



Change Management Service

## **Commissioning services within the voluntary and community sector - barriers, issues and opportunities.**

The Change Management Service at Nottingham CVS has been asked by Nottingham City Council to detail the barriers and issues for voluntary and community organisations (VCOs) to be more involved in commissioning with the local authority. We have also considered the opportunities commissioning can offer for both sectors.

The list below has been informed by our work with VCOs in Nottingham and the County since 2005 – it is not exhaustive but is intended to serve as an illustration for Nottingham City Council.

NCVS Change Management Service will welcome further opportunities to continue this dialogue, and will be pleased to support local authority proposals to overcome these barriers and issues, and promote the opportunities commissioning could bring to both sectors.

### **Barriers**

(The list is not in any specific order of priority - all issues and barriers are interlinked and should be considered with equal significance).

- Within both sectors there is limited understanding and awareness of the public service reform **agenda** and the role that the VCS could and does play within it, as well as the difference between commissioning and procurement. See recommendation 2.
- Commitments and action points in the **Compact** should link with commissioning. See recommendation 16.
- A lack of understanding within both sectors of the principle of government-led initiative '**Full Cost Recovery**' (FCR) – problems are exacerbated by a lack of acceptance from some funders and commissioners that some VCOs have higher costs than others, or may look expensive against in-house services with hidden overheads. Also lack of recognition that applying FCR will result in increased costs in VCS funding applications/tenders, and to set budgets accordingly. See recommendations 3, 6 & 7.
- Limited capacity in the VCS to meet **demands of commissioners** – such as for example high levels of insurance; specific strategies in place; quality standards achieved – before being in a position to tender for contracts. See recommendations 2, 3, 4 & 5.
- **Flexibility** for VCOs? An example - NCC's current PQQ requires details of staff CRB checks: in the VCS, often organisations actively seek people to work with them who can empathise with their client groups, and this can mean they have a criminal record. It may not be necessary to share this information or details with commissioners. Another example – NCC's PQQ also requires the Industry-based quality standard ISO 9000 / ISO 9001. The VCS uses other quality marks such as PQASSO and MATRIX. See recommendation 14.
- VCOs are concerned about **competition** from larger, more experienced VCOs within the sector, as well as from private and public organisations when bidding for funds/tendering. Tenders and applications take a long time to develop and need

approval from the Management Committee as well as input from users - many groups do not have the capacity, experience or time to do this well, and if they are not successful this can feel like a wasted exercise. Worries about 'fighting against the big boys' in the sector (larger and sometimes national charities, and also organisations from outside Nottinghamshire from all sectors) can also stop VCOs from engaging.

- Understanding and engaging with 'new' ways of generating income through service delivery under contract (over grants), the actual tendering process and the commissioning agenda can be quite a **culture shift** and can all be very daunting for organisations, especially those that have historically been given grants on a regular basis. Confusion and misunderstanding is clear in both sectors. See recommendation 2 (and 3 & 4).
- The desire from commissioners to have **fewer, larger contracts** for services that are delivered across the whole City can also be a barrier to VCOs. Many groups deliver excellent services and activities but constitutionally work to benefit only certain areas – establishing real, effective partnerships with other organisations takes time, commitment and resources and there are some fears in the sector that working in partnership can lead to being taken over, losing independence, time for maintaining and also policing partnership arrangements, and/or ending up being the one to do all the work. See recommendation 8.
- There appears to be no **consistency** in commissioning strategies across the board. The VCS often meets more than one agenda (i.e a VCO may work to benefit children, young people and families, but activities also fit under the health agenda and can touch on crime or education) and it is difficult and confusing for anyone who wishes to tender for services to have to work within many different requirements and processes. See recommendation 11 (& 10).
- Linked to this is having **notice** of commissioner's priorities, and what tenders are coming up. See recommendation 10.
- Some commissioning bodies don't necessarily recognise themselves **as being a commissioner** (such as schools, for example). The Office of the Third Sector is running a training programme for commissioners. See recommendation 9.
- Fears within VCS of **losing independence** by entering into a contractual relationship with the local authority (LA), added to fears that clients will not perceive a service as being independent if they know it to be funded by the LA.
- **TUPE** regulations are a barrier for VCOs. A lack of information about what TUPE is and the implications for an organisation relating to the contract, as well as the costs of taking on other staff and their related conditions/benefits of employment, makes organisations wary about tendering for a contract which will involve taking on staff from other organisations. See Issues, and recommendation 12.
- Risk is a barrier to VCOs. It appears that there is a trend to **hand over risk to the contract-holder** – a problem for many VCOs who are governed by voluntary Trustee Boards. Due to lack of understanding, risk may not be shared equally or fairly or be properly understood by those it affects. See recommendation 13.
- Allowing a charitable organisation to build up **reserves** is recognised as good practice and recommended by the Charity Commission. Reserves ensure that an organisation has enough money to pay its staff and creditors if it suddenly has to wind up. If a VCO achieves the outcomes required of a contract for less money than it budgeted for, it should be allowed to keep the remainder. The private sector is not



