5. From procurement to the commissioning of public services¹

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PROCUREMENT AND ITS CHALLENGES

This chapter looks at how the concept and practice of commissioning have changed the way in which public administrations have approached service delivery and argues that the growth of commissioning is—at least in part—a response to the need for a more strategic and cooperative vision in the delivery of services. We begin by looking at some of the shortcomings that traditional procurement has faced and in the subsequent section we explore the history of commissioning and some of the attendant questions that have been raised about it. After that a section explores the specific inputs and conditions that support the successful implementation of commissioning approaches. Finally, we offer some conclusions.

The relevance of acquiring goods and services on the part of the state is easily recognized when we think of it as an economic flywheel (Murray 2009; World Bank 2016) but as of late there has been an increase in the strategic use of this capacity. Because more complex policy goals that simply ensure the provision of goods and services for the administrative machinery have commonly been attached to this process, diverse instruments like public–private partnerships (P3), set-aside contracting, social impact bonds, and concepts like social procurement and commissioning have emerged.

The debate around government contracting is rather layered and complex, in part because of the flourishing of different concepts and instruments, whose boundaries are not clearly defined and in some cases are partially fluid, and in part because some of these instruments overlap. We argue that when we look at the capacity of governments to acquire goods and services we should do so through the lens of whether this is done by thinking of the tools employed as strategic enablers of outcomes (Dutil and Migone 2018) and an increased level of cooperation among the actors involved.² In the last 25 years, we have seen a progressive increase in the interest about and application of approaches that are both more cooperative (by which we mean that include deeper connections

among stakeholders, users, providers and the public administration) and are designed to reach strategic outcomes using the purchasing capacity of the state. The most common tool used in modern contracting when outcome-based results are desired is the shifting of part of the risk from the purchaser onto the provider. This reallocation of risk creates an incentive in the provider to operate more effectively, innovatively, and honestly. At the same time, these approaches move beyond the traditional economic dimension of contracting to look at how the state can viably and legitimately use procurement to solve social problems by delivering social services in an alternative fashion to the use of state bureaucracies (McCrudden 2007a; 2007b).

A growing literature in areas such as Corporate Social Responsibility (CSR) highlights how companies with higher social and environmental performance receive more procurement contracts (Flammer 2018). From other analyses it also seems probable that companies might align to the idea of 'good' that is either explicit or implicit in government contracting rules, using it as a comparative advantage in their bidding process (Snider et al. 2013). Social procurement is another important area of activity for governments in many parts of the world (Dragicevic and Ditta 2016). Within this area fall social impact bonds, which are only repaid when the outcomes are reached and that are used within the scope of their limitations (Pauly and Swanson 2017; Fraser et al. 2018). These have been applied in a variety of ways to connect government procurement with success in specified social outcomes. When we analyze these and other typologies, we can individuate a family of activities related to government purchasing that bring together the enablement of strategic outcomes with cooperative approaches. These are sometimes conflated with classic procurement, but we argue that they respond to different logics. In this sense, it is important to recognize that the procurement of goods and services overlaps and blends in complex fashion with the strategic, client-centered analysis of how services should be delivered and by whom.

In sum, simply looking at who delivers a service or how a contract is developed is increasingly becoming insufficient to capture the strategic role that the acquisition of goods and services has taken on for governments. Figure 5.1 organizes in a very general fashion various approaches to contracting along the two dimensions of strategic outcome orientation and cooperation. Because these approaches are not monolithic, for example social procurement can include social impact bonds but also green contracting practices and CSR, we have chosen to represent them as areas as opposed to punctuated elements in the contracting space.

In particular, commissioning can act as a flywheel for more collaborative service agreements by applying a different logic to contracting. Cooperation is built into the commissioning process's logic of outcomes orientation and client

Figure 5.1 Strategic and cooperative orientation of selected contracting approaches

focus, it is sustained by a practice of active engagement with the stakeholders and by expressly fostering a collaboration-based scope for contracting.

