



Before signing on the dotted line

all you need to know about
procuring public sector contracts

in partnership with

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Introduction

Undertaking public sector contracting

Public service delivery is at the heart of Government objectives. Voluntary and community organisations play a central role in this process. There are already many organisations engaged in the delivery of public service with still others interested in doing so. However, many organisations, in particular the small and medium sized voluntary and community organisations are inexperienced in navigating the complex realm of rules, procedures and practices that constitute the public sector procurement process.

To address this NCVO's Sustainable Funding Project and Futurebuilders England commissioned the Institute of Public Finance to write a guide to procuring public sector contracts for voluntary and community organisations supported by a selection of case studies.

The Sustainable Funding Project – an initiative established at NCVO in September 2000 – works to encourage and enable voluntary and community organisations to explore a full range of funding and financing options as a means to achieving a sustainable funding mix beyond short-term grant dependency. We provide a wide range of tools and resources covering all aspects of developing diverse and durable income streams. For more information visit our website at:

www.ncvo-vol.org.uk/sfp

Futurebuilders England is a government backed investment fund for developing the capacity of the voluntary and community sector to deliver public services in England. Therefore, if voluntary and community organisations are to enhance their role in delivering public services, it is important that they fully understand how the process operates. The aim of the guide and case studies is to help develop this understanding. To find out more about Futurebuilders, visit their website at:

www.futurebuilders-england.org.uk

What this guide does

Many voluntary and community organisations provide services to the public sector. If you have decided to join them, then this guide will explain how to go about engaging with purchasers and becoming a successful service provider.

Part 1 gives you the big picture, helping you to find potential public sector purchasers and to see how contracting all fits together.

Part 2 goes into more detail about the processes involved, and the main legal framework and technical matters you will need to pay attention to.

Part 3 provides case studies.

You will find practical advice, useful checklists and details of where to get further information if you need it.

Authors and acknowledgements

Institute of Public Finance

The Institute of Public Finance (IPF) is the management support services company of the Chartered Institute of Public Finance and Accountancy (CIPFA)¹. We specialise in giving advice on financial management, governance, property and asset management solutions, the supply of information and expertise, and the provision of people with appropriate skills to help at the most senior level.

We have unrivalled insight into public sector concerns and many of our people have held senior positions in public services, so we are uniquely placed to help VCOs understand and do successful business with the public sector.

The company has over 2000 clients across a broad range of public service organisations, and is an accredited Catalyst supplier as a member of the AMQIS Consortium.

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¹ The Chartered Institute of Public Finance and Accountancy (CIPFA) has charitable status and is a professional body deeply involved in education, training and the setting of national and international standards. IPF provides support to public sector organisations and managers at home and abroad, including: Consultancy; Training; Interim Management; Policy Studies; Statistical and Market Research; Technical Reference Information; Procurement, Project Management and Property Management Consultancy, and Advisory Networks, including Finance and Procurement. For more information go to <http://www.ipf.com> and <http://www.cipfa.org.uk>

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And a big thank-you to all the organisations that have generously agreed to provide case studies, demonstrating in a real way how some of the issues discussed can work in practice.

Section 1

The public sector market and how it works

Defining the public sector

All the services that are funded out of our taxes, even where people are asked to pay something directly for using them, are public services. Public sector organisations (PSOs) buy a vast amount of goods and services, and many are paying specialist contractors to provide services to customers on their behalf.

More information

The National Council for Voluntary Organisations (NCVO) website includes a summary of where to look for further contacts and background to procurement: www.ncvo-vol.org.uk

The government's principal agent on all issues of public sector procurement is the Office of Government Commerce (OGC). The OGC works with public sector organisations to help them be more efficient. Its website is a good starting point to find out about market areas and links to PSOs' current practices: www.ogc.gov.uk.

When exploring a concept new to you, a search on these sites is a good place to start. For example, in November 2005, NCVO published a survey and guide to the Freedom of Information Act on www.ncvo-vol.org.uk/FIA to meet demands for knowledge about changes in the VCO environment.

What is public sector procurement?

The process of purchasing goods and services by PSOs from external parties is generally referred to as procurement. Procurement rules and procedures set out how the PSO will manage and enter into contracts with suppliers. Purchasing is the part of the process that agrees and enters into a contract, by setting the standards and arrangements for meeting the PSO's objectives through the provision or acquisition of the specified goods and services. Procurement is not just about spending taxpayers' money. It is about effective use of financial resources, working and collaborating with others and trying to deliver best value public services.

The Government's guidelines require public procurement to be based on **'Value For Money (VFM)'**, defined as '...the optimum combination of whole-life cost and quality (or fitness for purpose) to meet user's requirements.'

This means that there is scope for ‘added value’ from voluntary and community organisations (VCOs). The big challenge for you is to demonstrate that value when offering your services.

More information

The public sector has recognised that good and effective procurement is core to delivering improved public services. See the *Department for Communities and Local Government*, formally the *Office of the Deputy Prime Minister*, *National Procurement Strategy for Local Government* on www.odpm.gov.uk

References in Appendix 1 will help you research current reports, strategies and practice, largely from the PSO perspective.

Other sites, such as www.sbs.gov.uk, show how government is helping smaller organisations become part of the contracting framework.

Variations in procurement rules

It is important for you to understand that there is no single or standard approach. You will see variations of approach across service areas as well as between different PSOs, largely because the essential core of any public sector procurement is to meet a set of needs and show ‘value for money’. The rules and process have to be able to adapt and be flexible according to the circumstances. Each PSO has evolved its own procedures, standards and protocols within the legal framework. There are common features such as specifications and requirements, terms and conditions of contract and a tendering process.

The structure and shape of the procurement process and forms of contract will be affected by how centralised purchasing is in the PSO. Some PSOs will devolve full responsibilities to directors and service managers. This then relies on the competencies of the people who procure, specify and place orders in the PSO to apply its regulations. This is why you are encouraged to engage as soon as is practical with the relevant staff in the PSO.

The scale of public sector procurement

It's a big market. Local authorities in England spend about £40 bn a year on goods and services. The National Health Service (NHS) and central government each spend around £15 bn a year. In 2003/04 public sector funding accounted for 38 per cent of the total income of the voluntary sector. Total public sector funding of the voluntary sector is in excess of £10bn per year.

This potentially creates a huge number of opportunities for you. Even a small share in this market can mean significant income generation for your organisation. VCOs are now being recognised as key providers of public services. You therefore need to identify and find where your potential purchasers are and how they contract services. Section 2 tells you more.

How the public sector buys services

Purchasing

As the public sector spends taxpayers' money, it is subject to controls on how it conducts its purchasing. Anything it buys must be of benefit to the public, and it must provide the best value for money available at the time.

Purchasing has to be done in a fair and open way so that nobody is unfairly excluded from the process. There are UK and European laws that define how things must be done, and everything is subject to audit and scrutiny. The formal processes may make it more difficult for smaller VCOs to get into the public sector market; difficult but not impossible.

You have to learn the rules and then play by them.

Stages in procurement

The PSO will say what is required in a specification, and you will have to prepare a formal offer describing how you propose to deliver it and what you will charge. Often you can choose how to structure your bid, but some PSOs require you to follow a very specific format. Many PSOs now put their providers through various stages:

1. A pre-qualification questionnaire (PQQ) to shortlist credible providers for the service in question. The key purpose is to assess your technical and financial ability to provide the services.
2. For those selected, a formal invitation to tender will follow, and possibly presentations to seek clarification on proposals to help decide among the most promising bidders and negotiate the final details.

More information

Seek expert legal advice

You may feel disadvantaged in entering negotiations or in earlier stages of understanding the procurement process and contract details. If you do not have the in-house skills and resources then you should engage and appoint experts to support you. Experienced contractors providing services regularly to the public sector will call in legal experts as advisers before finalising new, different or substantial contracts. This helps redress the imbalance between the resources and experience you have against the experienced knowledge of the PSOs.

NCVO has published some relevant guidance in this area:

Saunders, Joss (1998) *Mutual Obligations – NCVO's guide to contracts with public bodies*, NCVO. The principles outlined in this publication are helpful.

There are many examples of how PSOs approach the stages and steps in the procurement process. Section 6 outlines some of the main purposes and features of contracting and when some of the processes will be used. An example of a PQQ can be found at: www.ogc.gov.uk

The OGC's remit includes working towards standardisation of the process and making things accessible, so it has created toolkits and guidance.

More information

www.ogcbuyingsolutions.gov.uk outlines an eight-step procurement process.

Once you have won a contract you will have to demonstrate continuing good performance against the reporting and monitoring requirements set in the contract documents to avoid having it terminated early. Section 7 provides more details.

What drives public sector organisations

You need to understand how the public sector is driven by its core values and objectives in delivering and improving services. This will help you see more easily where they are coming from and where you can add extra value and improve your chances of success in working with them. This section tells you about some of those drivers.

Value for money

Value for money often means the lowest price, as long as the contractor delivers the right quality and performance. But sometimes it can mean adding value by offering more than the PSO asked for, even if the price is a little higher. For example, you may be able to demonstrate that your solution will bring savings elsewhere, or that you will create improvements in things like equality of opportunity, inclusion, and a focus on community and individual needs.

Case Study

Liverpool Crossroads uses standard guidelines to show added value – see Part 3, Case Study 1

Crossroads has developed its own Caring for service guidelines for managing and delivering care services. This enables managers to provide services and meet the high standards of care that they seek to achieve through internal quality assurance and resource management – CROQUET (Crossroads Quality Evaluation Tool).

Affordability and sustainability

PSOs are now under great pressure to become more efficient, which means making the money go further. Sometimes this means reducing costs, at other times it means finding new and smarter ways to deliver services. PSOs will look at what a service will cost over the entire life of the contract, including any costs associated with the end of the contract such as transfer payments for assets, and far from accepting annual increases in line with inflation they may well insist on cost reductions each year. You may need to commit to training and development programmes or to delivering improved performance over the contract period.

There are other things you will be asked for. As well as being affordable, services must also be sustainable, so you will have to think about how you can give the PSO confidence in your ability to develop, resource and deliver the service over the whole life of the contract. You can show how you would change and adapt services to meet changing demands, needs and legislative requirements. An open book approach, sharing details of your costs, will enable a fair and transparent foundation for discussing and agreeing changes.

Efficiency

The search for efficiency also means that many PSOs are joining together to purchase services. They might simply be sharing the administrative cost of buying the same thing, or you could find yourself contracted with one PSO to provide services for other PSOs.

You might also come across a PSO that puts a number of different services into a single contract because it believes that will provide better value for money.

More information

For more information on efficiency and what it means, go to government websites, such as those listed in Appendix 1.

Community benefits

You are probably already deeply engaged in community-based services, meeting gaps in needs, and working in areas adjacent to and overlapping with PSOs. You are well placed to help them achieve their national, regional and local vision of improving the quality of life for all. Community benefits when described, measured and realised are a key element of what you may be best able to offer. They cover any social, economic or environmental benefits that arise from providing the service.

More information

See Macfarlane, Richard, and Cook, *Mark Achieving community benefits through contracts*, Policy Press (2002).

The inclusion of community benefits in the procurement process, whether as a criteria or a measure of service performance, has to be justified and shown to be part of the core purpose of the service provided. In this way they can be used once identified and made part of the service specification in the assessment process and in the evaluation of tenders.

More information

This view is supported by the OGC and Department for Environment, Food and Rural Affairs (DEFRA) in their note on Social Issues in Procurement within their “Joint note on environmental considerations in procurement” see www.ogc.gov.uk/sdtoolkit

The Department for Communities and Local Government, formally the Office of the Deputy Prime Minister (ODPM) National Procurement Strategy, reinforces the point by linking the Local Government Act 2000 and the preparation of community plans, to the promotion and delivery of economic, social and environmental well being in communities. Providing the rules of the PSOs are met they can work to deliver, “community benefits” through procurement.

VCOs and ‘the compact’

You may have noticed in your local area that the public sector has joined with the voluntary sector to establish involvement in local strategic partnerships and to set up voluntary and community services committees. These are working together to shape and form ‘local compacts’. Local authorities are bringing together statutory bodies such as police and health to find ways of encouraging increased participation among both small and medium enterprises and the voluntary sector.

More information

www.thecompact.org.uk
“Effective local partnerships: a checklist for local practitioners in the public and voluntary sectors.”

One important result of taking part in these compacts will be an improvement in your understanding of how best to meet client needs in the design and delivery of services. You may find this is also where you can influence the values and the criteria that will be used in later contract processes.

More information

NCVO has a national database of VCO organisations and their relationships with strategic partnerships. See www.ncvo-vol.org.uk
Searches on both compacts and local strategic partnerships will provide more references for up to date information.

In the case studies in Part 3, both Liverpool Crossroads and Derwent Stepping Stones, saw the local council for voluntary services (CVS) as a way of influencing the direction of the statutory bodies on issues such as full-cost recovery and as a channel to find out how and where future opportunities were likely to appear. In both cases the channel is actively used by the public sector to advertise and invite participation in conferences about forthcoming service developments and programmes of funding.

How to influence the potential purchaser

As you get more experienced at working with PSOs, you can look for ways to influence the way they see things, what services they want to provide, and how they structure their contracts. Compacts can set out how PSOs will work with you in making a level playing field for procuring and delivering services, and could be used by you to discuss how the potential purchaser is approaching service specification and selection of providers.

More information

Strengthening partnerships – relations between the government and the voluntary and community sector

Key principles about procurement are being developed in local and national compacts to:

- ensure participation in procurement is on an equal footing with the private sector
- examine the appropriateness and fairness of the allocation of risks
- take account of equality considerations in design and selection processes for procurement activities
- put in place fair and balanced dispute prevention and resolution clauses in contracts
- commit to full cost-recovery in grants and contracts, and
- streamline and coordinate performance monitoring systems.

Useful sites: www.dca.gov.uk and www.ogc.gov.uk and www.homeoffice.gov.uk/documents/2005-strengthening-partnerships

At first you should explore the relationship by asking questions and direct explanations about what is required. If you are working with the PSO already, receiving a grant from them, or on a list of recognised providers, you have an initial starting point to influence design of service arrangements. When you are clear how the needs can best be met you are better placed to influence and contribute to the debate about how to more effectively meet community needs and help achieve a better solution.

Case Study

Liverpool Crossroads – how to become involved locally

The Business Manager, Sean Barrett believes that their network activities in the Liverpool area are an important way to influence the practicalities of integration and focus on needs. It is also a useful means to understand the market and identify future opportunities. He works on the Compact steering committee of Liverpool Council of Voluntary Services, aiming to influence issues including monitoring and full-cost recovery. See Part 3, Case Study 1 for more details.

Where you can influence the PSO

Within this process there are key points for influence as the purchasers interpret the rules, exercise judgement and make recommendations. There is not much scope for getting the core rules or terms and conditions varied as it might take months, given the internal PSO processes, so your focus should be to see how the rules may admit exceptions and changes, if appropriate:

- **At the specification stage:** How the service is designed and specified, sometimes before procurement is part of the equation. The most desirable outcome is to persuade them that a non-competitive process is appropriate. You may achieve the same outcome by showing how your service impacts in a measured way on local or community benefits, and meets the evaluation criteria. The emphasis will then be on openness and sharing of information to confirm value for money and the robustness of the arrangements for delivery.

- **At the tender stage:** How the service will best be delivered and what therefore are the key values or criteria that should be used to select you as the provider. Value for money includes showing differences in quality and your contribution, especially in areas of your expertise where you can show how important certain factors are to meeting the service objectives. You have to study the specification carefully to see what the core requirements are.
- **In negotiation:** Similar demonstration of how you can better achieve objectives may change the procurement or contract rules. At this stage it is not so much the rules as the outcome that has to be influenced. You may wish to suggest in the tender that you would welcome site visits or practical demonstrations of how your operations work.

Section 2

Finding a purchaser

You will need some understanding of how a potential purchaser goes about finding and choosing providers. Here is a series of steps to working successfully with the public sector. It assumes you're starting from scratch; if you're more advanced, just drop in at the point that suits your needs.

How you find the information

Where you access information

You now have more opportunities than ever to ask for information, for example:

- local partnerships, voluntary and community organisation committees, and forums encourage participation with service providers
- asking for information under the Freedom of Information Act
- internet search engines help you research and understand unfamiliar ideas and concepts
- PSOs have become more user friendly, publish more information and are encouraged to promote electronic access to their information – look at selling to guides on websites, attend, meet the buyer events etc.

You can now visit your local PSO's offices or your local library to see hard copies of documents and access local public sector information, or check individual PSO websites for further information such as their procurement strategy. Some will be easier to access than others.

A Guide to Purchaser's Plans or How to Find Out Who Might Purchase Your Service is a starting point for the types of strategy and plan information and is available at www.futurebuilders-england.org.uk

Confidentiality and legislation such as the Data Protection Act 1998 may limit access to full details in commercial and individual circumstances, but general information about the nature of the services required, who is involved, how things have been organised before and what the current and future expectations may look like, should be readily accessible. Similarly, the background to contracts and how PSOs will approach and manage the buying process is often available.

Inspection reports

You can check for recent reports that highlight key issues and failures in both public service and procurement practice. Your search can look for a specific PSO or for a particular service.

You can see how the services are regarded now or how a good PSO elsewhere has been able to demonstrate its excellence. Where these reports exist, use the information to help you demonstrate how you will help the PSO achieve the best standards of service and excellence.

More information

Websites for reports and inspections:

Audit Commission	www.audit-commission.gov.uk
National Audit Office	www.nao.org.uk
Commission of Social Care Inspection	www.csci.org.uk
Department of Health	www.dh.gov.uk
Education, Ofsted	www.ofsted.gov.uk

Finding the contracts

Your first aim is to get invited to tender for a contract. The next few pages suggest a practical approach to help you decide which PSOs are the most likely potential purchasers of your services. You can also get a grasp of the criteria they will use to select a provider.

Think about four stages:

- identifying PSOs that are likely customers
- marketing to your potential purchasers
- making direct contact
- meeting your potential purchaser.

Stage 1 – Identifying likely customers (PSOs)

Which public sector purchasers might be interested in your services? You can usually find plenty of information about organisations and their culture before making contact with them. You need to see what is available and work out if there are factors that might encourage them to work with you. When you do make contact, first impressions can be important, so do your homework.

More information

OGC publishes guidance such as *Tendering for Government Contracts; a guide for small businesses with further information and contacts*. The Small Business Service (SBS) has a portal specifically directed towards small businesses to help you access these opportunities: www.businesslink.gov.uk

Action Checklist – Stage 1

Identifying likely customers

1.1 Identify which PSOs buy your services. Find out:

- how much they spend
- how often they award contracts
- what sort of services they buy.

Talk to people you know and also study contract notices that appear in the press or online tendering sites.