asked to return unspent monies from a contract and the VCS should be afforded the same treatment. Likewise, having reserves in place should not prohibit a VCO from receiving funding. Reserves are essential for cash flow, particularly when contracts are paid on outputs.

- There is general lack of confidence within the VCS and misunderstanding about **negotiating contracts** – elements of a contract that could be negotiated include for example monitoring arrangements, targets and outcomes, payment arrangements and so on. See recommendation 15.

### **BME VCS** (contributed by PATRA Incorporating ACDA)

- There are specific issues and barriers for black and minority ethnic (BME) organisations in the voluntary and community sector in delivering services - mainly around funding; long term sustainability and longevity, and lack of trust and confidence from mainstream agencies; poor networking and communications. Other barriers/issues/fears for the BME sectors include religion (in some quarters for example, loans are unacceptable); personal and organisational liabilities; continuity of service from the public body; changing regulatory, social and political environments; stereotyping of the BME communities; lack of trust and confidence from amongst mainstream agencies, and lack of knowledge of mainstream opportunities.

You will notice from above that these issues and barriers are not contained only within the BME VCS.

### **Issues**

There have been serious issues with **late payments for contracts** (up to 6 months). Late payments have resulted in organisations having to use reserves - where available – or overdrafts, or the group being subsidised by a third party organisation (who often have to use their own reserves) in order to carry on in the meantime. Late payments for contracts are unnecessarily prohibitive and seriously jeopardise the smooth running of projects, stresses management controls, affects an organisation's ability to deliver a contract and plan for the future, and costs organisations financially as they are forced to support the project from reserve funds, if they have any. NCVS feel it is wholly inappropriate of public bodies to allow charitable funds to be used in this way, and believes this is not what the local authority would advocate as best practice – which is full payment on time, and advanced payments where possible.

**Misinformation & lack of understanding** of the VCS has caused many unnecessary problems for some VCOs. One serious example is a VCO that changed its legal status - following Charity Commissioner's recommended good practice - midway through delivering a contract. The contract was immediately suspended, and to date has yet to be re-instated despite negotiation. A third party charitable organisation is currently bankrolling the project (out of reserves) whilst a resolution is reached. Changing the status of the organisation after the contract was awarded had no bearing on the tender process used to award the contract, or on the contract itself. See recommendations 2 & 9.



Also damaging is misinformation given by LA workers about TUPE implications of a contract – one example of this resulted in a VCO not tendering for a service because they could not get confirmation about the possible TUPE implications winning the contract might bring. Having worked very hard on the tender, when the VCO asked the LA for advice around possible TUPE implications the LA said they could not be sure - the VCO were confused and felt it could not afford to run the risk, so did not submit the tender.

