What is commissioning and procurement?

The potential of third sector organisations to supply goods and services to the public sector has attracted much coverage and political support over recent years. But there remains confusion between the use of the terms ‘commissioning’ and ‘procurement’ and the legal position, policy positions and circumstances in which grants and contracts fit within a commissioning approach. The range of technical terms, legislation, regulations and documents can add to the confusion. The two terms are often used interchangeably, when in fact they refer to different activities. This article aims to provide a basic overview of commissioning and procurement and what they mean.

All national and local public bodies are moving towards commissioning approaches to the design and delivery of public services. They are moving from a more narrow service delivery role to a commissioning role in order to support a more strategic approach to public service delivery. These changes are far reaching and are taking place at different levels – locally, regionally and nationally. In other words, public sector bodies are in the midst of, and at differing stages of, very large scale change.

A general definition of commissioning is that it is the whole process of deciding what public services are needed, what priorities they are accorded, and choosing what, why, how and where to allocate resources to provide services. Service users, communities and third sector organisations hold the knowledge, ideas and skills that can often be vital to the design and implementation of the best services possible. Commissioning is usually described as a cycle of how best to meet strategic objectives and service level objectives by identifying need, scoping the market of providers, drawing in expertise, designing a service, deciding how to resource the service, choosing a supplier and monitoring the ultimate service’s delivery. As well as making decisions about what services are needed and their design, it is also necessary to consider possible methods of delivering and funding public services. An ‘intelligent’ commissioning process will consider a range of options, and may choose to provide the service in-house, provide direct payments to individual service users to buy the services they require, use grant funding, or procure using a contract with external providers. Procurement is thus one part of the commissioning process and refers to a specific method of purchasing services which

“Commissioning is seen as a broader and deeper process of meeting needs for whole groups of service users and/or populations. It provides for a ‘whole systems’ approach to developing improved outcomes, which links strategic objectives, the intermediate outcomes required from individual services and specific outputs required from delivery arrangements … This requires a broader understanding and proper consideration of the full range of possible delivery options, providers and partners through contracting, grants, shaping markets ...”
results in a contract. Public bodies should use a good commissioning approach to assess the needs of their local area and identify services that create better value and outcomes for service users, the public and the environment.

Local authorities and other public bodies have the powers to both offer grants to third sector organisations and enter into contracts for the provision of goods and services. The National Audit Office decision support tool distinguishes three ‘funding channels’ – procurement (ie contracts), grant, and grant-in-aid – and sets out a four-stage process for making decisions about which funding channel to use. Decisions on appropriate funding methods need to take account of a number of factors, including legislative frameworks, policies and policy objectives, and principles such as value-for-money. There are no hard and fast rules about which funding method is appropriate in every situation, but the Treasury guidance on funding relationships with the third sector states that the main factor that should decide which funding method to use is the “nature of the intended outcomes”.

The guidance states that where outcomes are relatively specific and it is important to minimise the risk associated with delivering a public service, a contract is more appropriate. In general, grants using public funds are more appropriate to fund organisations whose activities are aligned with the wider objectives of the public body.

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**Grants and Contracts**

Local authorities may offer grants to third sector organisations or enter into contracts for the provision of goods and services.

A **grant** is a means of providing financial assistance to third sector organisations for a special purpose, for example to support the wider objectives of the local authority in promoting the social, economic or environmental well being of their area. Grant funding is usually preceded by a call for proposals. One example would be a grant to support a local community centre to hold activities for children during the summer holidays. The grant offer letter will normally set out general instructions as to how the special purpose is to be achieved – ie through conditions that limit or guide the behaviour of the third sector organisations.

A **contract** on the other hand is an agreement between two or more parties which is intended to give rise to legal relations. The European public procurement regulations (in England, this is implemented under the Public Contracts Regulations 2006), apply to the purchasing of supplies (goods) and services by local authorities from an economic operator (means a contractor or a third sector organisation) above certain specified thresholds under a contract. Note the EU Treaty principles apply also to contracts which are below these specified thresholds. Entering into a contract is usually precipitated by requests to tender which are normally published in various public journals to ensure transparency and openness of the contract. One example would be a contract to deliver supported housing services for ex-offenders.