1.2 Having decided on your preferred potential purchasers, use their own publications, website, trade directories, or phone them to identify the key people in the buying process. You are looking initially for people who use the range of services you provide, whether they specify it, buy it or approve the contracts.

1.3 Find out how they buy your type of services, whether centrally or directly in separate departments. With centralised buying, one section of the PSO normally controls all purchasing for the organisation. Decentralised buying means that individual departments or units make their own purchasing contracts.

1.4 Find out who the current providers are and how long they have been providing the service. You may know which other companies or organisations have the capacity to make offers of service. This will help you to assess the chances of success in a competition.

Stage 2 – Marketing to your potential purchaser

Having decided on your preferred area of service provision you could choose to move to Stage 3 and make direct contact with potential purchasers. In the short term this is the most likely way to get an order or to be included on a list of approved providers or a tender list. The key is to get known for delivering consistent high quality services.

Provider, supplier and tender lists

You will find some PSOs in areas such as social care, health, children’s services and education place contracts or orders with their own list of providers. You may well already be included. If not, you should look out for opportunities to join select lists of providers. These are used for two purposes: firstly to reduce the costs of purchasing and providing services by having available providers who have previously qualified and shown they can provide services; and secondly to provide services smoothly and quickly when the exact details of what is required do not fit easily with a drawn out tender exercise. These lists will be advertised and tendered for through similar procurement procedures as for an actual contract or service.

It is the total value of the work or services to be performed under the contract that determines how the list is selected, see Section 4. Although the individual placement or referral may be low-value it is what it adds up to over perhaps four years that will count, four years being the limit on the life of framework contracts, see Section 5 for more detail.

Case Study

Liverpool Crossroads – accreditation and select lists

Liverpool Crossroads (Part 3, Case Study 1) have followed a pre-qualification procedure to be one of the providers of Caring for Carers services. This selection procedure was subject to European Directive procedures and managed by both legal services and procurement specialists in Liverpool City Council.

When you are in a competitive contracting context, you need to be able to pursue a number of potential purchasers to avoid being totally left out.

To avoid missing any opportunities, make sure that any PSO planning to buy services like yours can find details of your VCO quickly and easily. You need to invest in ICT capability so you are able to access information, meet the changing use of e-procurement methods (see Section 4 and Appendix 1) and through your website development present an effective profile of what you can do. You can use the following methods to make sure you are featured and generate this awareness.

Action Checklist – Stage 2

Marketing to your potential purchaser

- 2.1 List your VCO in general directories under the relevant categories.
- 2.2 Make sure your VCO is listed in specific trade directories such as the British Healthcare Trades Association.
- 2.3 Get editorial coverage, either describing your developments and achievements, or by providing expert comment on topical issues.
- 2.4 Develop your website to contain plenty of information for any potential users of your services, and to help to establish you as a credible service provider.
- 2.5 Make your website easy to find by listing it with the major internet directories and search engines.
- 2.6 Remember to keep it up to date so that it reflects well on your organisation.

Stage 3 – Making direct contact

In the end, the best way to ensure the purchaser becomes aware of your VCO and its services is to make direct contact. Use every opportunity to attend events or seminars where your potential purchasers may be present. Be persistent but polite.

Action Checklist – Stage 3

Making direct contact

- 3.1 Don't phone an organisation without first giving them some idea of your VCO and your services.
Write direct to the most relevant people in the PSO you have selected.
Request a direct meeting or provide an invitation to visit your site.
- 3.2 Follow up with a phone call a few days after writing and ask for a meeting, and for the name and contact details of the person you need to speak to.

Stage 4 – Meeting your potential purchaser

Potential purchasers are often reluctant to meet providers as they are busy. If you succeed in making an appointment, be sure to maximise the opportunity to make a good impression of you, your VCO and your services. Ask clear questions relevant to your service and provide the purchaser with comprehensive information. Provide good quality marketing literature and brochures, supported by copies of relevant documentation.

Action Checklist – Stage 4

Meeting your potential purchaser

4.1 Prepare well in advance:

- Research the PSO and its requirements.
- Decide who should attend, probably no more than two people
- Outline what you want to cover in your meeting, keeping it short and focused. Note the questions that you need to ask. Do not rely on remembering them at the meeting; plan to get the most important questions in first and take notes.

4.2 Ask clear questions relevant to your service. Listen to the purchaser to find out their situation, how they buy your service and any problems they have.

Focus on what you can do for them, identifying the ‘added value’ your VCO can offer. What makes you different from your competitors?

4.3 Identify the essential features of the requirements that will affect your service delivery.

- Who specifies the service, who uses it and who else might benefit from your service?
- How much do they buy and how often?
- Where is the service delivered? Is it at one or several locations?
- What does the potential purchaser think are the key requirements from a provider of this service?
- How satisfied is the purchaser with the current supplier?

4.4 When will they next be selecting providers or issuing a tender?

- Is competitive tendering always used?
- How will potential providers be advised: direct contact, press advert, online advert or in the Official Journal of the European Union (OJEU), (where all contract notices must be published for tenders that fall within the European procurement laws) or in the case of low value contracts the new Office of Government Commerce portal www.businesslink.gov.uk
- Are lists of providers kept, how and when are they updated?
- Are there special procedures for special projects and one-off purchases?
- Do they use direct invitations in addition to open tendering?
- How many do they normally invite to tender?
- What do they look for from providers – experience, financial standing, technical capacity, and so on? What rules do they use when they look at these things?

Deciding whether to bid

Once you have identified the range of opportunities, you have to decide which of those you might wish to pursue. In deciding you might consider:

- your organisation's objectives and capacity
- the contract opportunity and requirements.

Alignment with your objectives and purpose

Think about how well the PSO and the contract you are looking at fit with your own organisation's objectives. The closer the fit, the better the chances of a productive relationship. On the other hand, if your organisation is being drawn away from its core purpose, or if it disagrees with the policies and values of the PSO, there could be problems and conflict later on.

Case Study

Derwent Stepping Stones (DSS) – Part 3, Case Study 2

Janet Anderson, the Centre Manager of DSS found that, “Derby Council for Voluntary Services (DCVS) is an important source of information about potential contracting opportunities for local voluntary organisations. DCVS raises awareness of the opportunities like the Learning & Skills Council (LSC) contract, and keeps us all informed of funders’ or purchasers’ briefing sessions to explain and set out what is required and when”. Derby Learning Consortium (of which DSS is a member) is another source of information, and the challenge for DSS is to recognise and match opportunities to their capacity, services and catchment area. The briefing session enables tendering organisations such as DSS to, “understand the LSC priorities and targets in the ESF Objective 3 round on offer, and review whether we can do it”.

Trading issues

An issue for you is whether the services are the primary focus and purpose of the charity, or whether you would be better advised to deliver services through your subsidiary. Contracts will include demands for insurance cover, for professional indemnity and public liability, and occasionally performance bonds. Are you able to meet these requirements? You may decide that to enter this contracting environment you need to establish a subsidiary company to manage the impact on your charity. This is a core business decision that you should analyse and consider when entering into a regular flow of contracting activity.

More information

Charity Commission website

See this website for guidance and to access a range of free Charity Commission publications, such as: CC35 Charities and Trading and CC47 Charities and Contracts. (www.charitycommission.gov.uk)

See also, Elliott, Graham (ed) (2005) VAT for Voluntary Organisations (6th edition) NCVO

Your capacity to deliver the contract

Think about your capacity to deliver the contract. Do you have all the skills? Will it require a big expansion of your activities? Or perhaps it will make good use of spare capacity that you have? Don't underestimate the amount of work it can take to put together a successful tender. Do you have the capacity to do it before the deadline?

Action Checklist

Checklist to help you to decide what to bid for

- How do their objectives and requirements fit with yours?
- Can you determine the scope and level of service required and to be delivered?
- Your organisation must decide what it wants from the contract opportunity, such as
 - wider involvement in areas of special interest
 - greater reputation
 - contributions towards financial overheads
 - balanced workload and stability of service provision.
- How much of your purpose can be achieved through this opportunity and how will it affect other activities?
- How comfortable are you that you have the capacity to deliver through the whole life of the contract period?
- Have you the capacity to prepare and submit a winning offer?
- Can you see any risks that could damage your organisation if not effectively managed?

Trading issues

- Would this contract count as carrying out the primary purpose of your charity (so preserving tax exemption)?
- Could the contract be carried out by a wholly owned subsidiary of the charity?
- How firm is the contractual commitment to the volume of work?
- How is the present service provided? Will the contract lead to transfer of staff under the Transfer of Undertakings (Protection in Employment) 1981, (TUPE) Act, and would that be affordable?
- Can your organisation satisfy any requirements for performance bond cover, professional indemnity insurance and public liability cover?

Capacity checklist

- How much of your capacity will the opportunity absorb? You need to assess, as a percentage of your resources being used or funds being committed, how the value of the contract will affect you.
- What operational capacity is needed to meet the contract requirements?
- How many suitable current staff could be assigned?
- Would you have to recruit in more staff or volunteers? What additional training and development would be required? Is there scope for collaborative working with others?
- What restrictions on sub-contracting do the contract conditions contain?
- Do you have enough capacity to manage any sub-contractors properly and ensure that you meet contract requirements and obligations in full?

Building your case

Identifying your unique advantage

Successful VCOs ensure that there is a good fit between their own purpose and objectives and what the PSO is trying to deliver. A simple assessment of your strengths and weaknesses will allow you to emphasise your unique selling points, whether they are experience, quality of staff, or familiarity with client groups. You have to be careful to manage the presentation of your virtues so they fit the client's idea of what is required. The 'invitation to tender' (ITT) will specify the service required and will usually say what criteria the purchaser will use to decide between the different bids. You have to match what you offer with those in the specification and with the selection criteria. Finding your unique advantage enables you to focus and strengthen your chances of success in winning the contract.

Planning and costing the service for the contract

You should quickly outline the scope of the service and how you would provide it. This means checking that you can cover every aspect of the specification. You should pull together an outline plan that shows what resources you will use and how you will use them. You will need to quantify all elements of the plan including costs so that you can see the impact of the opportunity on your existing operations and services.

Building the business case

You can then build the business case to finally justify within your VCO why you believe you should go ahead. Your business case should demonstrate the benefits, indicate and assess the risks, consider how you will manage them, and quantify the impact on your resources. The advantages and disadvantages, especially in relation to your objectives, should be set out in sufficient detail to confirm your decision to proceed.

Planning for full cost recovery

You will need to be clear about your business case for this contract so you can see whether in providing these services you will achieve full cost recovery. Pay special attention to how you can separate out elements of your overheads and allocate them to the service. You may need to be confident in opening your books for scrutiny if the PSO requires it to justify the costs of delivering this service. For you this may be the first time you have measured your costs in this way.

More information

The Association of Chief Executives of Voluntary Organisations (ACEVO) and New Philanthropy Capital (NPC) – a charity that advises donors and funders on how to give more effectively – have published an interactive guide on how to examine and prepare your budget (see *Full Cost Recovery: A guide and toolkit on cost allocation*). For more information go to www.philanthropycapital.org/html/full_cost_recovery

Electronic procurement information

You will find in some contracts that you have to exchange information with the PSO, and this could mean helping to share, update and maintain records. Will your information systems be up to the right standards and will they be compatible with the PSO's systems? In some cases you have to invest in hardware, software or training of your staff, or even reorganise your operations to be able to deliver the contract. Assess how this impacts on your business case for making an offer. Does it change your decision to proceed or can you negotiate inclusion of extra potential costs?

You will have become aware of initiatives to increase the use of electronic means of communicating and transacting service business. You can see below the key features and meanings of some of these terms:

E-sourcing

Electronic sourcing (e-sourcing) means using the internet to establish, manage and monitor contracts. It is expected that e-sourcing will reduce the cost of tendering for PSO contracts by reducing staff time and overheads. It includes:

e-tendering – Where PSOs carry out the full tendering process online. Usually an interested supplier receives an email notice to go to a website to download the ITT and other supporting documents. Suppliers will submit their bid by going back to the website to lodge the completed tender by submitting details in a closed tender box. Both procedures are simple and quick to do, especially if you have Broadband.

e-evaluation – This is an automated process of tender evaluation against criteria that are agreed in advance. It is much simpler way for PSOs to carry out evaluation, and should provide you with the details of the outcome of the tender much faster.

e-collaboration and e-contract management – This is an online tool that helps to establish, manage and monitor contracts including collating supplier bid histories, such as the value and number of contracts awarded.

More information

Further information is available at

online.ogcbuyingsolutions.gov.uk
www.supplyinggovernment.gov.uk/newportal.asp
www.theconsortium.co.uk

Section 3

Working with others

Weighing up the benefits

Why might this be good for you

Where the contract is of a significant size or complexity you might have the chance, or prefer, to work in collaboration with another organisation; or you could sub-contract part of the work to another organisation. Equally, another VCO or a commercial company might want you to be a specialist sub-contractor in their bid.

You have to examine how you can influence or determine the most effective way of working. Look at how your work interfaces with others and assess how dependent the relationship is. Where you find it is really separate you may decide you should contact the PSO and explore the scope for dividing the services and making another contract. Within some large contracts you will find separate lots are specified and you should find out whether the route for you is to provide an offer for a particular lot. This will not always be possible and so you will have to consider working with others as a partner, collaborator or sub-contractor.

In entering into formal contracts, find out who is able to operate as a contractor and determine what arrangements are mutually possible.

Develop relationships early

In contracting you will usually have to work out your relationships with others and the scope for working together before specific opportunities are advertised. It is easier then to test each opportunity against the constraints and restrictions set by you and your partners for working together. You may have to agree what is needed to make one or both of you the contracting party. It will also enable you jointly to discuss with the PSO why one procurement route will give them better value and how the key criteria, perhaps in terms of location or community benefits, can be achieved.

More information

Further information and advice

Adirondack, Sandy and Sinclair Taylor, James (2001 – 2nd edition) *The Voluntary Sector Legal Handbook*, Directory of Social Change (see Section 9: Branches, subsidiaries, partnerships and mergers)

Morgan, Gareth G (2002) *The Charity Treasurer's Handbook: an Introduction to Voluntary Sector Finance and Accounting*, Directory of Social Change (DSC)

Sub-contracting

When might you wish to sub-contract

Before considering sub-contracting, you should gather as much information about the contract, the potential principal contractor and PSO. This will ensure that you are fully informed about the obligations and responsibilities you assume for your part of the main contract. A guiding principle is to ensure that any sub-contract reflects appropriately the transfer of the main contract obligations to the parties best able to manage them and the associated risks.

The PSO may indicate in the contract notice whether there will be opportunities for sub-contracting. Also, you can find out from the contract award notice and purchasers' profile, details of the successful prime contractor whom you can then approach directly. Section 4 tells you more about contract notices.

Look at the selection criteria that the PSO puts out with its tender. If your part of the service is critical, then you may be able to influence how the main contractor designs the bid. If your part is not critical, then you will have less influence. But, as a minority party, you are allowed to work with more than one main bidder, which increases your chance of success.

Benefits and drawbacks of sub-contract arrangements

There can be real benefits for you as a sub-contractor, such as:

- increased opportunity for a share in the public sector market
- possibility of long-term agreements as sub-contracting is often used in long-term projects
- increasing turnover and reduction in costs; regular work (helps with cash flow)
- less exposure to cultural problems (you do not have direct contact with the PSO and you will not be ruled out because you are unable to meet the entire requirements yourself)
- no need to respond quickly to invitations to tender (this will be managed by the principal provider – your dealings will only be in relation to your services)
- you can build on your sub-contracting experience to look for future opportunities for yourself.

There can, of course, be drawbacks, such as:

- this will not be your contract, so obviously you will not have the same level of control
- little or no communication with the PSO
- not the same level of returns as if you were the sole contractor
- no guarantee of recurrent contracts as you will face the threat of competition from cheaper providers.

Legal issues in working with others

You will require commitment from all parties. Trust and cooperation are very important for a successful collaborative arrangement. If this is not regularised the arrangement is likely to end in failure.

More information

Further information on constitutions, different legal structures for groups, the differences between them and pros and cons of each one is available at:

www.voluntaryarts.org/uploaded/map296.pdf

see also

Reason, J, Hayes, R, and Forbes, D (2000) *Voluntary but not amateur, a guide to the law for voluntary organisations and community groups* – London Voluntary Sector Council (LVSC), (6th edition) gives an example of a basic constitution.

Some issues to consider in forming collaborative arrangements

It is very important to formalise the relationship with a legal agreement, which sets out the obligations, responsibilities and boundaries of the partnership, consortium, joint venture or collaborative working arrangement.

Make sure there is a 'governing' document, to regularise the arrangements under which you will be part. This will set out aims, responsibilities and procedures and cover the purpose, history, financial position, reporting arrangements, profit share, the allocation of liability between partners voting rights, who has responsibility for what and who reports to whom.

If this is not done you are likely to experience reluctance from PSOs in entering into contracts with your partner organisation, as they are legally required to ensure they are contracting with a legal entity so that if there is a problem they can take legal action. This is not normally possible if the partnership is a loose arrangement of different organisations – an 'unincorporated association'. A partnership or collaborative working agreement will also protect your VCO as you do not want to be solely responsible for any default.

It is also important to consider employment legislation relating to members of staff who will work for the joint operation. If staff will be permanently transferred to the new organisation, the Transfer of Undertaking Protection in Employment Regulations (TUPE) may apply. There is also the possibility of seconding staff on a temporary basis. In both cases this involves complex legal considerations and you would be wise to seek expert legal advice.

Sub-contracting legal implications checklist

1. Ensure you have a legally binding agreement to protect your position, for instance, if the principal contractor becomes bankrupt part way through the contract, you will be able to seek recovery of your expenses. This should preferably be on your own terms and conditions, however, where this is not possible try and formalise the arrangement on standard terms and conditions (covering areas such as dispute resolution remedies, limitations of liability, indemnities and insurance) and seek legal advice to ensure that you do not agree to take responsibility for unnecessary risks.
2. Ensure that there are insurance arrangements in place to secure your position in the event of an injury to any of your employees or a third person.
3. Ensure there is clarity on the scope of work and its integration into the contract, to avoid being blamed for areas that are beyond your direct control.
4. Be aware of what intellectual property rights are being created and who owns what.
5. Make clear what and how you will be paid and what rates will apply if additional work is commissioned.
6. Be clear who will manage and supervise your staff.
7. Check the sub-contract reflects the main contract obligations to your comfort and satisfaction.

Section 4

The main legal and technical matters

As you become involved in contracts and tenders, you will find that a number of legal and technical points arise. In this section, we set out the primary matters that will affect you, and you will see how you can manage your contracts and make offers to work with potential purchasers.