TUPE can also be exploited – organisations do not know the history of the staff that may be TUPE'd over (for example TUPE may include staff who have been on long-term sick, or who are facing disciplinary procedures who are then transferred to the winning organisation and cause problems for them), and TUPE has also been abused: used to bring in expertise to an organisation as part of a collaborative tender where the lead body has sought the partner specifically for its staff skills and knowledge, and which has then attempted to cut ties with the partner but still keep its staff. See recommendation 12.

### **Opportunities**

Commissioning provides opportunities for the VCS as well as barriers. It is important that both sectors work together through infrastructure organisations and forums to promote these, and work to alleviate misunderstanding and concerns around commissioning. Some opportunities commissioning brings include:

- Long-term monies for VCOs - helping planning, sustainability and enabling organisations to develop smooth processes and robust systems, make a bigger impact from their services for beneficiaries, helps improve on stress within the sector (often based on short-term funding) - ultimately providing a better use of public monies.
- Statutory sector commissioners are able to ensure government targets are achieved using grassroots services, and that they are reaching disadvantaged communities and meeting service gaps.
- Effective commissioning can encourage a better relationship between the LA and Nottingham's VCS. The statutory sector is proud to work with a diverse VCS and should acknowledge the contribution (supported by statutory partners) it makes to a better Nottingham.



## Recommendations

1. LA lead officers, heads of department and commissioners devise a list of barriers and issues around working with the VCS, as they perceive them. This, along with this document, can be shared with infrastructure VCOs, with a view to working together to overcome them for both sectors.
2. Council-led event around commissioning with the LA in Nottingham - detailing definitions, requirements and current opportunities and future plans for commissioning within all commissioning departments.
3. Stereotyping of the voluntary and community sector (“voluntary equals free”) is damaging. Training and awareness-raising for council workers around how the VCS is set up, its motivation, needs and constraints.
4. Training and awareness-raising for VCS workers, volunteers and Trustees on how the Council is set up, its motivation, needs and constraints.
5. Having a fair and level playing field for all sectors to engage in tendering is not achievable without clear, widely promoted guidelines that can be flexible where appropriate. Commissioners to develop a standard pre-qualification questionnaire (PQQ) to help VCOs assess their eligibility to deliver a service under contract, before submitting a tender. This should be flexible to accommodate both the needs of the commissioner and potential provider (is everything always absolute?) in line with value for money (vfm). As well as setting out criteria for eligibility this can also help VCOs see a baseline so they can develop their systems and procedures accordingly. One Nottingham is considering developing a PQQ.
6. Training and capacity building for the VCS around the principles of and how to apply full cost recovery (FCR).
7. Training for Council grant-makers and commissioners around the principles of, and how to apply, full cost recovery (FCR).
8. Support for VCS to work in partnership where commissioners require it (i.e. to deliver services right across the city) – including a definition of what ‘partnership working’ and ‘partner’ means to commissioners, and help to manage a collaborative contract.
9. Training for commissioners on their role, the commissioning cycle and how to be an effective commissioner.
10. Provide a central place for local statutory tender notices. Accompanied by clear joined-up information about current and future priorities and plans from commissioners.
11. All commissioners - including for example those in different LA departments, the CDP and the PCT - should communicate when developing commissioning strategies and work to align commissioning strategies where possible.
12. Information around TUPE for both sectors will help concerns and misunderstanding. It will also be helpful to detail the TUPE implications of a specific contract (for example, if there are 15 full-time workers paid at grade SO4 with 5% pension contribution and above statutory benefits) to help VCOs decide if they can afford to tender.
13. Independently-led training and clear, concise information and support around risk management, as well as a fair & equal distribution of risk within contracts is key.
14. LA should identify and assess the common elements that are in the quality standards usually used in the VCS (such as PQASSO, MATRIX, Community Legal



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Services Awards) to those required standards (such as ISO 900 / ISO 9001), with a view to 'passporting' elements of these when tendering.

15. Contract negotiation training for both sectors.
16. Use the Action Points in the Compact to capitalise on buy-in across all Depts & sectors.

**Nottingham CVS Change Management Service**

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