It is important to understand the differences between entering into a grant-funded agreement and a contract for a variety of reasons. If, for some reason, a third sector organisation does not deliver under a contract it will be in default or breach and it can reasonably assume some legal action may be taken against it for not complying (ie, the local authority may take the matter to Court and sue for damages or in some cases seek specific performance of the contract). In the case of grants, if you do not deliver under the grant agreement, the local authority may bring no immediate sanction against you, provided of course there was no deliberate misuse of the grant money or it was used for a totally different purpose than it was given. It may, however, be taken into account when the local authority decides to offer grants in the future. There are likely to be occasions when it is a not clear that funding is by means of a grant or a contract. In such cases, legal advice should be sought.

[from: Institute of Public Finance]

Overview provided by Pauline Kimantas and John Dawson from NAVCA’s Local Commissioning and Procurement Unit.

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Commissioning: what’s in it for local voluntary groups?

Either – a massive and irrevocable loss of resources and influence. Or – a fantastic opportunity to address entrenched inequalities and meet the real needs of real people. It really depends on what is commissioned, says Alex Whinnom

This is why national policy on outsourcing the delivery of public services is so important. Policy has changed many times over the last three years, as the government feels its way to a comfortable position. Early on, there was breezy talk of the wholesale contracting out of services to the private and third sectors, and of VPFIs (voluntary/public finance initiatives) to parallel PPFIs (private/public finance initiatives). This was led by some national voluntary sector infrastructure and very much endorsed by some of the larger national voluntary organisations, which remain a powerful lobby. Others saw this idea as naïve at best and dangerous at worst.

In 2006, David Miliband MP outlined a more sophisticated position which has since become the consensus across the political spectrum, and rests on the idea that the (local) third sector has an essential role within communities – addressing poverty and inequalities, providing voice, generating trust, co-operation and voluntary action, and reaching people below the radar of statutory services. This includes both delivering public services and influencing commissioners. Whilst this position is endorsed widely, practice did not seem to follow it.

At local level, we witnessed a move from grant-making to contracting, often including competitive tendering; an increase in the size and reduction in the prices of public sector contracts; procurement processes that were very inaccessible to small voluntary organisations; and the proliferation of arms-length trusts and ‘social enterprises’ set up specifically to take advantage of contracting opportunities. GMCVO has lobbied for some time for recognition of the impact of public sector procurement practice on the local voluntary sector, particularly to raise awareness at national level. GMCVO and one of our members, the Wai Yin Chinese Women Society, gave evidence to the Public Administration Select Committee on the topic. It was pleasing to see that the report of the Committee, Public Services and the Third Sector: Rhetoric and Reality (July 2008), reflected many of our concerns.

We have since seen quite a sea change in the attitudes of commissioners, certainly within Greater Manchester. A range of work has been carried out by GMCVO and others to demonstrate not only the ‘added value’ that can be offered by local organisations working holistically with some of the most disadvantaged people, but also that there are practical solutions to the difficulties of contracting with these organisations. We have developed consortium and partnership models, provided critique of procurement processes and documentation, demonstrated outcomes-based monitoring, and raised awareness of commissioning with both the voluntary and the public sector. In my opinion, many public sector commissioners in Greater Manchester do now have an understanding of the benefits our sector can bring, and are interested in working with us.

The new Greater Manchester Strategy draft Vision places emphasis both on enterprise and prosperity and on diversity, inclusion and communities. It includes a specific commitment that “there will be no neighbourhood left behind”. Draft principles include “everyone, everywhere should have the chance to contribute and benefit from our success” and “a fairer and more inclusive place to live”. These are very positive aspirations for Greater Manchester which we very much support. We will not achieve them by any of us doing more of the same.

We believe the aspirations of the draft Strategy and of the new city-region Health and Economic Commissions allow and encourage a significant role for the voluntary sector in helping to address persistent inequalities and areas of deprivation, worklessness, low skill levels, public health and poverty. It is likely that the current economic downturn will impact most severely on groups that are already disadvantaged. These groups are served and supported through local voluntary action, and our large, diverse and well-connected voluntary sector is a major asset to Greater Manchester.

