

Outsourcing of staff-led mutual from London Probation Trust RISE Probation Mutual/Cabinet Office

Transforming Rehabilitation (TR) was a competition run by the Ministry of Justice to part-privatise the English and Welsh probation service. In January 2014 the Cabinet Office ran a tender competition for support to assist 10 groups of staff in Probation Trusts who wished to develop staff-led mutuals which could then bid for services being tendered through TR. RedQuadrant (with legal support from Browne Jacobson) were successful in winning three of these tenders, including that for RISE, a group of staff from London Probation Trust, who were interested in forming a staff-led mutual in order to bid for the services being tendered through TR.

The challenge and the methodology that overcame the challenge

RISE recognised that they were not able to bid to run the entirety of London Probation as a “prime” provider. Consequently, a strategy was agreed upon which aimed to maximise the chances of success for RISE: to persuade potential prime bidders to include RISE in their bid submissions as a material sub-contractor. This required negotiation with potential primes who had considerable scepticism about how a staff-led mutual would add value to their bid. There were also two serious potential primes bidding in London who were competing with one another and this meant RISE required two different teams for six months to work with each potential prime. Each potential prime had different models of what services they wanted to offer and different expectations of RISE, further complicated by the potential primes having differing pricing structures. Our role was to provide commercial advice, guidance and legal support to RISE in this process.

We were actively involved from the start of this process: offering input into bid development, whilst responding effectively to challenges from primes on the proposed business model and service offer in order to ensure that satisfactory commercial agreements were reached. The development of a persuasive and coherent argument and business case was essential to sell this somewhat radical concept to potential primes.

It was particularly important to define the nature of the services being offered by RISE: this task, however, was made easier by RISE already being a pre-existing business unit within the Trust which delivered offender rehabilitation programmes. We provided challenge to the existing configuration of services including reviewing the array of programmes being provided in the light of new legislative requirements in this area and also reviewing the services provided to other parties such as local authorities. The end product was a menu of services that could be provided by RISE to potential prime providers.

Of particular importance was pricing the services being offered by RISE in order to cover both reasonable estimate of costs and to relate prices to the fairly complex pricing structure

of the TR tender. Our team worked with RISE to review and challenge costs of existing and new programmes taking into account the risks involved in unknown variations in demand for programmes and other services, the tariff structure of the TR bid itself and the payment by results component of the bid

Equally important were the legal elements of this project. There were three components of legal support offered:

1. Advice on the form and nature of the mutual: RISE was established as a Community Interest Company with an Employee Benefit Trust and Staff Council representation
2. Legal advice on the form and nature of the agreements between RISE and the prime bidders at bidding stage
3. Legal support to finalise the sub-contractual arrangements with the successful prime bidder. These included the scope of services to be provided, the pricing mechanism for these services, asset transfer arrangements, back-office support arrangements, TUPE, secondment and pension matters

These discussions and negotiations were complicated further by the requirements to satisfy specific MoJ concerns around probation staff involvement in bids, to avoid any appearance of collusion between bidders and prime bidders understandable need for commercial confidentiality. We met these requirements by developing a set of fairly complex 'ethical wall' arrangements, resulting in Frank Curran and Dennis Vergne running two separate teams each, supporting different members of RISE in negotiating with individual potential primes, each of whom had different expectations of RISE and different approaches to pricing and contract negotiations and each of whom expected RISE input into the bid process. These arrangements included governance arrangements for making final commercial decisions on the proposed offer to/from prime bidders.

An overview of key elements in our methodology

- Confident in credibly offering and delivering a wide range of expertise to RISE.
- Acted as a critical friend to their service offer, input into financial modelling, coordinating advice on legal and governance forms and their implications (from Browne Jacobson), advice on marketing as well as commercial and legal support in negotiations with primes.
- Provided legal and commercial nous within a fast-changing, time pressured competitive process.
- Adopted a hard-headed, results-orientated approach to ensure RISE was able to achieve this.

The outcomes:

Both of the prime bids for the London Contract Package Area included a substantial role for RISE, backed up by partnership agreements and agreed prices. In October 2014 it was announced that the successful winning bid in London and the Thames Valley was MTCnovo. MTCnovo are a vehicle established by MTC and Amey to bid as primes for the TR services, and it now includes representation from RISE.

1. RISE was commissioned by MTCnovo to provide services with an annual value of £7.3 million in London with the prospect of further substantial volume of work in other areas
2. 130 staff spun out on 2nd February 2015 into RISE to form one of the largest public sector mutuals ever seen in the UK
3. Of the ten groups of probation staff who received consultancy support from the Cabinet Office only two were successful in establishing themselves as viable mutuals: RISE and Innovation Wessex, both supported by RedQuadrant.

Who to speak to in order to learn more?

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