These changes have taken place against the backdrop of the shift away from the regulatory state (Majone 1997) and toward much more market-oriented practices that have been variably described as consultocracy (Saint-Martin 1998, 2005, 2006), service, franchise, or competition state (Perl and White 2002; Bilodeau, Laurin, and Vining 2007; Radcliffe 2010). This new approach, as Butcher et al. (2009) noted, left behind at least some of the consistency and standardization of the early days and developed into “a hybrid mixture of part

public, part private, activities, delivery that does not remain in neat boxes or organizational settings, (with) loose combination of actors and providers who are each necessary to see something delivered” (Butcher et al. 2009: 31). This dynamic is not surprising. If New Public Management (NPM) opened up the space of service provision to rather independent non-state actors (Klijn 2012), post-NPM approaches have focused on creating more cooperation among providers (Bouckaert, Peters, and Verhoest 2010; Sanderson et al. 2018).

Alongside this transformation in the approach we have seen a shift in the roles of the actors that are engaged in it. Hence, non-state actors increasingly provide not only goods and services through procurement but also strategic advice to the public administration. This translated in actors like private consultants providing services like policy advice, which until relatively recently were considered a core government output, shifting considerably their scope and capacity within the policy advisory system (Peters 2015; Craft and Halligan 2017; Fraussen and Halpin 2017; Howlett and Migone 2017). The nature of these advisory processes (Savoie 2015) progressively evolved from “speaking truth to power” (Wildavsky 1979), to engaging in “the politics of policy advice” (Halligan 1995: 160), to “weaving” (Parsons 2004) or “sharing truth with many actors of influence” (Prince 2007: 179).

Finally, increased use of external actors in government purchasing has raised questions about its practice and long-term goals. Two areas are most prominent in this discussion: the first looks at value-for-money and the effects of this approach on government capacity (ANAO 2001; Committee of Public Accounts 2007, 2010; Riddell 2007; Public Service Commission 2010) and has been increasingly of interest also because of the recent vertiginous increase of the consulting business (Rapoport 2018).

The second analyzes the practical effects of current models of contracting upon economic development, which includes for example attempts to promote the growth of Small and Medium Enterprises³ (SME) (Loader 2015; Liao et al. 2017; OECD 2017), how to foster innovation using procurement as a tool (Skyles 2007; Edquist and Zabala-Iturriagoitia 2012; Lember, Kattel, and Kalvet 2014; Uyarra et al. 2014; Nouttilla, Aaltonen, and Kujala 2016), and how IT procurement also appears to face significantly larger challenges in a government context than it does outside of it (Giannoumis 2015; Rung and Blum 2015; Coggburn 2017; Klabi, Mellouli, and Rekik 2018). In the rest of this chapter we look in more detail at commissioning, recognizing that as of now it is a small part of the whole public sector contracting space but that it carries a very strong potential for strategic impact.

WHAT IS COMMISSIONING?

The delivery of public services has been, and remains, a core task for all public services. The trajectory and scope of that delivery, however, have changed over the past 75 years, as the paradigms that underpinned them shifted from war economy, to the welfare state, to NPM and finally to New Public Governance. These shifts embody political and material changes in the role of the state, in the nature of economic systems both domestically and internationally, and in the evolution of social and political elements at a global level.

Today, governments face challenges that are increasingly complex and interconnected, and more resilient to the traditional approaches aimed at tackling them. At the same time, both fiscal constraints and a growing demand from citizens for core services have become entrenched factors for government operations. Hence, many jurisdictions have focused greater attention on innovation and exploring new ways to design and deliver public services (Greve 2008). One of the results of this new focus has been an increased adoption by governments of new public–private service delivery approaches and, for some of those governments, the introduction of the concept of commissioning (Sturges et al. 2011; Rees 2014; Wear 2014; Leitch et al. 2016; Sturges 2018).

Commissioning fits within the growing public sector economy (OCC 2014) and in the mixed economy of public services (Murray 2011; Dominey 2012) areas of study. Rees (2014) notes that when discussing commissioning we are faced with three connected questions:

- Precisely defining what commissioning is;
- Assessing whether commissioning—as a novel and distinct approach from procurement—really exists and to what extent it is different from the latter;
- How it is shaping relations with third sector and—we would add—for profit realities.