Alex Whinnom, Director, GMCVO alex.whinnom@gmcvo.org.uk
Principles of good commissioning

Better public outcomes for individuals and communities, which yields efficiency gains and community benefits, through smarter, more effective and innovative commissioning, and optimal involvement of the third sector in public service design, improvement, delivery and holding the public sector to account is the vision of the National Programme for Third Sector Commissioning

To make that vision a reality, the Programme suggests that organisations can help by embedding the following eight principles of good commissioning:

- Understand the needs of users and other communities by ensuring that, alongside other consultees, you engage with the third sector organisations, as advocates, to access their specialist knowledge;

- Consult potential provider organisations, including those from the third sector and local experts, well in advance of commissioning new services, working with them to set priority outcomes for that service;

- Put outcomes for users at the heart of the strategic planning process;

- Map the fullest practical range of providers with a view to understanding the contribution they could make to delivering those outcomes;

- Consider investing in the capacity of the provider base, particularly those working with hard-to-reach groups;

- Ensure contracting processes are transparent and fair, facilitating the involvement of the broadest range of suppliers, including considering sub-contracting and consortia building, where appropriate;

- Ensure long-term contracts and risk sharing, wherever appropriate, as ways of achieving efficiency and effectiveness;

- Seek feedback from service users, communities and providers in order to review the effectiveness of the commissioning process in meeting local needs.

National Programme for Third Sector Commissioning

The Improvement and Development Agency (iDeA) is managing the National Programme for Third Sector Commissioning, which will run until March 2011.

The five outcomes of the programme are:

- co-ordinated specialist guidance and support on commissioning services from the third sector

- increased understanding of the third sector among commissioning and procurement officers

- provision of awareness training for councillors and public sector officers on the benefits of third-sector involvement in the shaping and delivery of public services

- provision of awareness and skills training for the most significant 2,000 commissioners concerned with correctional services, employment services, children’s services, education and training, health and social care services, and other local services

- improved third-sector bidding capacity

To find out more about the National Programme for Third Sector Commissioning visit: http://www.idea.gov.uk

Legal guide to tendering and procurement

A new guide from Tendering for Care provides information for those who may not be directly involved in the preparation of tenders, but who nevertheless need to be well informed with regard to the legal basis for tendering and procurement. Charity trustees, directors, managers and those who advise other organisations on the tendering and procurement processes will find .

Whilst the guide offers some indicators to the operation of the processes, as well as a ‘do and don’t’ list, its principal purpose is to offer organisations tendering for public sector contracts a simplified reference to legislation surrounding procurement and related regulations and guidance. It does not set out the full detail of tendering and procurement, but it focuses on the principles which apply most of the time. There are special cases and exceptions when the principles do not apply, and are dealt with in general terms rather than great detail.

‘The Handy Guide to Tendering and Procurement’, published by Tendering for Care

Tel: 01629 57501. E-mail: info@tenderingforcare.com. www.tenderingforcare.com
Keeping small groups on board

Neil Walbran looks at how membership of a health consortium in Sheffield benefits both well-developed organisations and smaller service providers that are not procurement-ready

One of my colleagues at Manchester Alliance for Community Care has completed a piece of work that addresses third sector BME organisations and mental health provision. The report is excellent and there’s an accompanying DVD: if you get the chance, have a look at it. One of the things which resonated for me about the report’s findings was, that BME organisations are effective in mental health provision when they remain small, focused and localised. Once a group grows beyond a certain size, it tends to lose its local reach and people disinvest. The trouble is, if you’re small you probably aren’t ready for contracting and must rely on grants – and we all know how precarious a funding situation that can be. So what’s been happening over time has been a series of small short-lived groups which rarely live long enough to prove their effectiveness, and in the gap between their lifespans when services are lost, people get poorly again.

How do we keep small groups thriving over a long period? One solution, which seems to have worked so far, has been developed in Sheffield. There, they have a ‘well-being consortium’ of larger third sector health providers which has successfully won a number of contracts in health provision.

To be a full member of this consortium, groups have to satisfy a number of eligibility criteria which form a membership prospectus. The larger, more developed organisations in Sheffield form the membership of the consortium, are procurement-ready and go up for the contracts – not necessarily all at once.

The smaller groups in Sheffield are eligible for associate membership of the consortium. They are invoiced for their services by the full members and this can last for as long as the term of the contract – or even contracts. So, for example, a cluster of large mental health providers (eg a local MIND, START etc) would win a contract and would then invoice a local drop-in service, counselling service, dance-for-fun group and so on as part of the supply chain.

In this way, smaller organisations have a far more secure funding base, can remain small if they wish to (or grow to become full members) and have the time to demonstrate their effectiveness.

Sound like a good idea? As we enter a climate where there is greater emphasis on contracting, with greater pressure on local authority grants and European funding going East, it seems this could be a bit of a lifeboat for smaller groups. It’s clear to me – and thankfully to the people governing the work of the Health Partnership – that we should definitely go for our own well-being consortium in Greater Manchester. Watch this space.