The principles of public sector buying

Underlying principles

The European Union (EU) Treaty governs all public sector procurement contracts in the United Kingdom, regardless of their value. The treaty establishes four fundamental principles which govern public procurement, as follows:

Principle 1 – equal treatment

As a supplier you are entitled to be treated equally and with the utmost fairness at every stage of a contract award procedure. This means that the selection of candidates to tender, the receipt of tenders and the treatment of tenders must be carried out in a scrupulously fair manner by potential purchasers.

A breach of equal treatment

This will occur if you suffer discrimination because of location or nationality or bias of any description; for example, a tender requiring training support and advocacy for ethnic minority governors in schools stipulates that the service providers must have 50 per cent of employed staff from ethnic minority background or a qualification in diversity and culture from a British university, whereas it should simply require appropriately qualified staff who are able to carry out the specific requirement.

Principle 2 – transparency

Information about forthcoming contracts and the rules to be applied should be readily available to all interested candidates. This means that you should be informed of the rules that will be applied in assessing your applications for tender lists and the criteria to be used by the potential purchasers in their evaluation of your tenders. A competitive tendering process cannot be carried out properly without this information.

A breach of transparency

This will arise if a contract is awarded with limited publicity or even no publicity at all, or if the award criteria are not made available to you as a tenderer. The European Court of Justice has recently ruled that all public contracts must receive “an appropriate level of advertising”.

Principle 3 – proportionality

The demands placed on you as a provider should be both relevant and directly related to the contract being awarded. For example, you should be prepared to provide information about your organisation and what you can provide when such information is necessary for commercial decisions to be taken by potential purchasers.

A breach of proportionality

This will arise if excessive conditions are placed on you as a prospective supplier. For instance, if a PSO insists on your organisation having a minimum annual turnover of £10 million when awarding a contract for £100,000.

Principle 4 – mutual recognition

This requires that the standards, specifications and qualifications in use throughout the EU receive equal recognition, on condition that the products or services are suitable for their intended purpose.

A breach of this principle will arise if what you can provide is suitable for the purpose specified and complies with the relevant standards but you are disqualified because you are unable to demonstrate compliance with the specific standard quoted in the tender.

You may wish to consult with your legal adviser and decide whether to pursue a complaint or grievance if you feel these principles have been infringed (see Section 7 for details).

The variety of goods and services

PSOs issue tens of thousands of orders for an immense variety of goods and services, ranging in value from a few hundred to many millions of pounds. There are three main categories, and it is important that you realise the differences, as different rules and thresholds will apply depending on whether something is categorised as a services, supplies or works contract.

Services contracts

Services are divided into two categories, known as 'priority' or Part A services or "residual" or Part B services. The two categories are set out in Annex 1A and 1B to EU Directive 97/52.

Examples of Part A Services Contracts:

- Computer support
- Engineering
- Financial services
- Maintenance and repair
- Management consultancy
- Market research

Examples of Part B Services Contracts:

- Leisure services
- Legal services
- Social services and healthcare
- Educational and vocational services

Most of the services provided by VCOs will be classed as Part B.

You need to know the difference between Part A and Part B Services as the full procurement regime only applies to Part A Service contracts, that is, a requirement to advertise in OJEU (see Glossary) and so on. Limited procurement procedures apply to contracts for the award of Part B services, for example, there is no need to issue a contract notice. However, recent EU case law suggests that all contracts (even those which are exempt or Part B Services Contracts) should have some form of advertisement, though not necessarily through OJEU. This means that you need to make sure that you are picking up relevant Contract OJEU notices or other advertisements to be aware of new contracts that may be of interest to you. This new ruling should make it easier for you to become aware of the needs of potential purchasers.

Supplies contracts

If a PSO intends to award a contract or a series of contracts involving the purchase, lease, rental, or hire purchase of goods or products they will be categorised as Supplies contracts.

Examples of supplies contracts include:

- Computer software
- Educational material
- Food
- Office equipment and consumables
- Vehicles

Works

Works contracts are broadly construction related and will not apply to most VCOs. The outcome is a work which is 'sufficient of itself' to fulfil an economic and technical function. It therefore needs to be a complete building as opposed to mere repairs or maintenance. However, contracts for major repairs or complete refurbishment are normally treated as works contracts, and the provision of facilities might be, if construction or refurbishment is involved.

Mixed contracts

If a PSO is purchasing a mixture of services and supplies in one contract, then it will be subject to the rules of the dominant part – the one with the higher monetary value. The same applies where there is a contract for a mix of Part A and Part B services. This is why it is important that you read contract notices clearly to fully understand the requirements and to check whether you are able to service the entire contract, either by yourselves or by also using sub-contractors.

Contract regulations and management

Variations in public procurement

A major characteristic of public sector procurement is the variation in rules governing the procurement process at national, regional, local and even at individual organisation level.

There are essentially three tiers of governance affecting the legal framework:

- 1. Local level** – PSO or departments internal standing orders, byelaws financial regulations, local strategies and policies
- 2. National legislation** – includes statutes, regulations and guidance from Parliament or central government. The Office of Government Commerce, Scottish Executive and Welsh Assembly Government support respective PSOs, although there is an element of overlap and collaboration between these organisations.
- 3. EU legislation** – EU Treaty, directives and UK regulations.

More information

The primary web site for PSO guidance is www.ogc.gov.uk

Your potential purchasers are likely to be at the local level, working within the two higher tier legal frameworks.

Case Study

The Learning and Skills Council (LSC) – how one funding agency approaches procurement of services

Derwent Stepping Stones Case Study, in Part 3, follows the LSC (Derbyshire) tender process. The LSC has defined the national, regional and local strategies to be implemented, the outcomes required and the reasons why it is setting specific objectives for each annual allocation of funds.

The process has been designed to inform and enable you to offer ways of meeting the specified outcomes through providing services in as cost effective way as practical. The criteria for selection are clear and explained. The documentation is developed over a fairly long period and once agreed by the LSC, becomes set for the round.

For the LSC the key is to identify and assess what is the most effective way of achieving the specified outcomes in the particular round of opportunities, against the published criteria and questions. The procurement rules themselves are less likely to change than the ways of considering and choosing the criteria for evaluation of bids.

The opportunity for influence is therefore not inside the annual procurement process, once the round has been launched, but in the preparatory stages. The entry point for influence will be through feedback and the forums for evaluation of what has happened or been achieved in previous rounds.

The local council for voluntary service will be able to help explore with the LSC what is most important for future rounds.

PSO constitutions will set out relevant rules and procedures that determine how they will deliver value for money and achieve the expected standards of integrity and probity. In local government these are called financial regulations and standing orders. They will include contract standing orders, and will determine the levels of authority for making and approving contract awards.

Contract standing orders usually include thresholds for inviting written quotations and applying full tender procedures, minimum numbers of quotations and tenders to be sought, and procedures for their return, opening and evaluation.

In the NHS they are usually referred to as standing orders and standing financial instructions. Whatever they are called, these policies fulfil the dual role of protecting the potential purchaser's interests and protecting staff from accusations that they have acted improperly in tendering exercises.

In central government departments and other PSOs there will be similar guidelines or sets of financial regulations and procedures. They are useful if you want to be clear about what the expected procedures are.

You can also request copies from the relevant purchasing officer or by writing to the chief legal officer or finance officer who has responsibility for overseeing the document.

More information

Contract regulations

See the following sites for examples:

www.cambridgeshire.gov.uk

www.liverpool.gov.uk/Organisation/Council_finance/Standing_orders/index.asp

www.dash.nhs.uk

To see if you can access your potential purchaser's regulations, find their website through www.tagish.co.uk/tagish/links

You can expect PSO guidelines to have exception clauses, which leave managers with the responsibility for ensuring that the selected procurement strategy will deliver 'best value'. As a result, some PSOs may be more innovative in their approach to buying your services, for example, you may be required to present your material in a particular way so that a PSO can test whether 'value for money' is best achieved in a way that falls outside their normal rules and procedures. You may have to offer proposed innovations or changes that will improve the PSO's scope for achieving their service objectives.

Tender process and criteria

Potential purchasers are required to base the procurement on objective criteria, and they will normally demonstrate that they are achieving these through a competitive process. Processes get more formal as the value of the contract increases. As such, procurement is very much linked with a quotation or tender process, at least from the perspective of the PSO. You will need to show in your offer how you meet the potential purchaser's requirements against the criteria set for the particular service being contracted. If you feel criteria are inappropriate you can ask potential purchasers to clarify requirements and say how in their view criteria will affect service delivery.

Criteria will be specific to any given opportunity and may include:

- | | |
|---|---|
| <ul style="list-style-type: none">• Value for money• Compatibility and adaptability to required use• Overall response times and quality of service• Security of service supply• Quality of service• Consistency of service | <ul style="list-style-type: none">• Delivery times and schedules consistently met• Ability to supply services in required quantities• Ability to deliver services to required locations• Flexibility to new/additional requirements• Courtesy and cooperation |
|---|---|

How thresholds determine procurement procedures

Procedures will set out a number of thresholds, the value of which will vary, as follows:

Direct purchase threshold

Goods or services below this value may be sourced from wherever convenient by the end user without having to obtain written or verbal quotations.

Quotation threshold

The purchaser is required to obtain a minimum number of quotations, normally at least three, for the goods or services before selecting the most appropriate. For lower value purchases a verbal quotation is sometimes acceptable, but for anything more than a few hundred pounds quotations are normally required in writing.

Tender threshold

As the value of the purchase increases it becomes increasingly important to demonstrate that value for money has been achieved and that any offers received have been evaluated objectively. You will see in Section 6 how thresholds and other features affect the contents and steps in the tender process.

It is the aggregated value of the services to be provided under the contract that will determine the procedures to be used.

Where you may find contract notices

Where tender notices appear

The opportunity to tender a bid may arise in three main ways.

- You may be directly invited to submit a tender. Ideally you will have identified potential customers and be included on their list of potential providers.
- By responding to a notice in the OJEU or an advertisement in the press. Even if you are included on a list of suppliers it is important to monitor the press and the OJEU, as the purchasing organisation may not automatically inform you that tenders are being sought. Once again an established relationship with a purchasing organisation can be very beneficial, as you should be aware of any forthcoming purchases and have already begun to prepare your response.
- By applying through a website. You will increasingly find it possible to apply electronically for contracts. The OGC and Small Business Service (SBS) are currently developing a national opportunities portal where suppliers will be able to access opportunities, as part of government initiatives to ensure small and medium size enterprises and VCOs have equality of opportunity to bid for contracts.

More information

See websites

www.ogc.gov.uk
www.supplyinggovernment.gov.uk
and www.businesslink.gov.uk

Newspaper advertisements

Because of the relatively high cost of placing advertisements in the press, tender notices usually only contain brief details of the goods or services required. See Appendix 2 for examples of typical tender advertisements.

Official Journal of the European Union (OJEU)

Contracts with a value exceeding EU financial thresholds must be published in the daily supplement to the OJEU. This provides information on current requirements and invites suppliers to express an interest, or to tender directly in some cases, depending on the contract procedure. It also sets out information about contracts that have been awarded. Some departments advertise more contracts in OJEU than their legal obligations demand.

There are four basic types of notice published in the OJEU:

- **Prior or pre information notices (PIN)**
PINs are published annually and indicate the higher value contracts that PSOs intend to award over the coming 12 months and their anticipated value. Although considered as good practice, many authorities do not publish PINs.
- **Qualification systems**
These indicate the existence of a list of approved suppliers who may be called upon to tender for goods and services as required. For the public sector these can only be used for contracts below the OJEU thresholds.
- **Invitations to tender (ITT)**
An ITT is related to a specific contract and will set out in detail what the PSO requires and the award criteria that will be used to select the successful supplier(s). It will also outline the rules and procedure that need to be followed in completing the ITT documentation. Other terms commonly used to define ITT include; contract documents, tender documents and terms of reference.
- **Contract award notices**
Following the award of a contract, the purchaser is required to publish details of the successful contractor. Contract award notices can be very useful for monitoring competitor activity or identifying sub-contract opportunities.

The OJEU is only available online or as a CD-ROM. Tenders Electronic Daily (TED) is the on-line version. You may find it easier to use the information services offered by commercial organisations that offer email alerts and more user-friendly searching.

Access to the Official Journal

A multitude of notice formats are used in the OJEU. Despite the confusing layout they all contain basically the same information. Appendix 2 outlines and explains what you might be expected to find.

More information

Information on Official Journal opportunities

- Tenders Direct – a commercial service accessible through the internet, providing an online database of opportunities and an alert service. (www.tendersdirect.co.uk or tel: 0870 609 1467)
- Business Link provides access to business advice and support for small firms through a national network. (www.businesslink.gov.uk or yel: 0845 600 9006)
- Euro Info Centres (EIC) has been set up by the European Commission to provide information and services. These include a library service of OJEU tenders. (www.euro-info.org.uk)
- The Stationery Office provides copies of the OJEU on CD-ROM for subscribers tel: 0870 242 2345

How will the Freedom of Information Act affect you?

Freedom of Information Act

The Freedom of Information Act aims to create a stronger culture of openness, accountability and transparency in public life by creating an unprecedented right of access to all recorded information held by public authorities, subject to some exemptions. Many PSOs have understood this and use their channels of information to provide you with better access to useful background information. The Freedom of Information Act applies to approximately 130,000 public authorities throughout the UK.

More information

Guides to Freedom of Information Act coverage is available at:

www.foi.gov.uk/coverage-guide.htm

www.itspublicknowledge.info/yourrights/yourrights3.htm (Scotland only)

What information is covered?

The Freedom of Information Act is fully retrospective, which means that it covers information already held in a recordable format, irrespective of how old it is.

How the Freedom of Information Act affects you

You are now able to ask for information from PSOs in a way not previously permitted. Once you supply information to a public authority you may lose control of your information. Any information you provide to a PSO might be released to others, so you have to review any information that you provide.

You may decide to use the Act as a commercial intelligence tool and find out how rivals submit tenders and charge for contracts with public authorities.

More information

The Freedom of Information Act 2000

The Act came into force on 1 January 2005. In Scotland similar provisions are contained in the Freedom of Information (Scotland) Act 2002.

NCVO published a survey and guide to the Freedom of Information Act on www.ncvo-vol.org.uk/FIA

- **Principal obligation**

Within 20 working days a PSO must say whether it holds the information that has been requested, and then communicate the information, unless one of the exemptions applies. PSOs will not be able to transfer, delegate or contract out of their duties to a third party.

- **Exemptions from the right of access**

The Freedom of Information Act exempts certain types of information from the right of access. There are two types of exemptions:

- **Absolute exemption**

This includes information that is reasonably obtainable elsewhere, information provided in confidence and where release of the information would amount to contempt of court.

Where information falls within the terms of an absolute exemption, PSOs may refuse to disclose the information and, in some circumstances, can also refuse to confirm or deny whether the information exists.

- **Qualified exemptions**

Includes information planned for publication in the future where it is reasonable not to disclose it immediately, trade secrets and information likely to prejudice someone's commercial interests if disclosed (this could be the tenderer's interests or the PSO's).

Qualified exemptions only apply where a PSO can prove that there will be real and significant damage (prejudice) to the PSO or to other people if the information is made public (the "public interest test").

Personal information exemption

Certain information supplied by you as part of a tender may be of a personal nature (for example, your employees' CVs). This will be exempt from disclosure under the Data Protection Act 1998. Section 40 Freedom of Information Act also contains an exemption for personal

information. However, as far as third party information is concerned (that is, where you ask information about a third person), it is a qualified exemption so there may be times where the public interest in disclosing outweighs the individual's privacy rights.

More information

The Freedom of Information Act: exemptions and guidance

The full list of exemptions, together with guidance notes are available at: the Information Commissioner's Office: www.informationcommissioner.gov.uk and the website of the Department of Constitutional Affairs www.foi.gov.uk/understand.htm

The public interest test

This public interest test does not mean what is of interest but rather what is in the interest of the public; this will evolve over time and changing circumstances. The PSO, and not you, will consider whether, in all the circumstances of the case, the public interest in withholding the information is outweighed by the public interest in disclosing the exemption. If the two are evenly balanced, the presumption will be in favour of disclosure. PSOs are, however, encouraged by the *Code of Practice on Discharge of Public Authority Functions* under Part I of the Freedom of Information Act to consult with you and to take your views into account when making a decision under the Freedom of Information Act.

More information

The Code of Practice on Discharge of Public Authority Functions

This code is available at www.dca.gov.uk

There are several references to confidentiality of information in

- Public Works Contract Regulations 1991 (SI 1991/2680)
- Public Services Contract Regulations 1993 (SI 1993/3228), and
- Public Supply Contract Regulations 1995 (SI 1995/201)

(all as amended).

Confidentiality

The confidentiality obligations in contracts will be subject to PSOs' statutory obligations under the Freedom of Information Act. There will have to be genuine commercial or legal reason as to why information should be treated as confidential. Information provided in confidence will only be exempt if disclosure of that information would give rise to an actionable breach of confidence.

This is a narrow and specific legal exemption, which applies in very limited circumstances, defined by the courts through complex case law, and you should therefore not assume this exemption will apply just because information is confidential or you have marked documents as confidential.

More information

How information is confidential

- Must have necessary quality of confidence (for example, not already in public domain).
- Imparted in circumstances imposing an obligation of confidence.
- There is unauthorised use of the information to the detriment of the party communicating it.

Note that whilst this exemption is absolute, there is an inherent public interest test in the breach of confidence doctrine. (See public interest test above.)

Commercial interests

Information may be exempted from disclosure if it constitutes a trade secret or where disclosure is likely to prejudice the commercial interests of any person (including the public authority).

Trade secrets are specific and defined by case law. This exemption may cover information given by you to the PSOs about unique ways in which you deliver services or manufacture goods.

Information may also be exempt where disclosure would prejudice the commercial interests of any person, including the PSO, for example, if the PSOs disclose precise details of winning tenders to losing bidders this may have an adverse impact on the successful company and also effect the authority's future negotiating position.

The commercial interest exemption is a qualified exemption. Therefore the public interest argument (discussed above) will apply.

What does this mean for you?

To help PSOs comply with their obligations, you are strongly recommended to identify, in your pre-qualification questionnaire or tender submission, the exact nature and location of any information included that should not be disclosed and to explain (in broad terms) why the information should not be disclosed. You may be required to submit a schedule of information which you would like to be exempted from disclosure. You also need to indicate how long you think the information should be covered by a non-disclosure provision.

While you are not currently covered by the Freedom of Information Act directly, if you hold information on behalf of a PSO, you will be required to supply the information to the PSO for it to be able to comply with a Freedom of Information Act request.

If you receive a Freedom of Information Act request directly, your responsibility is to forward the request to the relevant PSO. It will inform you how to re-direct the request and to whom. It will also advise how quickly you are to do this as part of the contract terms and conditions. As time will be of the essence, it is important that you set up procedures to deal with this, and build this extra work into your prices or establish a pricing mechanism to cover your expenses.