A variety of definitions turn up even through a cursory search for the term. For example Woodin (2006: 204) provided one of the early definitions of strategic commissioning, which is still often used, describing it as a “set of linked activities required to assess the ... needs of a population, specify the services required to meet those needs within a strategic framework, secure those services, monitor and evaluate the outcomes.” The English National Health Service (2018: 8) notes that:

[c]ommissioning in the NHS is the process of ensuring that the health and care services provided effectively, meet the needs of the population. It is a cycle of work that starts with understanding the needs of a population and identifying gaps or weaknesses in current provision, to procuring services to meet those needs.

Wade et al. (2006: 3) used an organismic analogy to portray health care commissioners as the 'brain,' 'eyes,' 'ears' and 'conscience' of the system.

The best analysis of the concept of commissioning is Sturgess's (2018) article where he argues that at the root of public service commissioning are three insights: the limited capacity of command and control tools in engaging the providers of public services effectively, the deeply underdeveloped nature of delivery systems that could easily be accessed by service users, and finally an immature relationship between policymakers and the managers of front-line services, which he calls entrustment. Commissioning goes well beyond traditional procurement and outsourcing agendas (Tanner 2007; Macmillan 2010; Martikke and Moxham 2010; Sturgess 2018). Although no common definition has emerged, commissioning generally refers to *a more strategic and dynamic approach to public service design and delivery with a clear focus on aligning resources to desired outcomes and by injecting greater diversity and competition into the public service economy*. The focus of commissioning is an outcomes-driven process aimed at achieving better outcomes for citizens, at finding better value-for-money options, and at becoming progressively more inclusive and rigorous in the way in which service delivery is designed and implemented.

A lot of effort by most writers and practitioners who support it has gone into defining it as separate and different from procurement even if drawing a precise line between the two can be difficult (Packwood 2007; Martikke and Moxham 2010; Sturgess 2018). Sturgess (2018) notes both the more strategic nature of commissioning with respect to procurement and its multifaceted nature as relevant distinctions between it and procurement.

It may be more effective to think about commissioning not as an on/off switch but as an evolving policy approach that is related to the New Public Management separation of purchaser and provider in the service delivery mechanism (Rees 2014), but that also undergoes strategic realignments of its own as conditions change (Bovaird and Davies 2011), and retains a substantial amount of diversity in the way in which it is understood and applied (Bovaird, Dickinson, and Allen 2012; Bovaird, Briggs, and Willis 2014). In fact, we could arrange the timeline of commissioning since the late 1980s as shown in Figure 5.2.

In this evolution we can imagine a progressive (and complex) process of differentiation between classic procurement and strategic commissioning, which represents a much broader, dynamic and involved approach (White 2011), tends to favor outcomes over outputs, and is often considered to be closer to an art than to a mechanical approach to tendering and outsourcing (Shaw et al. 2013).

However, because of the tension that exists due to various material realities, diverse ways of understanding and applying the concept of commissioning,

Figure 5.2 *Timeline of commissioning*

Table 5.1 *Differences between procurement and commissioning*

	Commissioning	Procurement
Framing Principle	Assessing public needs and outcomes precedes the decisions of what is to be purchased and how	Maximizing value-for-money and efficiency
Focus	Outcomes focus	Process/input focus
Main Dynamic Among Actors	Active engagement	Traditional commercial relationships
Competition Dynamic	Contestability	Limited to no competition once contract is awarded
Contracting Scope	Collaboration-based and flexible	Transaction-based and rigid
Government Role	Stewarding public service markets	Monitoring contract implementation

and because of the divergence that can occur in different jurisdictions at different times, we follow Rees (2014: 50) in arguing that it “may be useful to view commissioning as operating on a continuum—between ‘intelligent/collaborative’ commissioning on one side and ‘commissioning on price/procurement’ on the other.”

APPLYING COMMISSIONING

The role of government remains critical in this model. Governments still need to set priorities and be accountable to citizens for both the performance and the effectiveness of the services along with shepherding a reconfiguration of how those services will be provided.

An important part of that stewardship role deals with the sometimes excessive fragmentation of the service providing agents (NHS Commissioning Assembly 2014; NHS England 2014) and hence often appears in fields dealing with complex services whose provision is shared by various organizations

(Addicott 2014). In this sense, instruments like alliance contracting, prime provider contracting, and outcome-based contracting have an important role in sharing the risk of service delivery among a variety of providers who would be incentivized to find ways to improve communication and cooperation among themselves (Sanderson et al. 2018).

