



FLEXIBLE NEW DEAL AND WIDER WELFARE-TO-WORK COMMISSIONING IN THE PREVAILING ECONOMIC CLIMATE

ERSA's view on 'where we are now'

1. ERSA strongly supports the Government's welfare reform agenda, including the move towards more personalised conditionality and support. We welcome repeated Ministerial commitments that those further from the labour market must not be 'written-off'.
2. We welcome the Government's commitment to press ahead with welfare reforms during tough economic conditions – and indeed agree that it is more important than ever that those with more complex needs are given high quality support to move closer to the labour market and compete for the jobs that are available.
3. We strongly support the Commissioning Strategy and fully recognise that we (policy makers, commissioners and providers) are in the early stages of a journey towards world-class outcome-based commissioning of welfare-to-work services.
4. We are keen to work with DWP to develop techniques to put the Commissioning Strategy's principles into practice. We need to ensure fair competition at the same time as enabling commissioning to evolve swiftly as we develop new techniques.
5. Change and uncertainty in the economic climate reinforce the need to reconcile flexibility, fair competition and transparency in the management and evolution of DWP commissioning programmes.
6. We welcome DWP's recognition of the need for a 'pause' in the FND phase 1 procurement to ensure that final bids respond appropriately to the prevailing economic conditions.
7. The current context is so different from that originally envisaged that, no doubt, DWP will have considered carefully whether procurement law required the competition to re-start from the beginning. We can see the case for the approach you have chosen to take, ie to open up dialogue with those bidders who successfully pre-qualified to bid. It is of paramount importance that DWP conducts the remaining stages of this procurement in a way that all would judge to be fair, including those who declined to bid as primes or sub-contractors because they judged the original terms not to be viable.
8. Providers will more readily accept that DWP commissioning is reconciling flexibility with fairness if improvements in commissioning techniques and adjustments to reflect the prevailing economic climate are made not only to

phase 1 FND but also to existing welfare-to-work contracts and the pipeline of new procurements. Consistency in your 'commissioning mindset' is crucial.

9. Above all, ERSA asks DWP to base its decisions on what is in the best long term interest of the people who really matter in all of this - the customers we jointly serve – and also in the long term interest of the public purse. (We think these interests are mutually reinforcing, rather than opposing.) We also ask to work with you more closely than ever, to achieve a consensus on what that long term interest requires.

The way ahead – FND phase 1

Securing confidence in a process that will achieve the best result

10. Bidders will need to be confident that DWP is seeking final bids that are ambitious yet genuinely achievable. To date, the FND phase 1 procurement has fallen into the perennial trap for new public procurement programmes – where bidders feel pressured by the procurer into over-promising on price and performance
11. Bidders will also need to be sure of a level playing field where they can submit robust final bids that are well informed about market conditions and DWP requirements.
12. One priority for the meeting with bidders on Friday 6th February should be to agree with bidders the information they need and the timescale they can realistically manage. Bidders' internal sign-off processes will be particularly stringent, so bid teams will want to be confident of giving their own Boards sound propositions. It will be in DWP's best interest to create the right conditions. Equally, some bidders may now be considering withdrawing from some or all areas and they must be able to make such decisions on a well-informed basis.
13. It is very likely that prime contractors will need to reconsider their delivery proposition based on the revised volumes, in which case it is not just the pricing and working capital assumptions which change but the actual delivery model. This will demand some further re-writing of bids. This begs the question of how revised bids will be assessed and the assessment timeline. Again, this should be a priority for discussion on Friday.
14. A strong rationale for DWP adjusting the terms for FND must be to ensure that those further from the labour market receive the support they need, despite the worsening economic climate. There has always been a concern that the original FND terms did not serve this customer group well. Indeed, many independent providers, with valuable expertise and capacity to offer this support, reluctantly declined to bid for FND sub-contracts because they viewed the original terms as untenable. They may wish now to have an opportunity to bid – and primes may well need their capacity. DWP may need to issue directions about what they would now view as effective supply chains, and how they would expect prime contractors to build them so as to ensure demonstrably fair competition.

Getting the strategy right

15. It will be tempting on Friday and in the next few weeks for DWP and providers (both primes and subcontractors) to become so focused on process that they do

not step back and really 'take in' the consequences of a 300% increase in predicted volumes. DWP will need to play a leadership role to avoid that.