European and national legislation

The directives

The provisions of the EU Treaty cover all public-sector procurement contracts. European procurement directives set down the procedures and standards (based on openness, non-discrimination and competition) for choosing tenderers and awarding contracts with an estimated value above a set limit or threshold. These are backed by UK law to make them enforceable here.

Penalties for non-compliance with directives are severe, including possible suspension of tender exercises/contract award processes and/or unlimited damages.

More information

Where to find the details of legislation

In the early 1990s the European Commission adopted the following three Directives to regulate public procurement:

- Services Directive 92/50
- Supply Directive 93/36
- Works Directive 93/37

In the UK, the Directives have been implemented using the following Statutory Instruments.

- 1991 Public Works Contracts Regulations (SI 1991 No. 2680)
- 1993 Public Services Contracts Regulations (SI 1993 No. 3228)
- 1995 Public Supply Contracts Regulations (SI 1995 No. 201)

The three Directives listed above were revised in 1997¹ to incorporate the Government Purchasing Agency's (GPA) provisions, which were implemented in UK legislation in 2000.²

They have been superseded by a single new Directive (2004/18/EC) which, as well as simplifying the rules, consolidates the requirements for Services, Supplies and Works into a single text. The new Directive was published on 30 April 2004 and Member States have 21 months in which to implement this in national legislation.

In the UK, Scotland will be implementing its own version separately from the version for England, Wales and Northern Ireland, but both versions are due for publication in January 2006.

¹ Co-ordination of Public Service, Supply and Works Contracts Directive 97/52

² 2000 Public Contracts (Works, Services and Supply) (Amendment) Regulations (SI 2000/2009)

Financial thresholds

Financial thresholds determine whether a contract, or group of contracts, is subject to European procurement directives. If the value of a single contract, or series of contracts, for goods and services of a similar type exceeds these thresholds then the PSO as a purchaser must comply with the procedures laid down in the relevant directive.

More information

Financial thresholds

The value of thresholds is defined using Euro currency. The equivalent threshold value in currencies outside the Euro zone is based on fixed values, calculated every two years by the European Commission, which are published in the C Series of the Official Journal.

	SUPPLIES	SERVICES	WORKS
Central government authorities	£93,738	£93,738	£3,611,319
Other public authorities	£144,371	£144,371	£3,611,319

See www.ogc.gov.uk for up-to-date figures.

Standards

Wherever possible, EU standards legislation strongly steers PSOs towards:

- using national standards implementing European standards
- referring to European technical approvals
- referring to common technical specifications.

Where a PSO cannot satisfy its requirements by adhering strictly to the above guidelines, because of problems of compatibility with existing services or equipment and so on, then it may refer to:

- national specifications complying with the basic requirements in EU directives on technical harmonisation
- national specifications relating to design and method of calculation and execution of works and use of materials
- other standards documents: in order of preference – national standards implementing international standards, other national standards and technical approvals, any other standard.

You may find that this affects the materials or products specified that are part of how you provide your services.

Section 5

Types of agreement

Agreements with PSOs have many names. **In law it is not the formal description that counts but the content of the agreement.**

In practical terms, one of the greatest barriers to a productive PSO/VCO contracting environment is the degree to which it is not clearly perceived to be strictly a 'contracting' environment. You may receive public funding for your activities and services without clarity of the formal agreement as to the service to be delivered, standards to be met or quality of performance.

In reaching agreements to provide services, you may encounter grants, service level agreements and contracts. You may feel confused by the three types of arrangements.

- Grants are subsidies for the operation of the VCO in meeting its purpose and objectives and are subject to the European State Aid regime and its regulation of competition law.
- Service level agreements set standards and specify levels of service without any commitment to use the agreement.
- A contract will specify service requirements, and make clear what and how the service is to be delivered, and for what payments will be made.

There are also strategic approaches to procurement that lead to framework agreements.

Public procurement is about establishing contracts between PSOs and (for the purposes of this guide) VCOs. The procurement rules and procedures lead the PSO into a contractual agreement for the purchase of services. The contract specifies the services and the basis for delivery and payment. The agreement will determine for you, the VCO, how you provide services that meet the PSO's specified needs.

This section helps you understand some aspects of these.

General issues and distinctions

You may already be working with community, health, social care and education services where you are assigned work by agreement, according to your suitability and availability. Arrangements like this are increasingly being replaced by contracts.

You should check how PSOs want to purchase your services in future and what contracts will be introduced. If contracts are being introduced you need to understand how different the new arrangements might be by identifying the essential features of the contract. Examples of a service level agreement and nationally agreed contract are included in Appendix 3.

In some cases an agreement can be made orally, for example, over the phone. Acceptance means that a contract has been made, even though there is nothing in writing.

In law there is a distinction between:

- **a grant** (in which a PSO subsidises your work); and
- **a contract** (in which there is an exchange of specified services delivered to the PSO in return for specified payments).

PSOs may, in practice, go through similar internal procedures to issue grants, but grants and contracts and the relationships they create are different. The similarity can lead to confusion by both PSOs and VCOs. Grant conditions may specify the basis upon which the grant is given. They do not specify services to be delivered to the PSO. Grants may be given for general purposes, or specific projects.

Sometimes the service provision may be unclear in contracts, for example the social care of individuals. The key legal question is whether the care package is being delivered to the individual, subsidised by a grant, or delivered to the PSO, through it taking responsibility for the individual. This distinction is hugely important given the general policy shift away from PSO grant funding to publicly procured contracts. It also clearly explains the different treatment for VAT. VAT is chargeable on the supply of services. This occurs under a contract. Under a grant there is no supply of services to be taxed.

In the event of breach or default in delivering on a contract the PSO can pursue claims against VCOs long after agreements have been completed. The usual period for claims for contracts is six years.

More information

Further information on agreements

Saunders, Joss (1998) *Mutual Obligations – NCVO's Guide to Contracts with Public Bodies*, NCVO

Elliott, Graham (ed) (2005) *VAT for Voluntary Organisations* (6th edition), NCVO

The essential features of contract forms

Contract features and structure

- General terms and conditions will apply to all contracts let. They will describe the basis upon which the service is to be provided and the way the parties are to relate during the performance of the contract. They are usually in a standard form, which the PSO imposes and the VCO is obliged to accept. The opportunity for negotiation of the general terms will be limited.
- Specification or contract brief will set out in particular contracts:
 - requirements to be met;
 - standards to be complied with;
 - the definition of the services to be provided;

- the specific measurable ‘deliverables’ or ‘outputs’ which the VCO must achieve to fulfil its obligations;
- agreed performance indicators;
- agreed timescales;
- agreed payment provisions, including milestones or instalment triggers; and
- procedures for liaison, review, monitoring, reporting, renewal, dispute resolution, variation and termination.

These components of the intended working relationship should be the focus of the brief in an invitation to tender, the tender presentation, the subsequent negotiation and ultimately the formal agreed contract.

- **Schedules** may be used for individual orders or service provision under contracts. These are of particular importance where individual care packages or detailed elements of the service have to be set out after the contract is in place.
- **Letters** are usually exchanged to confirm and accept contracts.
- **Changes and variations** may subsequently be agreed to comply with procedures defined in contracts.

A broad **definition of contract** is that there is an offer + acceptance + consideration + contractual intention, leading to an agreement. The essence of the contract is an agreement setting out the arrangements whereby one party provides a service (or goods) to the other in return for payment.

Practical issues of the PSO/VCO contracting environment

Negotiation of Contract Terms will seem unequal if you are a VCO engaging with a large PSO. There are instances where the PSO will draft the tender documents in such a way that in making an offer you are accepting the terms and conditions of the contract. A preferred response may be to make clear any amendments or difficulties you have and the need for a short negotiation to finalise the contract on a mutually acceptable basis. You will need to be alert and assess your rights and obligations, and the recourse available in event of default/breach in each case or set of circumstances.

There are other problems and difficulties met by VCOs, such as those outlined below, some of which have been worked on through the Compact process (see Section 1).

- Contract periods are too short and can disrupt ability to deliver good services.
- The contract has little relation to actual circumstances, and the requirements of the specification.
- Bureaucratic procedures, not reality, determine specification requirements, e.g monitoring provisions.
- Unacceptable rights of intervention in VCO operations.
- Unilateral decision-making contrary to the mutual binding agreement made.
- And above all determination of contract prices (see case studies and other references in this guide to full cost recovery).

How the contract affects your service

Key points to understand are when and how you will:

- do the work and to what standards
- be paid
- be allowed to negotiate changes
- complete the requirements and understand how the service will end.

Case Study

Case study examples – Part 3

Liverpool Crossroads (Study 1)

Liverpool City Council worked with the Central Primary Care Trust to develop a supplier list for social care services. Contractors are engaged by contract, general terms and conditions, and service specification standards, to provide service packages to individuals by referral and a schedule procedure.

Derwent Stepping Stones (DSS) (Study 2)

DSS is contracted by Derbyshire Learning Skills Council (LSC) to deliver and achieve outcomes. The contract proposal sets out how Derwent Stepping Stones will meet the requirements.

The National Autistic Society (Study 3)

The society uses a nationally agreed set of terms and conditions. The PSO engages with it by this contract and agrees schedules for individual service packages. The national agreement specifies standards and requirements to be met.

Part 3 of this guide has more details.

Contract schedules

Contracts for services often cannot know the full detail in advance of what will be ordered or provided. A schedule within a contract can be agreed to through a set referral process and then used to purchase the required service package under the contract. These contract schedules can best operate within overall standard terms and conditions of contract that will be specific to the organisation, service sector, or supplier organisation.

The standard terms and conditions will cover generic issues such as payments, termination, status of the schedules, liabilities, and definition of the contract arrangements. The specification will refer to the standards of service required and how it will be delivered.

Other forms of agreement

Service level agreements (SLAs)

SLAs set out what is required as a service and the basis for delivery and payment. Flexibility is built into arrangements so that decisions on detail can be negotiated case by case, driven by circumstances and individual needs.

The public sector contracting environment is plagued by confusion as to the nature of service level agreements. This may be because many are used by PSOs to agree internal provision of services between departments. PSOs have then adapted them for use with external service providers. An SLA, properly described as such and properly analysed, is either a contract or a detailed specification forming part of a contract.

You may have an SLA in place that is linked to your grant funding. However, as the PSO is accountable for the provision of the services and the use of public funds, many of these arrangements are likely to become increasingly subject to public scrutiny and renegotiated to appear as specifications within a fuller contract.

Case Study

Service level agreements and Derwent Stepping Stones (DSS)

DSS saw advantages in moving towards service level agreements. DSS is looking forward in its business planning towards achieving 60 per cent of funding through contracts, moving away from grant funding because, “at the moment, we see in our financial reports a need to replace about £50,000 of funds each month”. See Part 3, Case Study 2, for more on this.

An important benefit of having an SLA in place is that as a provider you are uniquely placed to influence the definition and specification of the service. You are also likely to be included in any tendering or selection process by invitation. A difficulty for the purchaser is the consideration of fairness and accountability for anti-competitive behaviour. You may have to present your full service costs, so reducing subsidies and contributions from your charity function. This can be a challenge as the purchaser may not have appreciated the level of additional costs being supported by you (see references to full cost recovery in Section 2, and in Appendix 1).

A summary of the Acorn’s Children’s Hospice SLA is included in Appendix 3 to show how arrangements can be made and implemented, based on negotiated agreement. This SLA includes no commitment by the primary care trusts to use the services. Details will be adjusted to match each set of individual circumstances and requirements through schedules. It also means that the VCO has the final decision on whether to accept any particular referral.

Non-competitive opportunities

For you to operate in areas that are essentially non-competitive, you need to put effort into influencing and persuading the authority that services have to be packaged in a particular way. The basis for the contract process then will be negotiation, transparency and reaching a joint understanding of what is required and how it can best be delivered (see the checklist in Section 6).

Case Study

Non-competitive service procurement

Norfolk Industries, a sheltered factory supported for Norfolk County Council (NCC) by a management agency operation for Action for the Blind, is an example where, without Action's contracted services the factory would close. The contract for the management service by Action has therefore to be openly negotiated by NCC to achieve lowest target contributions to operational costs from the county council.

Framework agreements

Features of a framework agreement

A framework agreement is an arrangement where a purchaser, or group of purchasers, selects providers and establishes terms in advance so they can quickly order ('call off') goods and services when they need them in future. It is a kind of pool or panel. The agreement will cover specific goods or services and allows the PSO to buy from the selected providers quickly whenever they wish over the life of the agreement. The terms and your prices will usually be fixed for the duration of the framework agreement and will not be open to renegotiation part way through.

If you get onto a framework agreement you may find that:

- you do not know in advance exactly what the purchaser will want, or when and
- you are not the only provider on the framework, so you might still be in competition.

How do you assess a framework contract?

It is important to work out your business case before entering into framework agreements, as there is no guarantee of being awarded any business. The decision to make 'call offs' is entirely in the hands of PSOs and they can still go outside the framework agreement and separately tender, if they wish.

If you are part of a framework agreement with more than one provider, you will be required to:

- clearly define your pricing mechanism that will apply for any call offs
- set out what categories of services you are capable of providing
- have procedures and resources in place to submit specific proposals at short notice.

Points to note about framework agreements

1. The establishment of framework agreements follows normal procurement processes, but can only last for a maximum period of four years, except in exceptional cases.
2. Individual call-offs may extend beyond the four-year term of the framework itself. However, this should not be done in order to circumvent EU rules. For example, it would be difficult to justify a 12-month call-off towards the end of the life of the framework itself, where the normal pattern had been for such call-offs to last for just one month at a time.
3. Watch out in OJEU Contract Notices for whether the PSO wishes to set up a framework agreement for itself or as a central buying consortium on behalf of other contracting authorities and what type (single or multiple supplier). This will help you decide what level of resources to commit to the tender as you will have an increasing chance in the case of framework agreements with more than one supplier. Even where the PSO states it wishes to award a framework agreement, it does not necessarily have to.
4. Where a PSO is acting as a central purchasing body, the OJEU notice or a reference on the PSO website should clearly state which other contract authorities may wish to be part of the framework agreement. You should carefully study this to decide whether services are to be provided in your normal business catchment area even if the awarding PSO is not.
5. The estimated maximum quantity or value of goods, works or services for which call-offs are to be placed will be set out.
6. When entering into a framework agreement, it is necessary to consider the terms and conditions under which it was set up. This will require you to contact the PSO which set up the framework agreement for details of its usage.
7. Framework agreements may be structured for the same goods, works or services as follows:
 - Single supplier
Award of any call offs under the framework agreement must be in accordance with the terms of the agreement. You may however be consulted to provide clarification prior to awarding a contract.
 - Multiple supplier
There must be minimum of three suppliers to ensure genuine competition. If you are successful, you may be awarded individual contracts on framework agreement terms, where they are sufficiently precise, or required to take part in a mini competition (based on pre-determined rules) with other suppliers who are capable of satisfying the subject of the contract.
8. Framework agreements may use the new dynamic purchasing system under the new directives.

Section 6

How to bid – tendering

Keys to the process

You have to work out exactly what purchasers are looking for, and how you should present your service. If you can influence thinking in advance, so much the better.

Key steps for you to understand	
For the purchaser	For the VCO supplier
Agree the full requirement and specification of needs	Keep abreast of what is happening in the purchaser's sector and how their needs and targets are changing
Liaise and negotiate with suppliers	Keep in touch with purchasers and take any opportunity to influence their thinking
Advertise	Monitor the press and other sources for contract notices
Invite and receive bids	Develop and submit your tender
Evaluate offers	Respond quickly and professionally if asked to make a presentation or provide more information
Negotiate arrangements and agree contracts	Negotiate arrangements and agree contracts
Handle problems and maintain records	Keep a complete record of everything you have done in case you need to raise or help resolve problems within the bidding process

What you can expect to happen

To help you understand how PSOs manage bidding processes and features that may be included in typical standing orders and financial regulations, the tables below outline the goals, main descriptive features and circumstances for using various procurement processes. The tables cover a variety of competitive and non-competitive opportunities, including low-value procurement and staged procedures with pre-qualification.

Table 1 summarises the typical circumstances where PSOs select a different procurement process. The goals explain what the PSO is looking for in the response to a:

- **pre-qualification questionnaire** – used where contracts exceed £35,000; EU tenders and tailored versions used for contracts below £35,000
- **request for a tender** – used where tenders exceed £35,000 and for EU tenders
- **request for a quotation** – used where a contract is estimated to exceed £5,000 but below £35,000
- **low value procurement** – used where contract value is estimated at £3,000 or less
- **non-competitive procurement.**

Before inviting a request for tender (your offer in detail) the more complex higher-value processes have a pre-qualification stage. This helps to reduce the amount of effort you need to put in because it enables the PSO to select organisations with the real prospect of meeting their full requirements and avoids bidders competing for opportunities outside their capacity or experience.

PSOs will evaluate whether you are able to do the work, on basic criteria such as your company status, financial standing, health and safety policy, environmental policy, or equal opportunities policy and experience of delivering similar services. The match has to be relevant to the opportunity and assesses your technical capacity and ability to be able to meet the fuller brief and requirements that will be detailed in the tender invitation.

One of the national projects they are working on in OGC is the simplified PQQ based on a self-certification questionnaire – see www.ogc.gov.uk

Table 2 then outlines the key features or steps that may be used. It shows you whether what is being asked for is reasonable, and what you might expect.

You can see from this what you are likely to encounter and what PSOs are working towards. Even though the details will differ according to the value of the contract, the steps and principles will be similar.