Because of its nature and goals, commissioning sits at the interface of policy and service delivery, compelling all involved to reason on the appropriate division of roles and responsibilities that is necessary in delivering government priorities and the desired outcomes.

Commissioning grounds the choice of how to deliver public services in four principles. The first is that diversity in public service delivery will foster innovation and generate better value. The second is that a mixed economy is the environment in which public services are delivered by a mix of private, public and not-for-profit organizations. The third principle is that market stewardship is a requirement for a mixed economy if we wish to deliver both value and the desired outcomes. Finally, it postulates that contestability (the credible threat to a provider that it will be replaced if they are failing to deliver the service) should be encouraged.

By creating public service markets, the expertise and resources of the private and not-for-profit sectors can be harnessed and leveraged through new business and delivery models. As commissioning has evolved, its primary aim has been to increase service levels by both private and community partners. The approach recognizes and separates clients (purchasers) from service providers to enable public bodies to concentrate on what should be delivered (outcomes focus) rather than how such service should be provided. The intent of a more open and competitive public service market is that incentives are created to drive innovation, reduce costs and empower citizens. Competition and choice can be important mechanisms to foster change using limited government intervention. The approach has also enabled the adaptation of traditional tools to ensure that they are more dynamic and responsive to the needs of the new partnership arrangements (e.g. contracts).

By introducing greater competition and diversity into the design and delivery of public services (Sturges 2015), commissioning has created more latitude for partnerships with the private and not-for-profit sectors (Sturges et al. 2011); it has opened relevant spaces for engagement with service users where improvements to their practice can be implemented (Hudson 2015; Petsoulas et al. 2015; O'Shea, Chambers, and Boaz 2017). It has also helped to spur economic growth while enhancing governments' capacity to meet the evolving demands of citizens.

Whereas in some areas commissioning has become an important part of how some services are delivered, this is not (and it is unlikely to become) the norm across the whole spectrum of service delivery. However, we should not

Table 5.2 *Characteristics of high quality commissioning*

Domain	Main Description	Standards
Person-centered and outcomes-focused	This domain covers the quality of experience of people who use social care services, their families and carers and local communities. It considers the outcome of social care at both an individual and population level.	Person-centered and focuses on outcomes Promotes health and wellbeing Delivers social value
Inclusive	This domain covers the inclusivity of commissioning, both in terms of the process and outcomes.	Coproduced with local people, their careers and communities Positive engagement with providers Promotes equality
Well led	This domain covers how well led commissioning is by the local authority, including how commissioning of social care is supported by both the wider organization and partner organizations.	Well led A whole system approach Uses evidence about what works
Promotes a sustainable and diverse marketplace	This domain covers the promotion of a vibrant, diverse and sustainable market, where improving quality and safety is integral to commissioning decisions.	A diverse and sustainable market Provides value for money Develops the workforce

Source: Dickinson (2015: 17).

shy away from the notion that, at its fullest level of implementation, commissioning is about the potential that exists in engaging with a broad spectrum of providers and users to develop an approach to service delivery that is more cooperative, better adapted to stakeholders' needs and ultimately more effective.

In 2014, the Health Services Management Centre and Institute of Local Government Studies in Birmingham released a report on commissioning that attempted to isolate the standards of high quality commissioning. Table 5.2 highlights the main areas in which commissioning is different from classic processes of outsourcing and procurement.

To summarize following Sturgess (2018) commissioning is possibly best described as a family of approaches that rose to prominence since the 1980s mostly within Anglo-Saxon public administrations and that share four main characteristics:

- The recognition that public service delivery generates very significant mixed markets, which require significant stewardship;
- The recognition that engagement with delivery agents and stakeholders is fundamental to achieve success in service delivery;

- The recognition that the process of entrustment needs to be developed;
- The recognition that decisions regarding service delivery should be taken in a way to align authority and accountability. This means they should take place at the level where resource allocation and delivery of results can be best managed.

Arguably one of the jurisdictions where commissioning is most developed is the United Kingdom and particularly in the application of commissioning to health care services (Glasby 2012). However, it is increasingly appearing as an option in jurisdictions where outcome-oriented solutions are favored. For example, in the Republic of Ireland the until recently highly fragmented relationship between the state and non-profit service providers (Keenan 2008) is becoming rather more structured (Shaw and Canavan 2017) and a commissioning approach is being administered through the TUSLA independent agency, which responds to the Department of Children and Youth Affairs.