Neil Walbran, Health Partnership Officer, GMCVO
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Commissioning experiences

A report providing an insight into third sector experiences of public sector commissioning was produced recently. Written on behalf of GMCVO’s Health Partnership Project, the report also makes recommendations for improving voluntary and community sector (VCS) organisations’ chances to contribute to health in Greater Manchester.

The material presented is based on 20 interviews with VCS organisations across Greater Manchester in receipt of public sector funding either in the form of block grants, service level agreements or contracts.

The research included organisations with experience both in competitive processes (tendering or competitive bidding) and in non-competitive informal processes.

The findings are not intended to be representative, but to highlight a spectrum of issues that are of relevance in public sector relations with voluntary sector agencies. The report presents key findings on the three stages of the commissioning cycle – commissioning, procurement and contract management – along with a section on the impact of statutory funding relationships on third sector organisations.

Commissioning: Possible
Greater Manchester VCS Organisations’ Experiences in Public Sector Commissioning
Compact commissioning guidance

Guidance on implementing public service commissioning was published by the Commission for the Compact in February 2009

The Commission’s guidance identifies current Compact principles and demonstrates where and how they can be applied to commissioning to deliver better outcomes and improve performance. It also highlights those Compact principles relevant to third sector organisations involved in commissioning. The guidance takes a four-stage approach to the commissioning process. It highlights the importance of effective analysis, planning, sourcing, and monitoring and review, and explains the ways in which the Compact can be applied during each of the stages.

Commissioning should reflect Compact principles. Working in this way creates an environment underlining the benefits that independent third sector organisations often bring to public service design and delivery. A third sector whose independence is acknowledged and supported can help commissioners to deliver better outcomes for individuals and communities.

The role of third sector organisations, the Compact and commissioning

Whilst the guidance is aimed primarily at commissioners, the Compact Code of Good Practice on Funding and Procurement also contains undertakings for third sector organisations when working with public sector bodies.

The following principles are therefore relevant to commissioning for third sector organisations. Working in this way will ensure that value is added to the commissioning process.

- When engaged in planning, third sector organisations should contribute constructively to the design of programmes and focus their contribution on the needs of service users.
- Third sector organisations should also be clear about whom they represent and be accountable for representing their views. In the design of commissioning processes, confidentiality should also be respected.
- When discussing terms of delivery, consider those risks associated with delivering outcomes. Communicate these clearly to commissioners so they can be addressed.
- Third sector providers should seek to understand timescales and the decision-making process. Where there is a lack of clarity, contact the commissioning body.
- Consideration should be given to the level of work involved in meeting outcomes. Organisations should be clear on how their work will meet outcomes and that delivery fully meets commissioning requirements.
- When developing bids, understand the direct and indirect costs associated with the delivery of the service.
- When developing joint bids, ensure management functions and accountability for delivery between partners is clear.
- Third sector providers should seek to have good systems in place to manage and account for funding and be transparent in reporting.

More information from: www.thecompact.org.uk

Influencing commissioning

Encouraging commissioners to listen to third sector service providers is one of the aims of GMCVO’s Health Partnership Project. Neil Walbran outlines how the Project has started to address the issue

When I first came into post at GMCVO 18 months’ ago, I set about promoting the work of the Health Partnership to as many people as possible. One of the most interesting meetings I had was with PCT commissioners in Bury, as it was then that I came across one of the main issues facing the third sector around health commissioning.

A major strand of my work is to improve commissioning arrangements with the VCS around health. In a practical sense, this means that third sector providers would have an input into service design before it reaches a tendering situation. At the meeting, I was told that there were implications in this approach for
commissioners, where potential conflicts of interest may arise. It would be inappropriate for providers to write service specifications for themselves.

And this has been the rub for the Health Partnership – and I expect it’s something that isn’t confined to Greater Manchester. So the next phase of my work will involve addressing this issue and hopefully getting it sorted out. How this is going to shape up isn’t very clear at the moment – but I think one of the first things that needs to be established is some sort of common dialogue between our two sectors. To illustrate:

A while ago I met one of our statutory colleagues. He’d called asking for a meeting with me about the work I’d been doing through the Health Partnership. He wanted to discuss the research report we’d released a few months previously, Commissioning: Possible, for which we’d interviewed organisations around their experiences of commissioning arrangements with the statutory sector. One of his first questions was about the references throughout the report to ‘funding’ and what this term actually meant.