Table 1 Objectives of public procurement processes

Item	COMPETITIVE PROCESS SEEKING MULTIPLE TENDERS OR QUOTATIONS				Non-competitive procurement
	Pre-qualification questionnaire (PQQ)	Request for tender	Request for quotation	Informal, low-value procurement	
What you (the VCO) should do	<p>Consider notice advertising the contract to ensure you meet all the criteria.</p> <p>You cannot have been guilty of corruption, organised crime or fraud.</p>	<p>Consider the criteria listed and weighted in the contract notice or contract documents to maximise your chances of success, and the evaluation strategy, described in the contract</p>	<p>Find out procedure for tendering from select/approved list.</p> <p>Check adverts in local press, and relevant journals.</p>	<p>Ascertain procedures at PSO.</p> <p>Consider producing brochure of services and send this to PSO.</p>	<p>Find out what types of services have been procured this way in the last year.</p>

Item	COMPETITIVE PROCESS SEEKING MULTIPLE TENDERS OR QUOTATIONS				Non-competitive procurement
	Pre-qualification questionnaire (PQQ)	Request for tender	Request for quotation	Informal, low-value procurement	
	<p>Show your potential to fulfil their advertised requirements.</p> <p>Check deadline for submitting the PQQ. Develop this information electronically, to allow quick updating. Some PSOs are starting to use PQQ accreditation bodies to meet this requirement.</p>	<p>documents. If you do not understand anything, seek further information from the designated officer.</p>	<p>Timescales and formalities will be less than for request for tender. You will need to respond quickly. Store standard information electronically which can be updated/reviewed immediately.</p>	<p>Consider promoting services on your website and collaborating with other organisations to set up.</p> <p>e-Marketplace (once a business case has been developed).</p> <p>A growing trend is to pay for such items using PURCHASING CARDS. Consider introducing this into your organisation and set up e-mail accounts for orders and online purchasing.</p>	
Why the PSO will do this	<p>To implement an efficient, effective, objective, fair, open and transparent, procedure for obtaining unique tenders designed to meet PSO's objectives</p> <p>To select the proposal(s) that achieves the highest score and meets the requirements specified in the competition, based on suppliers' financial, economic, technical capacity and ability.</p>	<p>To implement an effective, objective, fair, open and transparent process for obtaining competitive tenders from suppliers based on precisely defined requirements for which a clear or single solution exists.</p> <p>To accept the lowest tender or most economically advantageous tender.</p>	<p>Same as for request for tender, except that tender promotion is done primarily on an invitational basis from a pre-determined suppliers list but may be supplemented with public advertising of the procurement opportunity.</p> <p>Usually three written quotations are required.</p> <p>For contracts between £3,000 and £5,000, one written quotation may be sufficient.</p>	<p>To obtain competitive pricing for a one-off procurement in a quick and cost effective manner through phone, fax, email, other similar communication method, supplier advertisements or vendor catalogues</p> <p>Used for low-value/high-volume commodities, localised requirements, for example, stationery.</p>	<p>To allow for procurement in an efficient and timely manner without seeking competitive pricing.</p> <p>To provide for exceptions to the formal procurement requirements of the financial regulations and standing orders. This is rare and will only be undertaken in exceptional cases where PSO has obtained prior approvals and consents.</p>

Table 2 Descriptive features of procurement processes

Item	COMPETITIVE PROCESS SEEKING MULTIPLE BIDS OR PROPOSALS				Non-competitive procurement
	Pre-qualification questionnaire (PQQ)	Request for tender	Request for quotation	Informal, low-value procurement	
Sealed bids or sealed proposals required	Always (some PSOs may now accept electronic tenders, however same principles of security apply)			Not applicable – emails may be accepted	
PSO will issue a request for information or a invitation for tender of interest/pre-qualification before or together with a call for bids or proposals.	Moderate to high likelihood	Moderate to high likelihood	Low to moderate likelihood	Not applicable (needs statement may still be required)	
Call for tenders or quotations advertised	Most likely to depend on contract value – in accordance with requirements of PSO's standing orders and/or EU procurement rules.	Always	Shorter advertisement may be carried out depending on contract value.	Not applicable	
Formal process used to pre-qualify bidders/suppliers (i.e. request for pre-qualification)	Moderate to high likelihood		Low likelihood (Some PSOs are now using accreditation bodies, for example, Construction Line).	Not applicable	
Seek bids or proposals from known bidders/prop onents (select/appro ved list)	Always	Will be advertised, however PSO may also invite known suppliers after notice/ adverts have been despatched. Important therefore that you and your services are known to PSO.	Always	Moderate to high likelihood. Various e-catalogues, suppliers websites exist now for quick and easy purchasing.	

Item	COMPETITIVE PROCESS SEEKING MULTIPLE BIDS OR PROPOSALS				Non-competitive procurement
	Pre-qualification questionnaire (PQQ)	Request for tender	Request for quotation	Informal, low-value procurement	
Two-envelope or similar multi-stage approach used	Self-addressed labelled envelope or the information for the front of the envelope will be provided.	Green banded envelope. Do not mark the envelopes with details of identity of your organisation otherwise your tender will be invalidated.	Red banded envelope. Do not mark the envelopes with details of identity of your organisation otherwise your quotation will be invalidated.	Informal process which will vary, however safeguards will be implemented to ensure security of responses.	
Bids or tenders opened and announced at a public meeting	Low to moderate likelihood	Always. Tenders usually opened by chief law officer and chief officer. Register of all tenders received will be maintained.	Unlikely. Quotations opened by chief officer and one other officer. Register of quotations received will be maintained.	Not applicable	
Late receipt	Usually not accepted	Usually not accepted	Usually not accepted	Unlikely to be accepted	
Type of agreement with provider	N/A	Contract in writing and under seal (executed by two directors/chief officer).	Contract in writing (normally executed by two directors/ chief officers). Sometimes on standard terms and conditions.	Purchase by cash, purchase order, or procurement card.	Cash, purchase order, credit card, or blanket contract (standing agreement/offer).
May include In-house bidding in addition to external bidding	Yes (PSOs may have direct service organisations bidding)			Not applicable	

Where a formal tendering process is not used

Typically, non-competitive procurement is used when:

- no bids were received in a competitive open or restricted procurement process (can also be negotiated procedure)
- for technical or artistic reasons, or for reasons connected with the protection of exclusive rights (such as a patent, copyright or exclusive licence), the contract can only be performed by one particular supplier
- there is a need to proceed extremely urgently as a result of unforeseeable events (except where the events are attributable to the PSO)
- there is a need for repeat or additional works, supplies or services which must be provided by the original supplier (for example, for reasons of compatibility)
- there is only one supplier who could provide the works, services or supplies
- contracts are of low value.

European directive tender procedures

In addition to three categories of tender procedure, open, restricted and negotiated, a fourth procedure, the competitive dialogue, was introduced when the new European Directive was implemented in January 2006. The majority of contracts are awarded using the restricted procedure.

- **Open procedure**
Any supplier can request a copy of the tender documents and then submit a response. This is infrequently used, as it is likely to produce a large number of tender submissions that the PSO has to evaluate.
- **Restricted procedure**
This is used when only a limited number of suppliers will be invited to submit a full tender. On the basis of economic and technical information provided by suppliers the PSO will select those they will invite to submit a tender. In comparison with the open procedure this reduces the amount of work in evaluating final tenders.
- **Competitive dialogue procedure**
This is designed to cope with particularly complex projects such as private finance initiative or public-private-partnership projects.
- **Negotiated procedure**
This is only used in more complex projects when there may be a number of solutions that will meet the requirement or the overall price cannot be determined in advance.

Candidate selection criteria

Criteria must be relevant to determining the candidate's ability to fulfil the requirements of a specific contract as well as any additions which are expected to result directly from the initial contract.

Unless you are providing a very simple and homogeneous commodity it is likely that the purchasing authority will use either a restricted or a negotiated procedure. You will be requested to complete a questionnaire or provide information listed in tender advertisements. This information is then used to determine which providers will be invited to tender or negotiate.

How to respond to advertisements:

The first stage criteria fall into three main categories:

- exclusion criteria
- financial and economic information
- technical capacity.

The criteria used are usually very similar and so it is possible to prepare standard material, although it is important to provide any information in the format requested by the PSO.

First stage criteria for candidates

Exclusion criteria

The conditions for exclusion of a candidate include issues such as:

- conviction for membership of a criminal organisation, corruption, fraud or money laundering
- bankruptcy
- professional misconduct
- non-payment of social security contributions or taxes
- misrepresentation in supplying information.

As a provider, you may be asked to sign a declaration confirming your compliance with the above matters, as a pre-condition of being considered for a place on a tender list.

Financial and economic information

Evidence of financial and economic standing is usually established by you providing:

- audited accounts
- details of overall turnover for the previous two to three financial years
- information about turnover related to the products or services being purchased over the same period
- for services contracts, evidence of risk indemnity insurance.

These requirements have to be specified either in the advertisement or in the invitation to tender documentation.

Technical capacity

Evidence of technical capacity may be furnished through various means which the purchaser specifies in advance. These may include the availability of resources or other aspects. Tests of technical capacity will relate to the nature, quantity and purpose of the products or services to be supplied and should be confined to the subject of the contract. It may include

- a list of principal deliveries or services over the previous three years with details of amounts, dates and recipients (whether public or private organisations)
- for services contracts, the educational and professional qualifications of managerial staff and of those responsible for providing the services
- the provider's technical, quality assurance and research facilities
- the technical bodies responsible for monitoring your quality control and conformance with other standards.
- information on health and safety aspects
- information on environmental management
- average annual staff levels and the number of managerial staff for the last three years
- the facilities, or equipment available for the carrying out of the services
- an indication of the proportion, if any, of the contract that the service provider intends to sub-contract
- information regarding service providers' registration on official lists.

Where you meet the candidate selection criteria and submit a valid tender, then your tender is entitled to be given due consideration under the contract award criteria. If your tender proves to be the best under the award criteria, the PSO is not entitled to reject the tender by returning to reconsider the selection criteria. However, the PSO may at its own discretion decide not to award any contract and to cancel the entire award procedure.

Preparing your tender

Remember to:

1. Read all of the documentation carefully and note the key points that you must act upon.
2. Check that you can meet the principal requirements and that you will have the necessary resources at your disposal to fulfill the contract, if successful.
3. Note the duration of the contract. It is becoming standard in the public sector to award two- or three-year contracts, and three to five year contracts are fairly standard with utilities.
4. When you receive the tender invitation documentation compile a checklist of all items you will need to provide in your bid.
5. Use the checklist before finalising your bid and submitting it.

You should designate someone in your company to take overall responsibility for compilation of the tender. Individual aspects can also be allocated to appropriate staff, for instance, financial figures to the accounts team, and so on. Ensure that the nominated person will not be away at the time the tender needs to be submitted.

Your bid should be bound so that it is easy to read. You may be asked to provide a number of copies to assist the evaluation team, some of which may omit pricing information.

Key checklist for tender preparation**Closing date**

- Note the day, date and time by which the tender must be submitted
- Make arrangements in advance for delivery (post, courier, personal delivery, and so on)
- Acknowledge receipt of the invitation to tender and advise that you intend to submit a bid

Award criteria

- Note whether it is lowest price or most economically advantageous tender.
- If the latter, what are the factors involved?

Company

- Information on company structure, management and organisation
- Details of shareholding(s)
- Details of personnel
- Details of current order book

Financial information

- Turnover for past two to three years (government guidance recommends two years)
- Most recent audited accounts
- Bank references
- Tax Clearance Certificate
- Guarantees and bonds

Technical information

- Details of plant, equipment, and so on

Specification

- Do you understand the full requirements of the specification? If not, seek clarification
- What standards are quoted?
- Can you meet the requirements of the specification?

Health and safety

- Details of health and safety policy
- Details of accident records
- Environmental issues

Quality assurance

- Details of quality assurance

Insurance

- Ensure the appropriate insurance is in place

Pricing

- Structure the pricing as specified
- If tender pricing sheets are included complete in full and total the costs

Sign-Off: Don't forget to sign all tender documents – unsigned documents will not be considered

Final reminder:**Labels and envelopes**

- Has the purchaser provided a label for returning the tender? This is an administrative detail for the purchasers in order to be able to isolate tenders and treat them in a confidential manner.
- Does the PSO want one envelope inside another? Comply with whatever is requested.

The deadline:

PSOs are strict about deadlines and being five minutes late may mean all your work goes to waste.

Contract award criteria

Awarding bodies must make known, in advance of the tender process, the criteria they intend using to choose the successful tenderer(s) for contracts. The criteria should be specific to each contract and may be in terms of lowest price, or the most economically advantageous tender submitted for the contract. You should examine these award criteria and ensure that your tender meets them to as high a degree as possible.

Lowest price criteria

This is increasingly rare. Under these terms the PSO must make the contract award to the supplier who submits the lowest priced valid tender, that is, with all the requested information provided and any specifications of product or service strictly observed.

Most economically advantageous tender (MEAT) criteria

Under this option the PSO must specify the particular factors chosen for the contract in question, in descending order of priority (where possible). The factors chosen must relate to the specific contract and only those factors may then be used in evaluating tenders. MEAT criteria may include:

- price
- quality
- technical merit.

See the example list in Section 4.

Evaluation of tenders

Tenders are often evaluated in two stages, and quite often by separate groups within the PSO. First there is a technical stage, to ensure your product or service will meet the specification and performance requirements, then the commercial evaluation stage. Only tenders that comply with specifications and general tender requirements will be considered for acceptance. If your tender does not meet requirements it will be treated as invalid. The PSO is not allowed to alter pre-published award criteria.

These rules ensure that all service providers receive equal treatment when competing for public contracts.

Contract award

Submission of a tender normally constitutes a binding legal obligation to provide services, subject to terms and conditions in the tender document. The successful tenderer will normally receive an official purchase order or other formal notification of the PSOs intention to award a contract.

If your tender has been unsuccessful you should be notified straightaway, although there may sometimes be a slight delay until the successful supplier confirms their acceptance. Section 7 tells you what you can do if unsuccessful.

The realisation of all the preparation and hard work is the receipt of a purchase order or signed contract from the purchaser. Rather than an end point, this is the beginning of the contract management phase to ensure that you fulfil the contract terms and put yourself in a strong position to win future contracts.

Using e-auctions

Usually, e-auctions are 'reverse auctions' (lowest bid wins) to decide between a number of potential suppliers who have already passed the pre-qualification stage and submitted bids and where all other factors apart from price have been factored into the ranking (weighted e-auction), although e-auctions based on price can also be done.

Watch out in OJEU contract notices or local adverts to see if PSOs wish to use e-auctions. You will not need to install any special programme or software to be able to take part in e-auctions and you will be provided with relevant technical and operational information. The only thing you will require is access to the internet, so consider investing in good quality broadband to allow you to upload and download documents as well. Even if you do not have access to a PC do not worry. Many PSOs make facilities available either within their offices or at the local library.

It is, however, essential that you are familiar with how e-auctions work and have carried out all necessary preparatory work to ensure that you confidently take part without undermining your usual pricing strategy, for example, you do not continue to bid to an unsustainable price level. Watch out for local events, as most PSOs will invite interested suppliers to take part in test e-auctions for familiarisation with the process and technology before the actual event.

Section 7

The outcomes of your bids – next steps

When your bid is unsuccessful

It is important to learn from unsuccessful bids, to help you to decide whether a different approach is needed for future bids and to check whether you have any cause for complaint. After putting effort and resources into your bid, you should find out your particular strengths and weaknesses in relation to successful tenderers. The amount of information made available will be subject to the EU procurement rules and Freedom of Information Act 2000, but de-briefing can be a useful source of information and should be looked for.

Although it is a requirement under EC Procurement directives for PSOs to provide feedback, some PSOs may be uncomfortable about giving feedback to you, fearing that anything they say can be used against them. However, if you have developed a good working relationship with a PSO you are likely to get more meaningful and constructive feedback.

Relevant EU rules concerning unsuccessful bids

For contracts subject to the full EU procurement rules, PSOs are required to submit contract award notices for OJEU publication within 48 days of award of contract, subject to the “standstill period” (a cooling-off period before finalising contracts), described later in this section.

PSOs are required to use mandatory forms every time a contract is awarded and also in the case of awarding Part B Services contracts. These notices provide for publication of the, “price or range of prices paid” and the, “value of winning awards or the highest and lowest offer taken into account in the award of the contract”.

The new EU Procurement Directive introduces two important changes:

- PSOs are required to state the criteria they will use at the pre-qualification stage in the contract notice or the PQQ. The criteria must be objective and non-discriminatory, but do not have to be weighted.
- The criteria to award the contract (for example, quality, price, after sales service and so on) will be weighted, and set out in the contract notice or invitation to tender.

Seek a debriefing

If you are unsuccessful, you are able to write to the PSO requesting a de-brief. The PSO is obliged to respond to you within 15 days of your written request, providing you with reasons why you were unsuccessful and, if you had submitted a compliant tender, also the characteristics and relative advantages of the successful tenderer and the name of the successful tenderer.

The PSO is only able to withhold this information in limited cases, for example, if release of information would:

- impede law enforcement
- be contrary to public interest
- prejudice the legitimate commercial interests of a particular undertaking
- prejudice fair competition between service providers.

Abandoned bids

If you submit a bid and a PSO later decides to abandon or recommence competition, it is required to inform you promptly and in writing if required. It will also communicate its decision to OJEU by sending a contract award notice stating that the tender process has been abandoned. Where the PSO has “unreasonably” abandoned the tender, this could provide you with grounds to challenge the decision.

If you believe that you are experiencing discrimination ask for a reasoned explanation from the PSO. If you do not receive a satisfactory explanation, consider instructing solicitors experienced in intellectual property law with a view to taking legal action.

If you have a grievance

If you feel aggrieved by the decision that your bid is unsuccessful and have cause to believe that the PSO has acted improperly, you may consider taking legal action.

Central civil government departments and their suppliers also have recourse to the Government Procurement Code of Good Practice for Customers and Supplier – again available on the OGC website. Local authorities have the small business friendly concordat – on www.odpm.gov.uk

Complaining to the European Commission

You can complain to the European Commission about suspected infringements. In high-profile cases, this may result in the European Commission taking infraction proceedings against a member state for infringement of the procurement rules, which could lead to the member state appearing before the European Court of Justice.

The Commission also has powers to call upon national authorities to justify their procurement procedures and rectify any infringement. In the context of such proceedings, the Commission can apply to the court for an interim order to stop the award procedure if the contract has not yet been concluded. Although complaining will only cost you the price of a stamp, and can even be done anonymously, this course of action is rarely used.

More information

How to complain to the European Commission

There is a standard form available on the following link which you can use to complain. www.europa.eu.int/comm/secretariat_general/sgb/lexcomm/form_en.doc

The other option is to hand in the form or letter at any of the Commission's representative offices in the member states. A list is available at the following link: www.europa.eu.int/comm/represent_en.htm

You can also complain by letter to the following address:
Commission of the European Communities
(Attn: Secretary-General)
B-1049 Brussels
BELGIUM

Complaining through UK national courts

You may wish to pursue legal action in the High Court (or the Court of Session in Scotland) against the PSO concerned. This is relatively uncommon in the UK because of the high costs plus uncertainty of outcome. You would have to demonstrate that you have suffered loss as a result of the failure by the PSO to follow the regulations and the courts are reluctant to 'second guess' the outcome of a tender process had a different and correct procedure been followed. There is also a perception (mostly incorrect) that action could result in you being viewed as a 'troublemaker supplier' and that this would affect your future chances of being successful.

Procedure point

To be entitled to challenge a procurement decision, you must first:

- inform the PSO of the alleged breach and of your intention to bring proceedings, and
- bring the action promptly, and in any event within three months from the date when grounds for the bringing of the challenge first arose.

If you decide to take action and are successful, provided the contract has not been awarded (that is, you are within the standstill period or activities under the contract have not yet commenced), the courts have the following powers:

- suspension of the contract award procedure
- setting aside of unlawful decisions taken
- correction of documents to remove discriminatory clauses
- damages, including costs of tendering and possibly loss of profits.