In practice commissioning refocuses the traditional service delivery approach toward a client-centered and outcome-oriented method, where contestability of services, competition among stakeholders and a broader engagement among all actors is developed. This means that the various organizations involved redefine their relations with the public administration on one level, with the clients/users of the services on another and finally with each other. A critical element in this relationship is the creation of high levels of trust in the relations among stakeholders. This trust will affect the flow of information and help in the creation of a contestable environment where multiple parties can move away from hindrances to outcome-based approaches, such as overly legalistic contracts, while enabling the devolution of meaningful autonomy to those who are ultimately accountable and responsible for the delivery of services.

In some cases, the new relationship will modify what are established sets of interactions. For example, increased competitiveness in the not-for-profit field has been linked to decreased cooperation among the providers (Buckingham 2009; Mills, Meek, and Gojkovic 2011), while other studies showcase the permanence of cooperative strategies (Allen et al. 2017). However, it is unclear whether these shifts were simply the result of commissioning or should be fitted within the broader trend toward less grants and more outsourcing that has also pushed competition levels further up independently of the type of service delivery approach that was chosen. We should note that the actual commissioning process is somewhat less neat than most of the models that are presented and seldom is it possible to find a logical, sequential and rational process in place from start to finish (Miller and Rees 2014). Hence, it is important to think about how we can improve our chances of success when we tackle commissioning projects.

CONDITIONS AND IMPLEMENTATION CHALLENGES FOR COMMISSIONING

While commissioning is an important part of modern service delivery, we need to be mindful of the fact that the approach requires specific support to be successful, especially with regard to the scope of commissioning, the complexity of the field and the availability of resources needed. For commissioning it is particularly important to effectively mobilize the stakeholders and to provide them with the opportunity to engage in substantial interaction. As we note below, the policy and governance capacity are critical for the success of commissioning approaches (Kekez, Howlett and Ramesh, Chapter 1 in this volume). For commissioning the organizational information capacities represent the crux for outcome-oriented approaches that engage strategically the contracting space. At the same time, successfully developing and maintaining commissioning agreements does require specific individual capabilities in the analytical and managerial dimensions. In this section we explore in more details the role of these inputs.

The issue of the appropriate scope of commissioning is reflected in its outcomes focus: it is simpler to organize commissioning around policy areas where “the links between inputs, outputs and outcomes are reasonably straightforward and uncontroversial, or where one or two simple outcomes can be agreed on as fulfilling policy objectives” (Schwartzkoff and Sturgess 2015: iii). Stemming from this complexity are various reflections: on the one hand, while commissioning can be adapted to very complex and sensitive areas such as mental health (Schwartzkoff and Sturgess 2015), this must be done in a careful fashion at the design, planning and management levels. Slay and Penny (2014: 11) note correctly that:

[d]one well, commissioning can ensure high-quality public services that deliver real value for money. It can maximise social, economic and environmental outcomes, prevent harm and help to achieve well-being for all. Done poorly, commissioning risks providing services that alienate and disempower, that are inflexible and overly departmentalised, that privilege short-term cost efficiencies over long-term public benefit, and that ultimately offer poor value for money.

Working with outcomes means always working with measurable outcomes. If some of the desired outcomes are not measured or are incorrectly measured, the result is that proper incentives cannot be created, and the process is likely to be sub-optimal. In the realm of public services such measurements can be very tricky and therefore it is sometimes questioned that outcomes-based processes can actually succeed (Lagarde et al. 2013). Measurement, even of benefits, remains surprisingly sparse for outcome-oriented contracting (Buchanan and

Klinger 2007; Sanderson et al. 2018) whether we look at specific sectors like defense (Caldwell and Howard 2014) or at the bigger picture (Love, Mistry, and Davis 2010). Even for broad goals like achieving better risk management (Matthews and Parker 1999) the effects remain difficult to measure. However, if commissioning is to succeed, appropriate measurement methodologies and monitoring need to be established (Selviaridis and Wynstra 2015), iteratively maintained (Gelderman, Semeijn, and De Bruijn 2015), and potentially changed as things become clearer (Hudson et al. 2010).

