

Ten procurement barriers affecting charities and social enterprises

1. Limited pre-procurement dialogue

Before commencing any procurement activity, public authorities should be engaging with their supplier market to:

- assess the population's needs,
- consider service design
- understand and develop the supplier base.

Voluntary organisations are often well placed to contribute at this stage, advocating on behalf of service users and advising on how to improve services.

In practice though, public authorities often fail to engage with suppliers appropriately at this pre-procurement stage. Charities report a widespread but mistaken assumption on the part of commissioners that EU rules prohibit such dialogue. The Cabinet Office has published a 'myth-busting guide'¹ to clarify that dialogue is not only permissible, but essential, for public authorities to engage with the market before commissioning services. Meanwhile, the EU has just introduced two new procurement procedures, both of which have dialogue 'baked in'.

Proper engagement with voluntary organisations at an early stage can deliver significantly improved outcomes and efficiency. For example, the charity Turning Point² has delivered its Connected Care model of community-led commissioning across 14 areas in England. This model enables communities to be involved in the design and delivery of services and has resulted in services that are more effective and which deliver significant net benefit to the public purse.³ Another example is West Mercia Probation Trust which works with the charity YSS, to identify local needs and explore innovative new service ideas.⁴

Recommendation

Pre-procurement dialogue with communities and the market should be the norm, to ensure that services will be effective and represent good value for money. This should be part of the training curriculum for all procurement staff. It should also be communicated as part of a firmer requirement to take account of social value when commissioning public services.

¹ <http://mutuals.cabinetoffice.gov.uk/sites/default/files/documents/SEC%20-%20Busting%20the%20Myths%202011.pdf>

² <http://www.turning-point.co.uk/about-us/who-we-are.aspx>

³ A cost benefit analysis of one area found that with every £1 invested a return of £4.44 was achieved. When the benefits of improving quality of life are included, a return of £14.07 is gained for every £1 invested.

⁴ NCVO's *Open Public Services: experiences from the voluntary sector* provides more examples of pre-procurement dialogue: http://www.ncvo-vol.org.uk/sites/default/files/open_public_services_experiences_from_the_voluntary_sector.pdf

2. Inappropriate decisions about procurement approach

“Procurement seems to be very personal to an area and depend on how one or two (or few) personalities interpret legislation. More work needs to be done in educating procurement officers in the use of grants – i.e. it’s not just about the £££ size of specification that means it should be a contract - there are other factors - we suffer from the ‘it’s over ££££ therefore contract, PQQ, tender’ without any further thought”

“...the difficulty we have is that commissioning staff within Local Authorities are not clear as to what is and isn't a contract. So for us more training for Local Authority staff would be a priority.”

“Specialist officers who work in our 'field' are often very cautious about procurement. They will negotiate, then announce that all of this has to go to procurement, and there are significant delays.”

– Charity respondents to NCVO survey, Oct 2013

For a healthy market of service provision to exist procurement approaches need to be varied to suit the individual circumstances.⁵ A grant may be most appropriate way of funding a voluntary organisation to deliver services at a local level – particularly if the service is niche, small scale and/or innovative. A service contract may be more appropriate where the commissioner wants the provider to fulfil a detailed specification – appropriate for most services, where effective practice is well-understood and the commissioner wants to get best value by comparing a range of bids. Within a service contract, the commissioner should also be specifying additional social value that they want to achieve. Payment-by-results contracts should be reserved for only specific and limited circumstances.

There is widespread anecdotal evidence to suggest that silos between commissioning and procurement teams lie behind many cases of ineffective decision-making about procurement approaches. In some cases, commissioners will have gone to lengths to engage with local suppliers, but once they handover to procurement colleagues, the procurement proceeds in a way that does not reflect these prior discussions. Commissioners may want to offer scope for innovation or VCSE participation, but are overruled by risk-averse procurement teams with rigid specifications. Where commissioners and procurement teams do work well together, more innovative and cost effective public services can result.