These remedies are not exclusive and you are free to apply to the court for any other remedy that may be available under UK law. After the contract has been awarded the only remedy currently available under the rules in the UK is damages against the PSO. Courts in the UK cannot overturn a contract for infringement of the procurement rules, once it has been awarded.

Checklist for complaint

- What is the nature of your grievance?
- Have you raised it with the PSO?
- Do you have a good grasp of the legislation? If not, consult a professional.
- What is your ultimate objective in seeking legal redress?
- How far are you prepared to pursue your complaint, given that you will lose anonymity at some stage?
- Have you sought legal advice?
- What is the potential cost of losing compared to possible reward from winning?
- Will this affect your future chances?

When your bid is successful

Feedback

It is always useful to find out why your bid was successful to be clear about the award criteria and what were the strong points of your offer.

For contracts above the EU threshold, the PSO must award a contract on the basis of one of the following two award criteria (which it will state in the contract notice):

- lowest price – feedback on the bids received or range of prices can be helpful
- most economically advantageous tender – it will be useful to request feedback on how you scored against each of the criteria when your bid was evaluated.

Standstill period

The UK government, in order to implement the landmark European Courts of Justice ruling in the Alcatel Case (Case C-81/98) and change the current remedies available to aggrieved tenderers, now requires all procurements subject to the full EU Directives to include a standstill period of at least ten calendar days between informing the tenderers about the award decision and concluding the contract.

This has been done to improve the position. Before the case, there was no obligation to inform participants of a decision prior to the conclusion of a contract, and only limited scope to challenge concluded contracts by aggrieved or unsuccessful tenderers. The change makes the rules comply with the EU Remedies Directive.

The standstill period does not apply to contracts below the EU threshold or to contract awards outside the full scope of the directives, such as Part B Services contracts. It also need not apply to procurement processes where there is only one tenderer, including those following the urgency provision under the negotiated procedure where single tendering takes place.

Notification letter

Before the contract has been concluded, you should receive a notification letter from the PSO to whom you submitted your bid. It will give you details of:

- the award criteria
- where appropriate, your evaluation score and the successful tenderer's score
- the name of the successful tenderer.

Note though that the directives allow, and in some cases require, PSOs not to publish certain confidential information. This is also subject to the Freedom of Information Act 2000, which may prevent the disclosure of some of the above information in the notification.

Contract award notice

As stated earlier, the PSO will publish a contract award notice to notify the outcome of the tender. The notice will specify, amongst other things, details of the successful tenderer and total price to be paid, although the latter is often withheld on the ground that publication of the price would prejudice legitimate commercial interests.

The contract award may take some time from the date that you submitted your bid, especially for larger value contracts. You should be provided with a timetable of the decision-making process. If you have not heard anything after some time, you should contact the PSO and get an indication of when the decision will be made.

Potential delay

If another bidder makes use of the standstill period to question the award decision, there may be a delay in concluding the contract arrangements to enable you to commence. You should bear this point in mind in all tenders where these rules apply and consider having a 'price inflation clause' in the contract that will give you the opportunity to make changes to contract prices, especially where there is a substantial delay.

More information

What EU Rules say about Standstill Periods

Within two working days of the start of the standstill period a bidder can request additional debriefing from the PSO.

The PSO, due to the new standstill obligation, must provide the bidder with such additional information at least three working days before the end of the standstill period.

The time periods will start the day after the award decision is issued and must end on a working day. PSOs will be required to take account of UK public holidays in calculating standstill time periods, and extend it where appropriate.

For more information on the standstill period go to www.ogc.gov.uk
and
www.ipfprocurement.net

If the bidder questioning the award decision, decides to start a legal challenge, the PSO concerned will be required to wait to see if interim measures are granted before proceeding to conclude the contract with you.

If interim measures are granted, the PSO will be required to wait until the outcome of legal proceedings before being able to conclude the contract. **You should therefore not make a start on any preparatory work until you have signed the contract or you have a legally enforceable agreement.**

Becoming e-enabled

Future practice

As part of your bidding preparations, and in response to your successes in bidding for contracts, you will increasingly find PSOs being driven by the E-Government imperatives of central government and using:

- **e-payments via BACS or CHAPS** – electronic transfer of funds into your bank or building society, in the way many people now get paid their salaries. You need no special software or equipment; simply tell the PSO your organisation's bank account details.
- **purchase-to-pay tools** – software and systems which will allow online trading and transactions between a PSO as purchaser and your organisation as supplier.
- **procurement cards** – these could come to pay for spot contracts and schedule-based services, where referrals have to be agreed. They may be used in future to confirm orders, saving on transaction time.

Some examples of purchase to pay

- **Buy-side systems** are designed to streamline the internal workflow associated with procurement.
- **Marketplaces** are hosted on the internet where suppliers publish catalogues of the goods or services under contract, for staff to ‘click and buy’ using the internet. Zanzibar, IDeA marketplace and eProcurement Scotland are examples of marketplaces in the public sector.
- **Sell-side solutions** are an online catalogue of products available from only one supplier, similar to consumer sites by supermarkets.

How procurement cards work

Similar to personal credit cards and known as P-cards – suppliers are paid within five days and the purchaser is billed monthly via consolidated invoice.

Benefits to you include guaranteed prompt payment, which will help with cash flow, as well as increased compliance with contracts.

You should consider accepting payment for low-value/high-volume supply of goods and services from your PSO customers as this is seen as a “quick win saving” for them. It is possible that some PSOs will only pay their suppliers using this method in the future, at least for some types of goods and services. The major attraction of P-cards is that you need no extra equipment or software.

The only limited costs for you will include:

- a small transaction charge (normally ranging from 1-4 per cent)
- the cost of implementing the card processing equipment, which increases with higher level capabilities.

Think before you become e-enabled

PSOs will in future be using some or all of the above elements of e-procurement. Some of the initiatives will require upfront investment, which can be quite substantial, and it is also likely that significant new ways of working will be introduced.

If your organisation is contemplating e-commerce in order to keep up with e-procurement in the public sector then you are strongly advised to draw up a business case to test the potential benefits from the investment, such as, for example, increased market share, to make sure that it is worthwhile.

Case study 1

Liverpool and Sefton Crossroads Caring for Carers (Crossroads)

Introduction

Crossroads Caring for Carers (Liverpool and Sefton) is a specialist voluntary organisation providing support to carers and people with care needs in their own homes. Crossroads Caring for Carers provides carers with time to be themselves, and supports them in their role of looking after people with care needs. It helps them to relieve the physical and emotional stresses and strains of the caring role. It currently delivers over 1,200 carer support hours per week to some 180 families. Crossroads Caring for Carers (Liverpool and Sefton) is a Registered Charity operating as a social enterprise and a company limited by guarantee.

A recent merger with Sefton Crossroads Caring for Carers has brought about new challenges for the organisation. Future developments and investment are supported by £181k from Futurebuilders, part loan and part grant, which will improve capacity and the ICT infrastructure to further expand the services provided.

Sean Barrett, Business Manager, played a significant role in Crossroads Caring for Carers (Liverpool and Sefton) development over the last 4-5 years by them moving into a new contract environment. “The income growth over the last four years has been about threefold,” he says. This is particularly evident in the way the relationship with Liverpool Central Primary Care Trust (PCT) has grown. Early in 2001, the organisation had one shared client with the health authority and the local authority. It contracted for 133 hours per week of care, worth about £15k per year, today we have a quarter of a million with the PCT. There could be twice as much if we wanted there to be. Any surplus from activities is reinvested in the development of the business.

Purchaser and contracting issues

Crossroads Caring for Carers delivers services under contract on a full cost recovery basis on behalf of Liverpool City Council (supported living) and the three Liverpool primary care trusts.

Today Crossroads Caring for Carers has between 15 and 20 important contract agreements, primarily with Liverpool City Council (LCC) supported living team budgets and Central Liverpool PCT continuing care. The contracts are operated by referrals.

Adult referrals from:	Children referrals from:
<ul style="list-style-type: none"> • Liverpool HATS • Private • Complex needs – continuing care • Adult support care • Carer’s grant • Stroke re-enablement • ILF/direct payments • PCT palliative care • Learning difficulties • Aspergers Project • Renal Failure 	<ul style="list-style-type: none"> • BL Children’s palliative care • Liverpool City Council Family Advisory • Alder Hey Hospital • Sefton Children Parents and Families Unit • My Life – Young Carer’s Club • Stepping Stones • Thumbs Up • Playbarn

“The budget is effectively built up from the various contracts and funders”, says Sean Barrett . Crossroads Caring for Carers’ current annual income is about £850,000, of which £550,000 is in payment for services under the supported living contract. The primary purchasers are the Central Liverpool PCT for £250,000 and LCC for £170,000. The balance of contract-based income is met by private or Independent Living Fund individual contracts, but using the main agreement where practical and appropriate to define and specify services.

The contract relationship in practice

Sean Barrett describes Crossroads Caring for Carers as a “contract-based business”. He sees his role as managing the future development of the business and negotiating the principal contracts.

Operations Manager Tony Rowan manages the design and delivery of the individual client service packages. He works with the care management team to match resources to the requirements of the carers. He has full responsibility and accountability for providing carer support service. Crossroads Caring for Carers is also appointing a finance manager to complete the senior management team to manage the financial aspects of the organisation which will include efficient administration of accounts, procedures, payments, wages, and invoices and to improve the organisation’s capabilities in contractual matters, management reporting, forecasting and budgeting. Each of the senior management team has a functional responsibility directly to a Board member.

The supported living contract is established with LCC under all-embracing terms and conditions and includes specified menus or packages of service to define the three levels of rates to be applied. These levels are determined by the complexity of the care needs and the service is measured mainly by the number of hours of support which carers are given.

“The social workers start by trying to find a low-cost provider to fit within their team budgets”, says Sean. “They issue a referral form that defines what is required of us and goes into the system.” From this the required amount of care is assessed, an offer is made, the panel agrees to the offer and an individual contract for the client is then received, before action is taken.

Internally, Crossroads Caring for Carers assesses the referral against the contract requirements, as well as Crossroads Caring for Carers service guidelines and their experience. In the negotiation/contract management process the operations manager takes responsibility on

behalf of Crossroads, as the ‘supplier’ concluding any negotiation of any package. The care manager in Crossroads Caring for Carers agrees the details including training requirements and special needs for each service user and carer, based on the care plan and previous experience. A full assessment of need and risk assessment will have been carried out prior to the service commencing.

Crossroads Caring for Carers (Liverpool & Sefton) is recognised as a quality provider with the capability of providing care for a wide range of clients, many of whom have incredibly complex needs. Purchasers often state that we are not the cheapest in £s per hour but will refer clients to us because they are confident that we can meet their requirements.

Key stages in development of the contract

The range of services for carers provided today has developed from a situation four and a half years ago when Crossroads Caring for Carers simply provided domiciliary care for LCC. In early 2001, 90 per cent of this domiciliary activity was covered by a block contract with LCC. The schedule of payments and subsequent income did not cover the costs of the operation and the contract was terminated on the instigation of the Board of Crossroads Caring for Carers as they could not continue to operate at a loss and subsidise a statutory organisation. The council was also reviewing its provider relationships at the same time. The organisation’s immediate challenge was to engage with the Council and secure new contracts.

LCC was also moving forward with new contracting arrangements: “They wanted all their suppliers in Liverpool to meet a minimum requirement and justify their levels of costs”. LCC approached its listed suppliers to invite proposals under EU procedures. Under LCC procedures contracts in excess of £100,000 required their legal services involvement in procuring the services. LCC and the Central Liverpool PCT combined to administer a central procurement arrangement for suitably qualified and experienced providers.

The social care services provided must meet minimum standards, which are set by the Commission for Social Care Inspection (CSCI). The LCC social care services contracts division set up the specification requirements for the new contracts. In the first part of the EU open procedure, the pre-qualification questionnaire (PQQ) exercise asked suppliers to demonstrate their ability to meet CSCI standards. As an experienced existing operator, Crossroads Caring for Carers was able to meet these requirements and others.

The range and area of support services provided is sometimes quite specialised and requires extensive training of key carer support workers. Any organisation offering services must meet the minimum regulatory standards of Commission for Social Care Inspection (CSCI), carrying out and complying with the requirements, for example, Criminal Records Bureau (CRB), Protection of Vulnerable Adults (POVA) and Child Protection.

Clients with Aspergers Syndrome

In January 2003, the opportunity arose to provide new services to clients affected by Aspergers Syndrome. Sean Barrett attended a conference in Liverpool organised by the statutory bodies for 17 nominated providers of services to people with learning disability in the area. The service requirements were outlined in two elements, to provide both one-to-one and group services. Expressions of interest were submitted in March 2003. Interested providers made a presentation showing how they would meet the requirements and Liverpool Crossroads Caring for Carers was successful in being selected as one of three shortlisted providers in May 2003.

Subsequently the organisation approached the new provision by forming a specialist team with appropriate training. The service was estimated as for a total of 60-100 carer support hours per month, costing about £15k per annum. The service was new and unknown to both the authority and the providers. Crossroads Caring for Carers added value to their offer by careful and thorough examination of needs and determination of the appropriate package of service. Even so appropriate level of rates to be applied had to be negotiated. Crossroads Caring for Carers thought the service required the most complex needs rate, which is the most expensive. The Liverpool City Council Aspergers team insisted on Crossroads accepting the lower, level 2, rate. This was reluctantly accepted as a compromise necessary to break the stalemate and start to deliver the service.

As a result of Crossroads Caring for Carers' approach to the negotiation and its early engagement in delivery of the service, Liverpool City Council has subsequently recognised the "complexity of the service issues and has met additional staff training costs".

To date the other two shortlisted providers haven't been able to deliver the service, leaving Crossroads Caring for Carers in a prime position to negotiate and agree new rates based on our real knowledge of how to meet the carers' needs.

Success factors

Crossroads Caring for Carers insists the lead in time for introducing a new service is up to six months. In this case, start-up was delayed by the time taken to complete the CRB Enhanced Disclosures, and POVA checks, especially as these were done in the summer at a time when new teachers were entering employment, and the time the client took to complete the contract paperwork.

"In contract negotiations it is extremely difficult to get funding upfront," Sean Barrett explained. The delays resulted in six months service provision without payment, so it is essential when contracting to be clear as to how the cash flow will be managed. In this service area up to 90 per cent of the costs incurred are salary payments to staff.

The purchaser's view

Yvonne Cropper, the Liverpool City Council Contract Officer, emphasises: "Don't start the work without a contract". Yvonne Cropper agrees a six-month start up period for a new service is realistic as it is imperative that all the arrangements are in place when the service starts.

Today, the services are expanding to provide more complex carer support. Crossroads Caring for Carers is constantly developing new services to respond to the needs of carers and people with care needs. It is proactive in seeking new contracts, working in partnership with voluntary community sector organisations and statutory agencies.

Crossroads Caring for Carers has developed its own guidelines for managing and delivering care services. This helps it to negotiate care packages within contracts, making clear what are its standards and how it operates. It also enables managers to meet high standards of care that they seek by providing a tool for internal quality assurance and resource management – CROQUET (Crossroads Quality Evaluation Tool).

For example, Crossroads Caring for Carers believes that a minimum level of carer support services is needed in the more complex situations. Crossroads Caring for Carers standards make this clear and require that the minimum intervention should be set at two hours, but this does not always match client assessments. The weight of Crossroads Caring for Carers track record and practical knowledge, and the quality of the service offered places it in a good position to deliver service to its own higher level guidelines. This helps Crossroads Caring for Carers to sustain premium rates in proven difficult circumstances by more accurately pricing the quality of care provided.

As a result the rates contained in the contracts are almost all now on a full cost recovery basis. The exceptions are minor and relate to the historical nature of some services provided. The rates are reviewed annually under the principal contract, and the services are subject to audit review as a social enterprise by the Charities Commission, CSCI, and by Companies House.

Crossroads Caring for Carers also uses a management database to monitor information on services, carers' schedules and clients under the various contracts and to ensure that regular monthly invoices may be raised.

Key challenges and opportunities

The organisation believes that “a track record of service delivery and securing contracts from public sector commissioners” is an important factor in Crossroads Caring for Carers continued progress. This also assists in maintaining diverse income sources that reflect the proactive response to contracting/partnership opportunities and help the organisation to manage growth in a way that “doesn't put all our eggs in one basket”.

Clients come to us because we can provide the staff at the quality they require. “It's about picking up one client and doing a good job for them. Our inroad is to find the solution they require. We'll take it on in a staged approach, to ensure we can meet our performance requirements. We will not break the rules of our policies and procedures even though these may not be specifically included in the contract. We also regularly measure the level of service we deliver and compare that with what we said at the outset of the contract. Clients are quite happy to accept our measures, because of our record in achieving high standards in the level of performance.”

The imminent review of service provision in the Health Sector is Crossroads Caring for Carers “next challenge”. The NHS is in the process of asking how best to “commission needs-led services in PCTs, integrating with local delivery plans”. The health sector approach may be to specify outcomes such as reduction in the numbers of obese children. The invitation to suppliers may then be to combine services and components of what they can provide to show how they can collaborate to deliver the outcomes required.

The Office of Government Commerce gives guidance on aggregation of services and explains issues that will arise. *Aggregation – is bigger always better?* OGC, 2004.

It is expected that the levels of strategic approach will be defined nationally, regionally, and locally. For the organisation and all suppliers, it will be important to match the size and structuring of the supply side response to the demand. Partnerships and sharing of services with and through others are as likely to become more common and important.

Networking

The organisation believes that Crossroads Caring for Carers network activities in the Liverpool and Sefton area are an important way to influence the practicalities of integration of service delivery and focus on needs. It is also a useful means to understand the market and identify future opportunities. The aim is to advance Crossroads Caring for Carers (Liverpool & Sefton) by networking with other statutory bodies and voluntary agencies including the Liverpool Community and Voluntary Services Welfare Organisation Committee. The Crossroads Caring for Carers Business Manager also chairs the Liverpool Social Care Partnership and sits on a number of specialist Strategic Health Authority groups and City Council planning groups. He also works on the Compact steering committee of Liverpool Council of Voluntary Services, aiming to influence issues including monitoring and full cost recovery.

The organisation values what all of our trustees and staff can do with the Futurebuilders' investment to support Crossroads Caring for Carers through capacity building, public relations, media, website development, improving office space and making it possible to plan against a three year horizon.

Case study 2

Derwent Stepping Stones, Derby

Introduction

Derwent Stepping Stones (DSS) was set up in 1988 to support families with a variety of services range in a disadvantaged area of Derby. It aims to provide routes into work or training for parents and carers, removing barriers to finding or staying in work. The support it offers includes childcare, training and support to families. Derwent Stepping Stones employs 34 full- and part-time staff. Its most recent annual income was just under £1 million.

