

What are Commissioning, Procurement and Contracting?



The Voluntary Sector has provided services such as meals on wheels, youth projects, environmental services and specialist healthcare for the public sector for many years. This has normally been done through grants or Service Level Agreements (SLAs). The government now wants the Voluntary Sector to deliver more public services because of their experience and knowledge of community needs. Commissioning, Procurement, Contracting and Tendering refer to different parts of the formal process for public service delivery.

What is Commissioning?

Commissioning means the **process** public sector organisations use to assess the needs of an area and how to meet those needs (in simple terms, drawing up a shopping list); how it then organises, contracts with a suitable provider and then monitors the contract performance. Public sector organisations can include central Government departments (for example, Department for Education & Skills or Learning and Skills Councils), the NHS and Primary Care Trusts, Local Authorities, Clinical Commissioning Groups (CCG's) and Universities and Colleges.

What is Procurement?

Procurement means the **purchase** of goods or services by a public sector organisation from another, external organisation (in simple terms, doing the shopping). It is one part of the commissioning process – although often the mechanics and demands of the procurement process can dominate.

All public authorities are required to follow formal public procurement rules when commissioning goods or services because they must contract on an objective, fair and transparent basis. If public bodies do not comply with the rules, then the procurement decision can be challenged. All service providers have a legal right to be treated fairly and equally.

What is Contracting?

The move from grant aid to contracts does not follow a common pattern. Four ways in which commissioning has been introduced are:

- Converting grant aid into a service contract
- Through open competition
- Through the approved list system
- By appointing one agency as the preferred supplier.

Contracting includes contract management and delivery of services after the contract has been awarded. It includes:

- Building an effective working relationship between the commissioner and provider
- Monitoring the contract's performance
- Dealing with issues and problems that can occur during the contract.

After going through the Commissioning Process the public sector organisation will advertise the goods or services they want to buy or Procure. This is called the **Specification or Invitation to tender stage** and gives an overview of the service to be provided. This sets the framework for structuring and drafting the bid. The bid needs to show that you can meet all of the elements of the criteria. The Commissioner should be able to easily and quickly find the information they need to measure your bid against the criteria.

The Commissioner may follow one of the following contracting processes. Options include:

- Public notice/open competition
- A two-stage or 'restricted' process – Commissioners can advertise the contract and invite interested parties to complete a Pre-Qualification Questionnaire (PQQ)
- An approved or select list – a list of organisations whose competency and efficiency has been pre-approved
- A direct approach to potential providers – by choosing to only invite those on the approved list to submit bids.

The final stage is the **Negotiation Stage**. This is where formal Contracts are negotiated with the successful bidders including the length of the Contract, required outcomes, monitoring methods and regularity and when and how payment will be made. The Commissioner will then publish their decision and appoint one provider as the successful bidder. In some procurement processes there is a stand off period after the appointment where the service will not start operating to enable other parties to challenge the decision. Before the service starts, the draft contract should be reviewed, negotiated and signed. Often the service specification is attached to the contract and becomes part of the contract.

How are Contracts Different?

Whereas grants and SLAs may have been renewed every year on a formal or informal basis, contracting is a **legally binding process** holding both parties responsible for standards in service delivery, monitoring, reporting and payment. Processes and Contracts should be **Compact** compliant. Organisations previously holding SLAs or grants may now have to go through the full Procurement process and will be competing against larger and more experienced organisations from any sector.

What's in it for us?

Contracts are usually longer than grants and subsidies and are subject to EU regulations, meaning that payments must be made on time. Contracts can also be negotiated and an organisation has legal rights if the public sector organisation fails them at any time. VAT can also be charged for services provided, unlike Service Level Agreements or grants.

Can public authorities favour charities or social enterprises when awarding public service contracts?

Not automatically. However, it is clear that specific social and environmental benefits that a charity might provide as "added value" can be taken into account in the commissioning process. This would need to be fairly and transparently incorporated into the procurement process.

Things to Consider

You need to consider the legal implications of entering into Contracts, for example does it constitute trading and does your Constitution allow it? You will be competing against some tender-experienced organisations and monitoring and reporting methods are very different. Below are some further examples of the wide variety of financial, capacity, human resources and legal issues raised by Contracting:-

- Do Contracts meet our organisation's objectives and aims?
- Does it with our strategic plan?
- Does the service reflect our value base? Are we enthusiastic about it?
- Will we need to set up a subsidiary?
- Does it reflect what we understand users want and need? (havethey been involved in drawing up the contract?)
- Can it be done – are the outcomes achievable?
- Do we have the skills and experience to manage a Contract?
- Do we have a good track record and evidence of delivering the services advertised?
- Do we have good recording, monitoring, evaluation and quality assurance systems in place?
- Attach evidence e.g.: evaluation reports; Quality Assurance Systems; Written policies and procedures; Business plan; user feedback surveys; evidence of other successful projects; recent accounts; Third Party references; recent risk analysis
- Are possible forms of collaboration appropriate? Do we have experience of setting up, working with and/or managing partnerships?
- Will we be able to cover the full direct costs and a contribution to overhead costs?
- How will the changes affect our staff, volunteers and service users and how will we manage this?
- If we don't bid, might future opportunities be lost?
- What could go wrong - are the risks involved manageable
- Will we be liable to pay VAT on the services you deliver?
- How will we continue the service after the Contract ends (sustainability)?

Common bid mistakes

Commissioners have identified the following common bid-writing mistakes:

- Not fully reading the material
- Assuming prior knowledge
- Not taking time to understand the context to the bid
- Using a different set of language or jargon
- Not following the prescribed format
- 'Cutting and Pasting' using a standard bid
- Not proving the need for or value of your service

Managing and delivering contracts

It is worth spending time building the relationship that you will have with the commissioner, in order to clarify roles and expectation: these should be clarified in the contract document. The organisation providing the service needs to be able to manage and organise its affairs without having to refer to the commissioner. The commissioner's role should focus on evaluating if the service outcomes are making a real difference to service users. A key part of the contract relationship is how it will be monitored and evaluated using a range of Performance Measures incorporating outputs; feedback; outcomes and future planning that incorporates learning from these.

The contract needs to have a process for managing any delivery problems that might occur and set out the kinds of issues that the service provider needs to inform the commissioner about. The service provider should be given the full opportunity to manage a situation without undue interference from the commissioner.

Moving towards a new business model?

Moving into contracts can involve working to a new business model that may include:

- Earning rather than funding
- A more diversified income base
- Working with other organisations
- A strong core of new skills and expertise
- A strategic role for trustees who develop a coherent business plan
- Building up profile
- Recognising the value of the organisation
- Thinking long term
- Avoiding mission-drift

The Exit Strategy

It is important to start planning how the contract will end as early as possible. This might include:

- Scaling the work down towards the end
- Working with partners who might carry on the work
- Developing alternative or replacement income (e.g. through trading).

Resources

- Winning the Contract – an online course from LearnDirect Business www.learndirect-business.com
- Charity Commission Guidance: <http://www.charitycommission.gov.uk/running-a-charity/your-charitys-work/working-with-other-organisations/delivering-public-services/>
- Futurebuilders: A Guide to Purchaser's Plans or How to Find Out Who Might Purchase Your Service: <http://www.futurebuilders-england.org.uk/>

Support

If you would like any support with any issues facing your organisation, please contact the Development Team at Community Southwark: development@communitysouthwark.org or 020 7358 7020.