⁵ NCVO provides guidance for voluntary organisations on different procurement approaches http://www.ncvo-vol.org.uk/commissioning/procurement_approaches

Recommendation

Appropriate selection of procurement approaches should be part of the training curriculum for all procurement staff. The Commissioning Academy should be extended for commissioners and procurement teams to attend together, to overcome potential silos.

3. Contract sizes are increasing

In recent years we have seen an increase in larger scale contracts, driven in part by the Government's enthusiasm for the prime contract model of service delivery. There are potential advantages to this model, such as achieving greater scale and coordination of services – either thematically or geographically – and managing risk exposure. However, many charities are unable to access the capital needed for these larger scale contracts, resulting in a diminution of local or specialist expertise. Furthermore, large contracts can also create unnecessary layers of management and increased costs, as primes take a significant cut of contract value.

A 2013 VCSE survey by Locality found that nearly 42% of respondents believe contracts have become larger in the last five years and a further 52% expect them to become larger still over the next five years. 80% said this would provide them with less opportunities and a lower range and quality of services in their area.⁶ These concerns are mirrored by an NCVO survey where 23 out of 46 respondents said the scale of contracts has prevented their organisation bidding for work. One respondent noted how Lancashire County council have moved to seek more county wide contracts rather than more local and how this has opened up the market to larger, sometimes national, providers to the detriment of local organisations.

Large contracts excluding the VCS have been most visible in the Government's Work Programme. Organisations wishing to deliver one of 40 prime contracts had to display an annual turnover of at least £20 million and the financial capacity to deliver large contracts that require significant cash-flow. Consequently only three charities now act as a prime contractor. More recently each of the 21 prime contracts for the MoJ's 'Transforming Rehabilitation' – which plans introduce a competitive market to probation services on a payment-by-results (PBR) – expects organisations to have an annual turnover of between £6-36 million. Although it is yet to be decided which organisations will deliver these prime contracts, it is anticipated that few, if any, charities will be able to do so.

The barrier of large scale contracts can be tackled in part with the development of consortia. Initiatives such as the National Consortium of Social Enterprises⁷ (funded by the National Offender Management Service (NOMS) and the European Social Fund) support the development of consortia to help increase employment opportunities for

⁶ The survey is yet to be published online.

⁷ <http://www.3sc.org/news/national-consortium-social-enterprises-launch>

offenders, and build the capacity of Social Enterprises to deliver public services. However, despite the advantages of working in consortia, many respondents to an NCVO survey said the lack of opportunity to bid in consortia or partnership has prevented their organisation from bidding for work.

Recommendation

Government should explore alternative ways to allow greater participation of charities in a prime contractor capacity in future programmes, by making contracts smaller and by providing more support and longer commissioning timescales to allow consortia building.

4. Payment by results

While payment-by-results is a compelling idea, in practice, we do not yet have developed examples of PbR working to improve outcomes. NCVO is also particularly concerned about the experience of service providers in these contracts, where risk is passed down supply chains. Voluntary organisations involved in the Work Programme have had mixed experiences, with few able to bid in the first place (see above), some being used as 'bid candy' but then receiving no referrals, and others experiencing 'back door' unfunded referrals.⁸

Subsequent schemes such as DCLG's troubled families, while organised locally, still suffer from many of the same problems as the Work Programme, such as low referral volumes. The MOJ's 'Rehabilitation Revolution' is attempting to tackle some of the problems associated with the PbR model by incorporating an element of grant funding, although it remains to be seen how much of this is will be passed down the supply chain to VCS providers. Social Impact Bonds may appear to be a potential solution to outcomes based service delivery, but they can work out very costly compared to using simpler payment mechanisms such as grants or block contracts.

Anecdotally, the mixed funding approach of DWP's Work Choice contracts is proving more effective than other PbR initiatives for both users and providers. The programme pays providers 70 percent of their monthly contract price in arrears to ensure suppliers maintain a minimum number of people on the programme at any one time, and to provide a degree of certainty in meeting fixed costs. The remaining 30 percent is paid when performance targets are met.