DSS is a user-led organisation with an exceptional track record for involving and engaging the local community, including families who have otherwise proved hard to reach. There is widespread community commitment to its expansion and development plan. DSS works in partnership with local people, current service users and agencies working in the area to develop new projects. These are managed in three sections:

- neighbourhood nursery
- community development, and
- learning centre (training programme).

Janet Anderson, the Centre Manager, Jo Fenton, the Finance Manager, and Diane Saffery, the newly appointed Business Manager for the delivery of the Futurebuilders project, shared their views of the Derwent Stepping Stones (DSS) experience of providing services to the public sector.

Derwent is ranked 16th in the table of deprivation in the East Midlands. The activities of DSS are focused, said Janet Anderson, “around the needs of local women who were trapped on benefits and unable to take advantage of training or employment, due to the high costs of childcare; this particularly applies to lone parents.”

DSS is looking ahead in their business planning towards achieving 60 per cent of funding through contracts and moving away from grant funding. DSS sees this as the way forward because, “at the moment we see in our financial reports a need to replace about £50,000 of funds each month.”

DSS has addressed quality requirements of the services it delivers by acquiring the Matrix Quality Award.

The contract

The contract that is the focus of this case study is with the Derbyshire Learning Skills Council (LSC), a public sector organisation which has now put in place three contracts of two years duration each for services in support of training programmes. As a co-financing organisation, the LSC provides the match funding to the allocation made by the European Social Fund (ESF), so that the services provided under the contracts are fully funded. These three contracts represent about 10 per cent of the annual income funding of Derwent Stepping Stones.

DSS aims for a holistic approach, offering childcare, support to families and a range of advice services alongside the courses themselves. Derby College is a key partner in the project, providing tutors who do the training. Gradually, the contract with the LSC has effectively replaced the previous European Social Fund support, which DSS had been receiving.

The tendering process

“Derby Council for Voluntary Services (DCVS) is an important source of information about potential contracting opportunities for local voluntary organisations. DCVS raises awareness of the opportunities like the Learning Skills Council (LSC) contract, and keeps us all informed of funders’ or purchasers’ briefing sessions to explain and set out what is required and when,” said Janet Anderson.

Derby Learning Consortium (of which DSS is a member) is another source of information for DSS, and the challenge is to recognise and match opportunities to their capacity, services and catchment area. A briefing session by LSC enables tendering organisations such as DSS to, “understand the LSC priorities and targets in the European Social Fund (ESF) Objective 3 round on offer, and review whether we can do it. There is then a workshop on how to write tenders, to help complete the expression of interest in the first part of a two-stage process [of support for organisations wishing to tender]”.

Final applicants are invited to part two. The Learning and Skills Council uses this two-stage process, offering feedback at each stage to help tendering organisations learn from the experience. DSS, for example is awaiting feedback on two unsuccessful tenders.

Janet Anderson found this a helpful process. “You know before it’s launched what you want to bid for, the tightness of the timescales – typically three months – and who to talk to by phone for clarification”. The terms and conditions of contract are quite “static”, so there is little room for manoeuvre. Each stage has its set of specified outcome requirements and identifies the total amount of funds available for each service schedule.

Sometimes, the Learning and Skills Council applies very stringent criteria. In one case DSS had applied with Derby College providing match funding. “This didn’t fit the arrangements so we had to pull out.”

A difficult area is the level of cost recovery and what can be included or what has to be excluded. “Some projects are not cost-effective”, said Janet Anderson. “You might have to breakdown costs and time for services delivered so you have less hours; you might give the total activity cost per unit figure; there might be a fixed price set for a student under the arrangement and no negotiation; or the rate may be set by the number of people to be supported.” These rates are not always sufficient for full cost recovery.

The tendering workshop helps to identify the key features in the questions in the tender that will require to be answered in the bid. Questions cover, for example, sustainability. Janet Anderson does not see a service as sustainable, if it does not meet full cost recovery levels. She also regards the standard LSC two-year contract period as too short, because of, “the initial investment in setting up the service and the time that elapses in commencing service delivery”.

From the contractor's point of view – that is the Learning and Skills Council – the timescale of two years is appropriate, because it matches the timeframe for the ESF allocation and enables the contractor to manage how the service is provided in chunks that can be monitored. There is a risk that longer contracts might lead to more need for adjustments in timing of service delivery and payments.

Success factors

“DSS has done a lot of work over the last two years to develop our approach to tendering”, said Janet Anderson. “The key is to make relationships to find out about their information and procedures.”

This approach includes creating a practical library with tips and hints on how to approach individual bodies, to learn about the needs of funders. DSS keeps a library of comments about funders, with entries such as:

- “Really approachable, talk to them before you put in the application”
- “This funder will not fund overheads”
- “Find something extra they will pay for”
- “Make sure you put enough money in to cover monitoring costs”.

In the case of the Learning and Skills Council, Janet Anderson says that, “LSC pay for the output, and the contract is more straightforward, so the cost of the output has to contain all the elements DSS will provide.”

In the quarterly progress return to LSC, “we indicate certain statistics about how many learners complete the course”, said Janet Anderson. However, “DSS has also recently developed its own monitoring process that incorporates all requirements in one report ... We have developed a process to ensure that all the information that we feel will be useful is included. It's designed to be a ‘once only’ report, which meets the needs of funders, members, and staff so all interests are covered.”

DSS does not regard tendering for contracts as so very different from the grant application process. “A lot of our management time is spent applying for funding”, said Janet Anderson. “Sometimes, I am confused about whether it is a grant or a contract. As an organisation we are very aware of cash flow and look carefully at all the arrangements in an agreement. Identifying and reviewing the opportunities is an issue of having the capacity to look thoroughly at each situation.”

Key challenges and opportunities

Janet Anderson believes that one of the key barriers for the voluntary sector to overcome in its relationship with public sector organisations is the perception of, “a lack of value being offered by the voluntary sector. That's a cultural issue that we need to get over.”

“There is also a lack of understanding by public sector purchasers of the cost of delivery because many of the overhead costs in the public sector are hidden. For example, in schools they can deliver childcare much more cheaply than we can, because all of their overhead costs are already covered in the school budget. So they have no management cost, their payroll is done somewhere else, and their light and heating are automatically paid for. Hence, they see our costs as expensive, because we have to account for those overheads.”

In another example “Social services thought we would provide a contact centre for free and would not pay [for it], because they wouldn’t recognise how much it might cost them to provide the facility. “

DSS also has to compete with training providers who may supply crèche facilities. “They [the crèches] do not provide any added value and meet the needs of people who can pay for childminding, without the family support needs that we work to meet, whereas DSS works to bring into the learning process people who have missed out in the past.”

Future plans

DSS is considering extending its services into the provision of childcare trainers. “We would wish to mainstream this part of the service so it might lead to a contract with Derby College and the city council through Early Years”, said Diane. She also sees the potential for future development in introducing adults into the learning environment. “Our objective would be to prevent people falling into the ‘trap’ of missing out on education and training. We would like to provide prevention rather than a cure.”

DSS provides services to as many local contracts as it can. Janet Anderson sits on the board of Derby Council for Voluntary Services (DCVS) and says, “I can get drawn in and get quite passionate over some things”. She is aware that DCVS is working on the local ‘Compact’ (see Section 1) and believes that this will go some way to cover some of the monitoring, reporting, and process issues. She is also particularly interested in working through DCVS to get others involved in Futurebuilders work. The Futurebuilders investment will enable DSS to triple its capacity and hence the funding of the project officer to develop and build the associated services.

In terms of winning new contracts, a focus for community development family support comes through New Deal for Communities’ (NDC) funds [a government funded community regeneration programme]. This may lead to contracts for services through the NHS primary care trusts, which have applied to NDC for funds to help pay for family support services. Another key partner of the future may be the Derwent Children’s Centre, where social services are potential purchasers.

Janet Anderson says that six years ago the projects received money from the European Social Fund (ESF) as a grant, which for the previous ten years had been part funding some of their activities. The new arrangements cover potentially the full cost recovery of the service provided using the combined resources through LSC of the ESF and UK government.

Case study 3

The National Autistic Society, UK

Introduction

The National Autistic Society (NAS) was established in 1962 by a group of parents and people with a professional interest in autism, who wanted to build a school for their children, as there was not adequate provision of services. There are now five NAS schools in England and one in Scotland. The NAS does not take private placements in its schools. It encourages local authorities, as well as local groups and families around the country to develop specialist education and care services.

NAS offers a wide range of services required to meet the specific needs of individuals with autism, including those with Asperger syndrome. Asperger syndrome is a form of autism, with traits including difficulty in communicating and in social relationships, as well as a lack of imagination and creative play.

Specialist services aim to help individuals achieve their individual goals through from pre-school education to supported living for adults. An important element and unique part of the NAS charity service is the backup – a helpline, advocacy, branches, befriending and parent support schemes and so on.

NAS offers an accreditation programme for a wide range of autism-specific education and care services.

Jacqui Scholes, the Contracts Manager and Andrew Turnbull, the Financial Controller outlined their experience of providing services to the public sector through the “National Contract for the placement of children and young people in day and residential independent and non-maintained schools”. As it says on its front page: “The contract is supported and strongly recommended by the Department for Education and Skills, the Department of Health, the SEN Regional Partnerships, and the Association of Directors of Social Services.”

Purchaser and the national contract

The national contract is a pre-placement contract, so it is there before an individual placement referral, assessment and acceptance is negotiated. The first schedule to the national contract explains the requirements for the child’s statement, care plan and personal education plan. It sets the standards and processes for managing and providing the service, the details of which are then provided and set in the individual placement schedule (IPS).

The scope of the contract states at paragraph 2.4 that, “This contract will apply to all Individual Placement Schedules between the Authority with the provider during the period of the contract”. The IPS has a standardised format that nominates the child, the provider and the authority thus it validates and completes the contract. Variations to the schedules are admissible and subject to written agreement by both parties to the contract. For the National Autistic Society, this is Jacqui Scholes as contracts manager.

Jacqui Scholes saw the scope for variations to the schedules as particularly important. It made it possible to negotiate changes to the service and if necessary rises on the rates of payment, which included in exceptional circumstances the ability to go back to the purchasers. The annual rise is now aligned with teachers’ pay awards and other groups of staff. A substantial change to the service is a key issue at the level of the Individual Placement Schedule (IPS) and especially as sometimes, there is an urgent need to respond to an individual pupil’s changing requirements. “Meeting the pupil’s needs is the priority”, and principals and staff in the schools will act before the substantial change to the IPS is formally agreed.

Regular reviews take place and may lead to changes of the statement, care plan or education plan. In an emergency they are able to call a review and get professional agreement to any proposed changes. The formal process and agreement to amend payments under the contract will take longer. This may be something that will be examined in reviewing the operation of the contract in 2006.

Monitoring and audit are effectively well evidenced because of the requirements and focus of the care plans and personal education plans on individual needs. The contract enables the authority to bring in outside reviewers, if it wishes. The schools and services are subject to external inspections by OfSTED, CSCI and Autism Accreditation.

The contract has been in use for the last two years and only new placements in schools have come under this contract arrangement. For the NAS this means about 20 per cent of their school placements are now provided for under this contract. This is between 80-100 placements and amounts to about £5m income from the 80 local education authorities using this arrangement. The contract is subject to review and the next review is expected in 2006 so any changes are ready for the start of the 2007 school year.

How the national contract was started

Jacqui Scholes introduced the background to the national contract: “Local education authorities up to five years ago used to place pupils in schools on the basis of, ‘the statement’. The local education authority (LEA) would approach providers and agree to the placement. When LEAs started, about five years ago to send out contracts, I was called in to negotiate around the general terms being set to cover these arrangements, everyone was different. At about the same time, the National Association of Independent Schools and Non-Maintained Special Schools saw the need for a national contract. They worked with the Local Government Association (LGA), who were pressured by local authorities seeking to standardise arrangements, to develop and agree a contract that was first published in 2002, signed by the NAS in January 2003 and revised in June 2004. This national contract is now used by the majority of the 80 LEAs that place pupils in the National Autistic Society schools.”

The contract is not used by all the authorities in England and Wales. However it is understood the Greater Manchester Authorities are developing their own contract. NAS have their own version adapted for use in Scotland.

What we have learnt from the contract

When invited, the principals of the NAS schools commented that they “were satisfied with the contract and appreciated the lack of need for any negotiation of the general terms and conditions of the contract, with which they never had any difficulties”.

However when encouraged to identify areas for improvement in next year’s review they could see two areas:

- “Matching changes of circumstances in a given education and care plan to the timeframe for contractual agreement” (taking account of how long the bureaucracy takes compared with the needs of the client), and
- “Being asked for assessments and offers by referral letters and then the authority withdrawing from the placement, for a variety of reasons from perhaps being placed elsewhere to change of need.”

The school principals explained that they saw themselves, “sometimes as the place of last resort and this occasionally meant there was a need for a clear ‘exit strategy’ in accepting the pupil. This is perhaps the place of a specialist service and that when all other opportunities had been tried the school would get the referral. There is a level of support and care that cannot be met in their schools and in individual situations possible transfer has to be planned.”

One recent Ofsted inspection estimated the number of pupils that had been excluded from mainstream school was as high as 30 per cent. The Principals said; “The provision of service is less competitive for longer-term placements, 52 week and 38 week, arrangements than it is for short-term day placements. In the latter case, the experience is more variable, as there are local facilities that are accredited by the NAS.”

One principal suggested: “Meeting needs, is seen as the barrier, if the change in requirement is not in the contract”. Matching changing needs can be an issue in relation to the operation of the contract, although no examples of breakdown have arisen. Clearly sometimes communication and putting formal agreements in place have to be managed so the child is not disadvantaged.

The personal education plans and care plans have a variety of elements in complex cases that cut across departments and organisational boundaries in the authority. Health care demands may dominate the costs of the 52-week packages as needs require specialist healthcare that is identified and paid for as special provisions.

Payments are normally invoiced on a quarterly or termly basis. The invoices are for each individual child and matched to the IPS in place. The NAS is happy to allocate and breakdown their costs into education, social care and health components. Jacqui Scholes says, “We will resist issuing separate invoices and insist that under the contract the agreement is in place between two nominated parties – myself, as contract manager and the single representative of the authority.”

Future challenges and opportunities

Jacqui identified some of the challenges: “The structure of the education and care support available in this area of special needs becomes more difficult when pupils move into adulthood. So sometimes pupils move on and placements are terminated because an opportunity to take up a placement in an adult service arises. A further complication can be movement of the pupil’s family between authorities. Whilst covered by the contract, it is difficult occasionally to keep payments and invoicing in tune with changes at the placement level.”

Jacqui Scholes believes: “An important future issue is that the directors of social services should be actively supportive of the arrangements. This is becoming more crucial as local authorities begin specifying services through their children’s trusts. A key area for negotiation in agreeing the national contract was the notice period for termination of provision. LEAs accepted a termly basis for planning, placements and giving notice. Directors of social services were accustomed to shorter notice periods. The compromise in the national contract is for a notice period of nine weeks. The setting up of children’s services in authorities may lead to changes as the LEAs generally have less procurement and specification expertise than social services.”

Glossary

This glossary explains the meaning of words as they are used in the guide. The same words might have different meanings in other situations.

Accreditation	External recognition that you meet certain standards. This can be general (for example, your quality assurance system if you have one), or specific to a particular activity such as aspects of health care.
Added value	Features and benefits that you offer which exceed the specification for the contract.
Bid	A formal proposal to supply goods or services at a specified price, usually describing how the contract requirements will be met.
Business case	A document setting out the information a manager needs before deciding whether to support a proposed project, before significant resources are committed to its development. The core of the business case is an assessment of the costs and benefits of proceeding with a project
Charitable	In England and Wales, charitable purposes are defined as being: the relief of financial hardship <ul style="list-style-type: none">• the advancement of education• the advancement of religion• certain other purposes for the benefit of the community.
Co-financing organisation	A public sector intermediary body approved to act on behalf of a government office. For example, Derbyshire Learning Skills Council acts for the Government Office of the East Midlands and East Midlands Objective 3 Monitoring Committee. The co-financing organisation is responsible for setting priorities for the allocation of European Social Fund (ESF) resources within the framework of the East Midlands regional development plan, and for managing the delivery of ESF supported activity.
Contract	A binding agreement to perform a certain service or provide a certain product in exchange for valuable consideration, usually money.

Contract notice	A notice published in OJEU, (see below) announcing a public sector organisation's intention to let a contract for specific goods or services, and explaining the type of procurement process to be used.
Contracting party	The leading organisations that have entered into contractual obligations. If you have a contract with a PSO and you have sub-contracted some of the work to others, you are the contracting party, the sub-contractors are not.
Contractor	Someone (a person or entity) who enters into a binding agreement to perform a certain service or provide a certain product in exchange for valuable consideration, usually money.
Costs	The money spent on resources to deliver the service.
eAuction	A tendering process where bidders go online and bid against each other live to offer the lowest price. Bidders will already have submitted technical details of their offer and will only be allowed to bid a price if their offer has met all the requirements.
Efficiency	Getting more out of your resources, could be doing: <ul style="list-style-type: none"> • more with the same resources • more with fewer resources • the same with fewer resources.
Evaluation	The process of assessing each bidder's tender so as to be able to select the best one.
Feedback	Discussion with a PSO to find the reasons for success or failure of a tender so as to learn how to respond effectively in future.
Framework agreement	An arrangement where a purchaser selects suppliers and fixes terms and prices for a period in advance (often three years), and then calls on the suppliers to deliver as and when required.
Full cost recovery	Covering all the costs of providing a service, including a suitable proportion of overhead costs.
Grant	Money provided by a PSO to support a particular activity. Grants usually do not cover the entire cost of the activity. There will usually be conditions attached to the grant, and the voluntary and community organisation (VCO) can generally choose how to operate.
Invitation to tender (ITT)	A formal communication from a PSO to a supplier inviting it to submit a tender. The ITT will usually also include a specification for the contract, instructions for submitting an acceptable tender, and the terms and conditions, which will govern the contract once it is active.

Lot	Some contracts are divided into a number of parcels of work (called “lots”) and suppliers are invited to state whether they are bidding for the whole contract or just parts of it.
OJEU	The Official Journal of the European Union, where all contract notices must be published for tenders that fall within the European procurement laws.
Overheads	The indirect costs incurred in running a business. These include rent and rates, marketing and publicity, administrative and financial costs.
Partnership	A cooperative relationship between people or groups who agree to share responsibility for achieving some specific goal.
Performance	Delivery of goods or services, judged against the standard specified in a contract.
Pre-qualification	A questionnaire used by PSOs to check the suitability of suppliers and shortlist the ones they will invite to tender.
Procurement	The process of buying goods and services.
Procurement card	Like a credit or debit card, but for organisations rather than individuals. It allows purchasers to order and pay for goods and services in the same way.
Public sector questionnaire (PQQ)	The part of economic and administrative life that deals with the delivery of goods and services by and for the government, whether national, regional or local.
Public sector organisation (PSO)	A public organisation that provides or manages government and public sector services.
Purchasing	The buying of goods and services.
Quality	Fitness for purpose when judged against the standards specified in the contract.
Quotation	A less formal (often non-competitive) written offer to supply goods or services at a particular price.
Request for tender	Same as invitation to tender.
Resources	People, equipment, facilities, funding, or anything else required for the completion of an activity.
Select list	A list of suppliers that a PSO has already assessed and accepted as credible bidders for one or more services. If you are not on the select list, you may not be eligible to bid for the work. Not all PSOs operate select lists.

