

# Contestability – Challenges for Auditors

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“Contestability -  
A credible threat of competition to better  
influence outcomes”

*KPMG, 2014*

# Why Contestability?

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Argued that it helps focus on outcomes rather than processes by increasing

- Economy and efficiency
- Customer focus
- Innovation
- Capacity and capability – access to services from a variety of suppliers

# Assessing the Impact of Contestability through a Commissioning Framework

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“Commissioning is the process of articulating outcomes taking into account community needs and pursuing delivery models or systems **(particularly open and contestable systems)** to make best use of total available resources both now and in the long term”

*Department of Premier and Cabinet – NSW*

# Assessing the Impact of Contestability through a Commissioning Framework

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“Strategic commissioning links the delivery of strategic objectives with key operational outcomes.

It involves more than deciding whether to deliver services in-house, in-partnership or externally and focuses on managing and using markets to secure desired outcomes”

*HM Treasury - UK*

# Commissioning Framework

## Six Steps

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1. Outcomes/end-user needs
2. Systems/market review
3. Design/Strategy
4. Procurement
5. Accountability
6. Evaluation

# Outcomes/End-User Needs

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- Medium to high risk – not a traditional area of focus for reviewers/auditors but fundamentally important to service delivery
- Agencies may focus on processes instead of outcomes and end-user needs
- When outcomes are identified, a strong connection is not always made to the services required and how best to maximise value

# Outcomes/End-User Needs

## Role of Auditor

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### Auditor questions

- Have policy outcomes been identified
- Was there broad engagement with stakeholders in defining outcomes
- Are the outcomes clearly defined and measurable



# Systems/Market Review

- High risk – often overlooked by agencies and reviewers/auditors
- Tendency to go straight to procurement stage without understanding the system/market and how best to derive value
- Need to clearly define the current and desired system/market and service delivery, and where improvements need to be made

# Systems/Market Review

## Role of Auditor

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### Auditor questions

- Has the existing system/market been properly assessed and defined - nature, dynamics and performance
  - Governance arrangements, providers (number, size, diversity, capacity and capability), existing services, demand, system maturity, competition and barriers to entry
  - End-users – awareness and knowledge - know what they want, what is available and where to find it
- Has the desired system/market been defined – one that will maximise value
- Has gap analysis been undertaken

# Design/Strategy

- Medium to high risk – governments must be more proactive in making systems/markets work properly
- Strategies are needed to manage, support and regulate both the demand and supply side of the system/market to maximise value
- Strategic governance issues need to be covered ie separation between the regulator, purchaser and provider

# Design/Strategy

## Role of Auditor

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### Auditor questions

Is there a strategy to move from current to desired state

- Are system/market transition issues covered
- Are both static and dynamic considerations taken into account
- Are decisions to deliver in-house, alliance or third party services based on deriving maximum value for the desired system/market
- Is the governance framework fit for purpose
- Have accountabilities been set – eg procurement, contract management and evaluation

# Procurement

Process of acquiring goods, works and services, from third parties and in-house providers

- Low risk commissioning area
- Agencies relatively experienced at procurement process
- Need to ensure procurement
  - focuses outcomes not inputs and outputs
  - maximises value in the designed system/market
- Need to watch probity and fraud risks
- Procurement specialists need to understand markets and contestability

# Procurement

## Role of Auditor

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### Auditor questions

- Evidence that procurement supports desired system/market and outcomes:
  - Is procurement outcomes focused
  - Have market development activities (supply and demand side) have been take into account
  - Have key stakeholders been involved in designing the procurement process

# Procurement

## Role of Auditor - continued

### Auditor questions

- Where necessary - are pathways specified to secure outcomes
- Are the same service outcomes set for private, NGOs, in-house and public sector partners
- Is information and reporting transparent and accountable
- Are the necessary skills and resources assessed and applied
- NSW Audit Office Best Practice Procurement Framework

# Accountability

- Medium to high risk area
- Contract management frameworks are often not in place
- Risk-based contract management is often not used
- There are limited public sector skills and experience to properly manage contracts and negotiate best value for money
- Accountability for in-house providers often overlooked
- Contracts are sometimes renewed without properly reviewing the quality of services, market testing prices or negotiating with suppliers for better prices
- Need strong accountability regimes – economy, efficiency and effectiveness



# Accountability

## Role of Auditor

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### Auditor questions

- Evidence of sound contract management – Audit Office better practice guide
  - Are there appropriate reporting and oversight practices in place
  - Does each contract have a risk based contract management plan
  - Is there clear and periodic performance reporting by providers
  - Do staff have the skills and experience required to manage each contract are assessed and sourced
  - Are roles and responsibilities determined and assigned
  - Are there regular reviews of the contract management framework for relevance and adherence
  - Is there independent internal monitoring of individual contracts

# Accountability

## Role of Auditor - continued

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### Auditor questions

- Evidence of early and ongoing contract reviews:
  - Are there early contract reviews to ensure the service is progressing as expected and to gauge key stakeholders satisfaction
  - Is there periodic full contract monitoring (eg 6 months new service or a year for existing one) – outcomes, stakeholder satisfaction and system/market performance
- Is there evidence of solid accountability frameworks – economy, efficiency and effectiveness

# Evaluation

- High risk area – needing agency and reviewer/auditor attention
- Services need to be evaluated for their contribution to outcomes
- Evaluation needs to cover the system/market, services and individual design strategies
- Evaluation should cover both in-house and third parties
- Evaluation results need to be publicly available

# Evaluation

## Role of Auditor

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### Auditor questions

- Have the performance of in-house and third party services, and the system/market been evaluated against intended outcomes
- Is this analysis made public
- Has contestability been optimised at all stages of commissioning
- Is evaluation continuous
- Has evaluation taken into account input from service users, staff and other stakeholders
- Is there independent evaluation
- Is the evaluation timed to impact decision making

# Commissioning Audit Office Forward Program

- Contracting for services - Out of home care
- Contracting for bus services
- Mental health services
- Transfer of public housing to community housing providers
- Managing urban development projects – Barangaroo
- Governance arrangements in local health districts and hospitals

# Questions

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