A forthcoming NCVO report will make further recommendations around payment-by-results.⁹

⁸ The Work Programme – Perceptions and Experiences of the Voluntary Sector. June 2012
http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf

⁹ NCVO has published a report in partnership with BWB 'Payment by results contracts: a legal analysis of terms and process' <http://www.ncvo.org.uk/pbr>

5. Short procurement timescales

Short procurement timescales can act as a significant barrier to charities wanting to compete for contracts. Producing high quality responses to what are sometimes complex and onerous PQQs and ITTs can take a considerable amount of time and resources, but a particular challenge is forming the partnerships or consortia needed to achieve the capacity and scale required to deliver some large contracts.

37 out of 46 respondents to an NCVO survey said short procurement timescales have prevented their organisation from bidding for work. One respondent noted how their local authority gave only 4 weeks to put a consortium together and complete the PQQ back-to-back with the ITT.

Recommendation

Training for commissioners and procurement professionals should include procurement timescales that reflect the complexity and scale of the contract being tendered. Where short timescales are necessary, commissioners should provide business support for charities.

6. Disproportionate requirements at PQQ and ITT stages

PQQs help public bodies determine whether providers have the capacity and suitability to deliver a particular service. However, their use can be burdensome for some organisations. 13 out of 45 respondents to an NCVO survey said they spend more than four weeks per year completing PQQs and tenders and 31 out of 46 said the bureaucracy of procurement procedures and paperwork has prevented their organisation from bidding for work.

Certain questions or requirements can also cause VCSE organisations to be unnecessarily screened out at an early stage of the procurement process. Invitation to Tender (ITTs) documents similarly create a barrier for some charities wanting delivering public service contracts. For example, one youth association successfully applied to be added to a Framework of suppliers linked to Troubled Families Initiative had to complete a 49 page PQQ and 99 page full tender – but has yet to receive any referrals. Another applying for a £10k grant for arts activity was asked to produce their AGM board minutes and explain what is already allocated within their committed reserves of almost £4m. Another NCVO member reported tender documentation 102 pages long.

Recommendation

Procurement professionals should ensure that requirements at the PQQ and ITT stage should be proportionate and relevant. This can be as much about the quality of questions asked as the number.

7. Contracts awarded on price, not value

"Cheapness" has won out, despite the commissioners' stated desire for quality.¹
– **Charity**¹⁰

"In bidding processes, companies are making offers to supply adult social care at a rate that should be mathematically impossible if they are paying the minimum wage, making National Insurance contributions, putting in to a pension scheme and providing training. No local authority should make that deal: even just on the pragmatic basis that it will be their own residents who are on the receiving end of that low wage, their own housing benefit department making up the carer's rent shortfall, their own health and children's services that come under strain when poverty is rife. And these care workers are storing up poverty for their own retirement."

– **Social Enterprise UK**¹¹

Public sector procurement is increasingly driven by price, rather than delivering value for money.

As the quote from SE UK above suggests, in many cases, this can be a complete diseconomy. With social care visits reduced to 15 minute slots, and care workers on zero hour contracts, many care workers find themselves working long hours for little pay.

By contrast, many charities and social enterprises go out of their way to create added value. Motivated by mission, rather than profit, they want to deliver a high quality service. Many also create employment opportunities for disadvantaged groups, build communities through active engagement and user voice, and attract additional resources to complement public spending, eg volunteering opportunities and grant funds.

The Social Value Act 2012 has placed a legal requirement on local authority commissioners to account for the social, environmental and economic well-being of an area when designing a service (i.e. pre-procurement) and deciding to award a bid. However, feedback from NCVO members, Compact Voice, the Public Services Delivery Network and voluntary sector partners suggests this is not happening nearly enough. In some cases, this appears to be because commissioners seeking to achieve broader social value or trial new methodologies – such as social value – have their business cases blocked by risk-averse procurement or finance teams.