Always because of its complexity, commissioning (Addicott 2014) remains sensitive to both external and internal conditions. For example, when implementing commissioning the type of market rules and architecture that go with it will affect the final results (Figueras, Robinson, and Jakubowski 2005) so that new contracting rules may need to be written (Arthur and Kennedy 2014). The fluid, complex and interconnected nature of many of the policy areas that could be appealing for commissioning (for example, social policies in health care, prison management and so forth) have led many practitioners to note that commissioning is more of an art than a science (Shaw et al. 2013; Wye et al. 2015). In this sense it is possible to find examples of commissioning that have a fluid nature, passing from the state corporatist model of governance to the societal one (Kekez, Howlett, and Ramesh, Chapter 1 in this volume) as conditions change.

Complexities also affect commissioning when we turn our attention toward its implementation. Appropriate resourcing is fundamental in this stage and this does not simply mean sufficient financial resources. For example, contestability—which is defined in economics as the potential for competition in a specific market—is critical to the success of commissioning. A lack or a severe limitation of contestability, say through the presence of a monopolistic player, can dramatically hinder the process and require regulatory changes in market architecture before commissioning can become viable.

On another level, the individual competencies and knowledge of the commissioning team are also a fundamental resource for its success and are different from the skills that we usually associate with classic public management and traditional procurement (Allen and Wade 2014: 311). In fact, Allen and Wade (2014) argue that managers in a commissioning context need to be both the guardians of good practice and enablers of positive disruptive practices so that a significant change to the status quo can be achieved. Finally, a fundamental resource for successful commissioning is the engagement of the communities that receive the services. This process is less straightforward and simple than we could think at first blush (Ellins 2012; Addicott 2014) but it is a fundamental one if we want to build the level of trust that is necessary to make the system work (Dickinson et al. 2009, 2010).

Finally, we should note that mixed markets for public services can present extreme internal variation. Very large multinational companies can share those markets with small not-for-profit realities and so the introduction of commissioning frameworks, with their focus on outcome-based approaches and measurement can become de facto obstacles to the participation of some entities in these contracts.

To summarize some of the needs attached to the implementation of commissioning it is useful to look at Helen Dickinson's (2015) recent review of Australian and international experiences in commissioning where she identified four areas of lessons learned:

- Clarity in defining commissioning is very important;
- There are best practices but no silver bullet or one-size-fits-all commissioning;
- Appropriate data, competencies and incentives matter;
- Community engagement is critical.

We would add to this list the notion proper resourcing, understood broadly, is also fundamental to the success of commissioning efforts.

Commissioning holds a high potential for cooperative and strategic approaches in contracting but at the same time requires important investments and constant attention in terms of developing strong policy and governance capacity within the stakeholder community.

CONCLUSIONS

We have strived to describe the potential of commissioning both as an alternative—we believe a better alternative in many cases—to classic outsourcing and procurement processes, and as a tool for innovative public service delivery that can provide important benefits to all those who are engaged in it. However, some important points must be considered in this process.

- Commissioning should be clearly outlined when we speak of it;
- Commissioning is not the best fit for all service delivery;
- Commissioning involves both technical and value-based decisions;
- The skill set of commissioning professionals is fundamental for the success of the process and deserves a lot of attention;
- Community and individual engagement are very important pieces of commissioning and should be carefully considered;
- Commissioning is an art not a science;
- Commissioning efforts should be properly resourced.

Furthermore, commissioning is not a stand-alone policy but the result of an evolution in service delivery approaches. As such it is dynamic and interconnected to both internal and external dynamics. This means that it will require careful attention both in the 'set up' phase and during the service delivery phase where careful measurement, the considerate application of incentives, and maintaining effective accountability chains are fundamental.

NOTES

1. A shorter version of this chapter has appeared as a journal article in *Policy Design and Practice* (Migone 2018).
2. Dutil and Migone (2018) note how this definition was provided to them during an interview by a Director in the Ontario Public Service's Ministry of Government and Consumer Services.
3. Statistics Canada defines an SME as any business establishment having between 0 to 499 employees and less than \$50 million in gross revenues.