16. An increase of this magnitude demands capacity building rather than simply consolidation of the market. That in itself requires capital investment which is already under pressure.
17. The need to support and strengthen third sector capacity is well accepted at a policy level, eg through the work of the Third Sector Task Force. The economic downturn adds urgency to the need for policy support to be translated into practical action to address constraints on quality third sector provision, such as access to working capital.
18. If the 300% increase is a 'bulge' rather than a permanent increase, then prime contractors and sub-contractors will need to plan both for scaling up at the outset and scaling back as we emerge from recession. As primes and sub-contractors, providers will need to make careful judgments about their return on investment within the timescale of the 'bulge'. This underlines the importance of a well-informed and transparent market dialogue about the implications of changing labour market conditions over the lifetime of phase 1 FND contracts.
19. There is a real danger that valuable capacity will be wasted and lost very soon if capacity building does not become central to the FND strategy. This is an immediate concern as we can already see capacity being lost, for example, as providers adjust their size between contracts.
20. Outcomes are what really matter in public service delivery, so ERSA supports the principle of making sure that welfare-to-work commissioning achieves good outcomes. However, current economic conditions need to influence how this is done:
 - There needs to be realism in the judgement of what constitutes a good outcome when unemployment is high. A good outcome for FND customers in the next 18 months would be to move closer to the labour market, build self confidence and employability skills and be better able to compete for the scarcer jobs available, jobs that may well require a different set of skills. Providers should be incentivised to achieve these outcomes, even if they do not translate into jobs in the short to medium term
 - Providers are less able to wait until the time has elapsed for outcomes to be achieved before they receive payment
 - While there needs to be a step change in performance in welfare-to-work (notably, we suggest, through stronger teamwork between providers and Jobcentre Plus), the need for capacity building and the pressure of scaling up to meet projected volumes will have an impact on the pace of improvement.
21. There needs to be market dialogue to establish appropriate payment and performance management arrangements which take these points on board. For instance:

- Judgements or definitions regarding what constitutes sustainable employment – and what is helping someone towards sustainable employment - clearly need to take account of the economic climate
- There is an argument for recognising the value of placing people in temporary work because that builds employability skills and helps people to move towards sustainable employment
- DWP had already accepted the case for front-loading the management fee. The case for this is strengthened by the current economic climate. There is also a case for reconsidering a significant change in the split between management and outcome fee, especially if that allowed differential pricing to recognise the higher cost of supporting those who need longer term, intensive support.

Ensuring ongoing flexibility and fairness through the lifetime of FND

22. DWP requirements and market conditions will change during the life of FND phase 1 contracts. DWP and ERSA began useful work on DWP standard contractual terms. We need to build on this to ensure that the change control mechanism is effective. Moreover, there must be common expectations among all contract managers and providers about how to use this mechanism effectively to govern arrangements for responding to significant changes in circumstances.
23. Generally, joint DWP/ERSA work on improving risk management in welfare-to-work commissioning would be valuable. For example, the success of welfare-to-work commissioning will depend on the Government continuing to press ahead with welfare reforms. It would be sensible to build into the contract a recognition that non-implementation of welfare reforms would trigger contract variations.
24. It will also be important to ensure continued commitment to the Code of Conduct to ensure good supply chain relationships between prime contractors and their sub-contractors through the life of the contracts.

The way ahead – existing welfare-to-work contracts and future procurements

25. It is crucial that the DWP's 'commissioning mindset' is consistent across its commissioning, so that recognition of the impact of the economic climate leads to flexibility in existing welfare-to-work contracts. The change control mechanism on existing contracts should be used with care and confidence, to ensure that all existing welfare-to-work provision is delivered under conditions that really do achieve high performance.
26. Similarly, key issues that are taken on board for FND phase 1 should also be taken on board and applied appropriately for forthcoming new procurements.
27. Some thought must also now be given to the FND transition strategy, to reflect both the finally agreed timescale for FND phase 1 and the paramount importance of not losing valuable market capacity. Similarly, the timescale for FND Phase 2 and the transitional arrangements for those contracts require further consideration.

28. The learning from this exercise to ensure that FND phase 1 is fit for purpose in the prevailing economic climate also needs to feed into welfare-to-work and related commissioning by other commissioning bodies at national, regional and local levels. We are keen to help communicate and support the adoption of these important lessons across all strands of provision.

The way ahead – partnership working between DWP, JCP and providers to create the conditions for high performance

29. We recognise that this paper raises a number of issues. We are keen to support DWP and the provider base to help find the answers in a way that reconciles flexibility and fair competition.
30. We urge DWP to work with us and make clear that Government recognises that 'we're all on the same side'. We have detected unhelpful signs of a 'public good, independent provider bad' attitude creeping into analysis of welfare-to-work services. This gets in the way of the good work we continue to develop with you on creating conditions for high performance. In particular it obscures the key factor in improving performance – stronger partnership working between policy makers, commissioners, JCP and independent providers.
31. We are particularly keen to take forward the really valuable work we have begun with DWP and JCP, to achieve stronger and more flexible teamwork at local level between JCP and independent providers. This is key to improving performance – and also to making the best use of combined capacity in response to the economic downturn.
32. The need to re-model FND highlights the current lack of a clear source of labour market data that DWP and commissioners share as a basis for resource and service planning. ERSA recommends that we jointly consider together how best to fill this gap.
33. Finally, we stress that we do support DWP in taking forward an ambitious commissioning agenda in challenging economic circumstances, because this is in the best long-term interest of the people we jointly serve, who need support to find and keep a job, develop their skills and improve their life chances.