¹⁰ Quote from a charity respondent to survey. 'When the going gets tough', New Philanthropy Capital 2012 <https://www.thinknpc.org/publications/when-the-going-gets-tough-2/>

¹¹ The Shadow State, Social Enterprise UK, 2012

Recommendation

Training for commissioners and procurement professionals should include developing a better understanding of risk, value for money, and social value.

8. Excessive monitoring and evaluation requirements

Appropriate and feasible monitoring and evaluation requirements can be beneficial to charities where they help staff develop an effective service and provide managers extra intelligence for improving the way the charity functions. However, excessive and inappropriate monitoring and evaluation requirements waste resources and reduce the effectiveness and efficiency of service delivery. This ultimately leads to poor value for funders. Onerous reporting requirements are a particular problem for smaller charities that receive small amounts of funding, and have less capacity to deal with monitoring requirements. A NAVCA report, 'For Good Measure'¹² found that one VCS service provider in Sussex was audited eight times in six weeks by local statutory partners.

The National Audit Office provides a practical toolkit, 'Intelligent Monitoring: an element of financial relationships with third sector organisations'¹³ to help funders consider effective and proportional monitoring.

Recommendation

Training for commissioners and procurement professionals should include the importance of proportionate monitoring and reporting requirements and incorporate reporting costs into funding agreements.

9. Poor quality data and reporting by public authorities

Open and transparent procurement data is essential for effective policy formation, driving improvements in procurement – by helping councils and charities identify needs, design innovative services and campaign for change - and providing accountability to the taxpayer. It also enables Government to track the value of VCSEs in local procurement and to support procurement – where necessary – which achieves local growth and greater value for money. Conversely, poor data – or a lack of data – creates challenges for constructing appropriate performance baselines and outcomes targets.

¹² <http://www.navca.org.uk/publications/forgoodmeasure>

¹³ http://www.nao.org.uk/intelmonitoring/wp-content/uploads/sites/9/2013/02/intelligent_monitoring.pdf

Currently there is no common standard for government to report spending data about its procurement activities, including contracts and grants with the voluntary sector. Each year, NCVO compiles its Civil Society Almanac (the most comprehensive analysis of the voluntary sector), using data from charities' accounts. This is necessary to derive sensible estimates of government funding to the voluntary sector, because government's own data is extremely patchy and inconsistent. To address this lack of timely data, Compact Voice also submits FOI requests to 352 local authorities annually¹⁴.

However, good practice does exist. Redbridge Council have developed [DataShare](#), a website that makes inspecting, access to, and downloading their data easier for everyone, including developers who may wish to use the data – including all contracts spend and payments over £500 - in their own applications, web sites and widgets.

Recommendation

Require all local authorities to publish their spending data on VCSEs in a consistent, open and machine-readable format.

10. Poor decommissioning

Decommissioning is stopping provision of a service or a significant part of a service in order to bring about an improvement to existing service provision. Improvement may refer to either or both outcomes or value for money, and also incorporates situations where decommissioning is driven by productivity and efficiency where there is a reduced budget. Decommissioning doesn't mean the service no longer exists – but that a process of review and change, and then fresh competition to win the contract – is conducted.

However, what might be considered by the commissioner as 'decommissioning' may be felt by the provider as a 'cut'. As such the key challenge is how commissioners and providers can work productively and closely through the decommissioning process. In such cases, good negotiation skills and trust-based relationships are essential.

An example of good decommissioning is the way Thurrock Council designed its current adult and social care services. Working with service users, commissioners built a coalition of support for decommissioning old day centres and replaced them with a more effective, community-based solution that gave people more choice, control and independence.^{15, 16}

Recommendation

Train commissioners to consult and work closely with users and service providers when a service is decommissioned. As with commissioning more generally, commissioners must

¹⁴ <http://www.compactvoice.org.uk/foi2012>

¹⁵ More examples of good decommissioning can be found here
<http://www.nesta.org.uk/library/documents/ArtofExit.pdf>

¹⁶ NCVO guidance on decommissioning <http://www.ncvo-vol.org.uk/commissioning/decommissioning>

better utilise the skills, knowledge and expertise of charities to identify community needs and co-design more effective and efficient solutions.