After I’d clarified this, he said it was his role to ‘stimulate’ the third sector market. After he’d clarified what stimulate meant for me, we talked about the potential threat to local groups from large national organisations and I pointed out that most of the perceived ‘nationals’ were actually franchises.

After I’d clarified what franchises were for him, we both realised we were speaking two quite different languages and that sort of wrapped it up for us.

Although this sounds quite a comical scene I think it really highlights one of the fundamental problems we face in building a positive partnership between our sectors. Perhaps a phrase book or an interpreter may be going a bit too far, but before we can influence, we certainly need to unify.

Neil Walbran, Health Partnership Officer, GMCVO neil.walbran@gmcvo.org.uk

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**Softening up the tendering process**

Local third sector organisations can face significant barriers when tendering for contracts. One of the major problems cited to local infrastructure support services is the tender documents themselves. Prue Yeoman reports on an initiative that aims to make the documents easier to use.

The NW Improvement and Efficiency Partnership (NWIEP) runs a group responsible for the production of a whole range of standard documents – including the ‘pre-qualification questionnaire’ and ‘invitation to tender’ – which will be rolled out to local authorities throughout the North West. NWIEP and the co-ordinator of the Five Counties Partnership (SCP) have worked together since August 2008. One intention was to improve understanding about the barriers faced by the local third sector when tendering for contracts. Prior to roll-out of the standard tendering documents to all local authorities in the North West, it was agreed that the SCP co-ordinator would set up and support a task and finish group. This would entail reviewing standard documents used in tendering and procurement that are of particular interest and importance to the local third sector, and writing a report with recommendations to make the documents easier to use and more relevant to the local third sector. This report has now been written and will be presented and considered at a NWIEP steering group meeting in June. If acted upon, it is anticipated that the number of successful tenders made by local third sector organisations will improve.

The first report, with recommendations, is available at: www.gmcvo.org.uk/?q=five.

Prue Yeoman, Co-ordinator, Five Counties Partnership
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Clever commissioning

A recent report published by the New Economics Foundation gives an example of what good practice looks like and how the VCS can take advantage of commissioning opportunities presented.

There are two dominant themes: value for money – not just price, but wider considerations of value – and Social Return On Investment, measuring not just the outputs and outcomes specified in the contract, but the wider benefits to the community. On value for money, the report urges commissioners to look at the quality and eventual outcomes for the individuals using the contracted services as well as the additional quality and support offered by the organisation. The report also discusses the idea of ‘co-design’ and ‘co-delivery’ – the involvement of communities and users in the design and delivery of services, something the report identifies as a strength of the VCS. This means better individual outcomes so greater value for money but also more effective in dealing with underlying issues so also delivers a greater social return on investment. The report, which is based on a number of case studies, has four main conclusions for commissioners:

- making commissioning for outcomes the norm;
- introduce frameworks that are capable of measuring what matters;
- incentivising intelligent commissioning;
- mainstreaming a co-production ethos across public services.

A better return: setting foundations for intelligent commissioning to achieve value for money can be downloaded from: http://www.neweconomics.org/gen/uploads/gsv02v55ifdaw45cn5lr2qh16022009135451.pdf (free registration required)

Further information

- Who Delivers Services? A study of involvement in and attitudes to public service delivery by the Voluntary and Community Sector in the North West of England
  The results from a survey in 2007 in the North West on the make up of the regional third sector and involvement in public service delivery. Centre for Local Governance, University of Manchester, April 2008
- Financial relationships with third sector organisations: A decision support tool for public bodies in England
  The National Audit Office
  www.nao.org.uk/guidance/better_funding
- Improving financial relationships with the third sector: guidance to funders and purchasers
  HM Treasury, May 2006
  http://www.hm-treasury.gov.uk/d/quotindcefunderson1505061h1.pdf
- Sustaining Grants: why local grant aid is vital for a healthy voluntary and community sector and thriving local communities
  NAVCA, June 2007
  www.navca.org.uk/publications/sustaininggrants
- Caring Capitalism: Small can be strong
  Article from The Guardian that looks at the help and support for third sector organisations that want to compete in the tendering process against the bigwigs.
  http://www.guardian.co.uk/caringcapitalism/third-sector-organisations-tendering
- Commissioning from the VCS: step by step
  Guidance on how to harness best practice and innovation from the VCS throughout the commissioning process.
  www.ncvo-vol.org.uk/index.asp?id=13346&terms=commissioning
- NAVCA Commissioning and Procurement minisite
  http://www.navca.org.uk/localvs/lcp/