Selection criteria agreement (SLA)

The factors that a PSO will take into account when deciding which tender to accept. Usually some factors will count for more than others.

Service level

Like a contract, but often less formal, and not normally binding in law. Often used between two PSOs, or between two different parts of the same PSO. A local authority social services department might have SLAs with the legal department (to get advice) and with the direct services department (to provide domiciliary care).

Specification

A description of the essential technical requirements for goods or services to be delivered under a contract, including the method for checking that the requirements have been met.

Sub-contractor

Someone (a person or entity) who signs a contract to perform part or all of the obligations of another's contract.

Sustainable

Capable of being maintained for the full duration of the contract.

Two envelope

A tendering process where tenders are first evaluated on technical and quality factors. The purchaser will only look at a supplier's price (in the second envelope) if it is acceptable on those grounds.

Unique selling point

A unique proposition that causes a PSO to choose a particular supplier.

Appendix 1

More information

Policies and practice

There is a lot of literature and electronic information available on good practice. See in particular the Office of Government Commerce (OGC) website www.ogc.gov.uk. This provides guidance and references to key government publications and documents for working with central government departments and the public sector generally.

The Department of Health and the NHS Purchasing and Supply Agency (PASA) provide details of tenders, information and guidance about NHS procurement. NHS PASA is the centre of expertise, knowledge and guidance on purchasing and supply matters for the health service. As well as advising on policy, the Agency also contracts on a national basis for products and services that are strategically critical to the NHS. Some of their eProcurement initiatives include the NHS Supplier Information Database, NHS-eCat catalogue solution, e-auctions and eSourcing pilots.

Further details of the guidance and activities conducted by NHS PASA can be found at

www.pasa.nhs.uk
www.dh.gov.uk/ProcurementAndProposals
www.pasa.nhs.uk/suppliers

To find out more about local authorities, use Tagish's directory to access all local authority websites

www.tagish.co.uk/tagish/links/localgov.htm
Tagish's Directory Main links page also guides you to contacts in most statutory bodies whether government departments, agencies or initiatives, nationally and regionally:
www.tagish.co.uk/Links

See also the national procurement website in Wales, which provides a portal for public and private sectors to share information

www.sell2wales.co.uk

Some useful websites

Audit Commission

The Audit Commission's job is to ensure that public services deliver value for money. It covers local government, housing, health, criminal justice and fire and rescue services.
www.audit-commission.gov.uk

Business Information Publications

Business Information Publications is a comprehensive source of information and library of publications in relation to all central government procurement guidance and contact points, includes National Health Service, EU Directive updates and some high level local authority material.
www.bipsolutions.com

Business Link

This is the national business service offering support and advice to small businesses. Guidance for small businesses into public sector procurement.
www.businesslink.gov.uk

Department for Communities and Local Government

Its website provides key documents and references for implementation of the government's National Procurement Strategy for Local Government
www.odpm.gov.uk

Futurebuilders

If you are a voluntary or community organisation looking for finance to help you expand your services to the public, then Futurebuilders could be the right fund for you. Its website has advice on finding a purchaser.
www.futurebuilders-england.org.uk

Government HM Treasury

The Treasury is the government department responsible for the economy and finance. This site helps understand the Government's approach to management of public sector expenditure and its priorities. It can provide links to government industries and opportunities. Its policy on the voluntary sector is at
www.hmtreasury.gov.uk/spending_review/spend_ccr/spend_ccr_voluntary

IPF

IPF is the management support services company of the Chartered Institute of Public Finance and Accountancy (CIPFA) and is the author of this guide. It provides comprehensive procurement related information and is a valuable tool and resource for anyone who wants to access up-to-date information about current initiatives, toolkits, research and developments in procurement, and the sharing of best practice.
www.ipf.co.uk /ipfprocurement.net
Also
www.cipfa.org.uk/shop

National Audit Office

This body examines government expenditure on behalf of Parliament. Its site includes Working with the Third Sector (June 2005), which looks at how government departments and other public bodies can work with voluntary organisations to achieve 'value for money' in services to the public.
www.nao.org.uk

National Council for Voluntary Organisations (NCVO)

NCVO has set up links to sources of information and advice on procurement through its Sustainable Funding Project's microsite on earning and public sector delivery.
www.ncvo-vol.org.uk/sfp

OGC

This site provides guidance and references to key government publications and documents for working with central government departments and the public sector generally. It contains Sir Peter Gershon's efficiency review report Releasing resources for the frontline, as well as spending reviews, and the Efficiency Programme.
www.ogcbuyingsolutions.gov.uk

OGC

OGC has a small business service (for all small organisations)
www.sbs.gov.uk
and the new portal for low-value contract opportunities www.supplyinggovernment.gov.uk

OGC and SBS

OGC is a portal for small businesses; opportunities and information available to providers
www.supplyinggovernment.gov.uk

OGC

This OGC site offers guidance under its Government Marketplace, Better Regulation Task Force (BRTF) programme to the voluntary and community sector. For example, there is a toolkit of help for the voluntary sector on www.ogc.gov.uk/sdtoolkit and guidance called think smart, think voluntary sector, which raises awareness of the value for money that the voluntary and community sector can offer when competing for public contracts
www.ogc.gov.uk

ODPM (As from May 2006, called Department for Communities and Local Government)

ODPM was formally the Office of the Deputy Prime Minister. Its website provides key documents and references for implementation of the government's National Procurement Strategy for Local Government
www.odpm.gov.uk

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- New Philanthropy Capital/Association of Chief Executive's of Voluntary Organisations (ACEVO) (2005) *Full cost recovery – an electronic guide and toolkit on cost allocation* with an Interactive CD-Rom at www.philanthropycapital.org/html/full_cost_recovery:
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- OGC Office of Government Commerce, (2004) *Aggregation – is bigger always better?* London.
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Appendix 2

Advertisements and notices: examples

Derbyshire Learning and Skills Council

ESF Co-financing Invitation to Tender – Derbyshire Learning and Skills Council and Jobcentre Plus

Derbyshire Learning and Skills Council (DLSC) and Jobcentre Plus will be launching a tendering round for Objective 3 ESF co-financing on 18 October 2004. Tenders are invited from organisations or consortia with the capacity to deliver elements of the DLSC and Jobcentre Plus ESF Co-financing Plans 2004-06, through interventions that:

- Prevent and combat unemployment;
- Promote equal opportunities and social inclusion;
- Promote lifelong learning;
- Promote workforce development; and/or
- Improve the position of women in the labour market.

Separate tender packs, including prospectuses and tender documentation will be available on these websites: www.lsc.gov.uk/derbyshire (DLSC tender packs) and www.jobcentreplus.gov.uk (Jobcentre Plus tender packs) from 18th October. Briefing events have been arranged for prospective applicants during week commencing 18th October and information on these is available on the websites above. If you require further information in advance of the events, please contact either Nic Aucott at Jobcentre Plus on 0115 9895798 or Sue Axbey at Derbyshire LSC on 01332 868351.

Example linked to invitation to tender notice published in OJEU

Anyshire County Council Select list of tenderers Adult and other education services

Framework Agreement

Applications are invited from suitably experienced and qualified companies, organisations or individuals wishing to be part of a list of appropriately qualified contractors to supply research services relating to

1. Advice services, relating to learning and work, aimed at adults aged 20+ within the Anytown sub-region,
2. Enhanced services, relating to learning and work, aimed at adults aged 20+ within the Anytown sub-region, within the county of Anyshire.

It is envisaged that the service provider will need expertise in the following areas:

- Preparation and compilation of relevant information prior to tender;
- Experience of carrying out research on behalf of public or private sector organisations focusing on adult and education services;
- Comprehensive knowledge of adult services in England;
- Completion of necessary reports on any process carried out and their presentation to stakeholders/management and the council.

Applicants expressing an interest will be sent a business questionnaire, which must be completed and returned with the appropriate supporting information by no later than 20th December 2005.

Tenderers will be selected on the basis of experience, capability, quality, skills and resources necessary to undertake the service, and financial standing. It is anticipated that tenders will be invited on 11th January 2006. The framework agreement is due to commence in late January 2006 and is expected to run for around two (2) years.

Contracts will be awarded on the basis of the most economically advantageous tender taking into account price, competence, experience, ability, quality criteria, skills necessary to undertake the service and also taking into account the council's duty to obtain best value and achieve the stated outputs for the commission as set out in the tender documentation.

If you wish to express an interest in providing this service, please fax/write/e-mail to

Mr Joe Bloggs, Procurement Group, Room xxx, Anytown Town Hall, [and so on].
Telephone: xxx, Fax: xxx e-mail xx@yy.gov.uk

The next example shows how a public services tender notice appears in the OJEU. The example uses the same tender advertised in the newspaper example used above, in order to compare the information provided in both examples. We have also added a key at the side of the OJEU advertisement to explain the layout that can sometimes be quite obscure.

Example of an invitation to tender notice published in OJEU

Title:	IRL-Inventing: Adult and other education services Framework Agreement
Purchase Authority:	ANYSHIRE COUNTY COUNCIL
Journal Ref:	145615-2005
Published on:	5-Dec-2005
Deadline:	This notice expires on 20/12/2005.
Contract Type:	This is a service contract.
Country:	England
Notice Type:	Invitation to Tender Notice –
Regulations:	Regulated by the European Services Directive 92/50/EEC.

1. Awarding authority: Anyshire County Council, Directorate of Education and Culture, Procurement Group, Room xxx, Anytown Town Hall, [and so on]. Att: Mr Joe Bloggs Telephone: xxx, Fax: xxx mail xx@yy.gov.uk.,.
2. Category of service and description CPV. 80400000 Category 24
 - (a) Anyshire Council is tendering to set up a framework agreement for the following services:
 - Advice services, relating to learning and work, aimed at adults aged 20+ within the Anytown sub-region.
 - (b) Enhanced services, relating to learning and work, aimed at adults aged 20+ within the Anytown sub-region.
3. Delivery to: Within the boundaries of the Anyshire County, England.
4. (a) Reserved for a particular profession: The provision of the services identified requires that the service provider use staff who has the relevant experience and competencies.
4. (b) Law, regulation or administrative provision: The contracts will be subject to English law.
4. (c) Obligation to mention the names and qualification of personnel: Tenderers will be required to indicate the names and qualifications and experience of their employees who will be responsible for the provision of the services.
5. Division into lots: Yes.
Tenders may be submitted for: All lots.
One lot.
Several lots

The title identifies the location and general requirement

Name of the organisation
The Official Journal reference no.
Date of publication
Deadline date for responses
Works, services or supplies contract
Country of origin
Notice type ie information, ITT, contract award, etc.
The legislation regulating this tender
Contact details of the purchasing authority

CPV and CPC codes classify the services required for searching and statistical purposes. Followed by a short text description.

Normally this is the same location as the purchasing authorities office but can vary.
Some services must be provided by specialist providers for example, doctors, lawyers, etc.
The relevant judicial authority in case of a dispute. Requirement to specify the particular persons who will complete the work.

Some contracts can be divided into smaller projects which can be awarded to more than one contractor.

6. Number of service providers that will be invited to tender: To be determined on consideration of applications received, but it is envisaged that between 5-8 eligible tenderers will be invited.
7. Variants: There are no variants.
8. Time limits for completion or duration of the contract, for starting or providing the service: The contract will be placed for the duration of the project, which is expected to run for around 2 years from the commencement of service provision. The commission is expected to start around January 2006.
9. Legal form in case of group bidders: Joint and several liability by all service providers. Legal bodies shall be companies or partnerships.
10. (a) Justification for accelerated procedure: Yes, as the council has only recently been notified of the availability of time limited funding.
10. (b) Deadline for receipt of requests to participate: 20.12.2005.
10. (c) Address: As in 1.
10. (d) Language(s): English.
11. Final date for the dispatch of invitations to tender: 13.01.2006.
12. Deposits and guarantees: The awarding authority reserves the right to require any bonds or guarantees it deems appropriate.
13. Qualifications: A questionnaire setting out in detail the authority's requirements is available from the address given in 1 and must be returned to that address by the deadline indicated in 10.(b). Tenders will need to be returned to the address indicated by 28.01.2006. not bankrupt or convicted plus accounts information, and so on, is often required. Date by which completed bids must be returned.
14. Award criteria: The contract will be awarded using the criteria of most economically advantageous tender, taking into account price, competence, experience, ability, quality, criteria and skills necessary to undertake the service and also take into account the council's duty to obtain best value and achieve the stated outputs for the commission as set out in the tender documentation.

A restricted procedure will use the information provided in your response to the questionnaire referred to in 13 to select the companies invited to tender. Whether alternative bids will be accepted.
Duration of the contract

Legal form to be adopted if a joint venture or consortium wins.

- (a) Justification for using a shortened timescale for this contract.
- (b) The deadline by which potential suppliers must have noted interest.
- (c) The address to which requests must be sent.
- (d) The acceptable language of the request.

Date by which the ITT will have been issued.

Any deposit or performance bond or guarantee that may be required.

A statement that the supplier is not bankrupt or convicted plus accounts information, and so on, is often required. Date by which completed bids must be returned.

The criteria that will be used to evaluate the tenders.

15. Other information: Following receipt of their expression of interest, applicants will be sent a business questionnaire. Those who satisfy the council's selection criteria will be sent a set of tender documentation together with an invitation to tender which will identify further the council's requirements.
16. Date of publication of pre-information: Not applicable.
17. Notice postmarked: 15.12.2005.
18. Notice received on: 15.12.2005
19. Covered by the "GPA" agreement: Yes.

Any other useful information

Date of publication of a pre-information notice, if any
Dates that notice was submitted to the European Commission

Can suppliers from countries covered by the government procurement agreement bid for the contract on equal terms.

Appendix 3

Contracts and agreements: examples

Summary of Case Study 3 National Autistic Society

Contract features are set out below

Introduction

Sets out the background and purposes of the negotiated national pre-placement contract to:

- core contract covering care and education
- reduce bureaucracy and repetition
- share good practice
- improve cooperation between partners
- improve quality by guaranteeing high standards
- facilitate dialogue
- provide a model that both day and residential schools and placing authorities can sign up to.

Values and beliefs

The agreement of signatories to place children and their parents at the centre of their respective service provision:

- Stable safe and caring environment for educational and social development
- Treat children as individuals through planning and review procedures, where appropriate involving them in the decision-making
- Safeguard the welfare through operational principles, established standards of practice and provision
- Promote partnership between child, parents, authority and school
- Attentive to child's needs and rights in relation to age, gender, race, sexuality and disability and meet cultural and religious needs.

The contract has clauses under the following headings:

Definitions

Amplification and explanation of the words used in the contract.

Contract status

Specifies: the nature of the contract its linkage to the schedules, the standards of service specified, the importance of the statement, Care Plan (CP) and Personal Education Plan (PEP); The period of the contract and the scope as it relates to the Individual Placement Schedules (IPSs); and the arrangements for variations.

Financial arrangements

Fees will be as in the IPS, plus additions if appropriate, the exclusion of VAT from the rates, and the responsibility of the authority.

The payment of fees clauses include; entitlement to claim, time for payment, notification of fee changes, circumstances for becoming non liable for payment.

Voluntary parental contributions may be requested by the provider for items not on the IPS.

Approval, statutory and other regulations

Any changes to the approved status of the school must be advised.

A list of the relevant, identified, legislation that relates to the provision of education and childcare. Compliance with and securing the health and safety of the child by the provider.

Conflict of interest

The informing of the Authority if any conflicts of interest arise as under the Local Government and Housing Act 1989.

Indemnity and insurance

The requirements for insurance and protection of liability are set out.

School employees

Sufficiency of provision of appropriately qualified staff to deliver the services, Criminal Records Bureau checking, standards for the recruitment process and to be met.

Records, information and data protection

The requirements for keeping and maintaining records, access to them, compliance with National Minimum Care Standards, and for Boarding Schools or Further Education Colleges.

Confidentiality

Application of confidentiality and policy to meet Data Protection Act 1998.

Monitoring of service provision

The right of the authority to monitor the service provision and request for action if the quality is not equal to requirements.

Corrupt practices

Actions by the provider that constitute a serious breach and lead to termination: offering gifts or inducements; inducements or unreasonable pressure on pupils or relatives to use the service; taking unreasonable financial advantage of the relationship with the child.

Resolution of disputes between parties

Requirement to liaise together and manage the contract; use best endeavours to resolve problems, dispute procedure set out.

Breach of contract and conditions of termination

How to terminate the contract for breach or by giving notice.

Termination of a particular placement

Similarly for the individual placements.

Force majeure

Delay or failure of the contract for reasons beyond the reasonable control of the parties.

Waiver

Standard legal statement.

Notices

How formal notices are to be given.

Law

English law

Third parties

Cannot enforce terms and conditions of the contract.

Complete contract

Statement of completeness of this contract above:

Signatures of agreeing parties to the contract

Signatures on behalf of the provider and the authority plus the DfES reference number and Registered Charity number.

Schedules covering:

Arrangements for the Provision of Education and Care
Individual Placement Schedule (IPS)

An Illustration Of A Service Level Agreement

Acorns Children's Hospice and a Primary Care Trust

Terms of reference

Establishing what the agreement is for “the provision of services to children with palliative care needs and their families who are registered with a GP within one of the PCTs”. It states who will commission the service.

Services

“The services to be provided will comprise of referrals to Acorns Children's Hospice (the hospice) for specialist, multi-disciplinary assessment, pain and other symptom management, respite care, day care and community team support.

For the purpose of this SLA the services are grouped into three categories:

- In-patient care, being the care of children full-time at the hospice, including respite care.
- Day care, being the attendance of children and young people (other than in-patients) at the Hospice.
- Community team support.”

Access to services

This is defined through leaflets in GPs' surgeries in terms of:

- making information available to publicise the arrangements and agreement.
- detailing the referral procedure.
- explaining the admission's policy.

Delivery of care (within the hospice)

This describes the key roles and aspects of the service of the link worker, the care planning, the multi-disciplinary approach, the service review and the facilities for relatives and friends.

Integration with other health care professionals

Establishes the commitment to integrate the services with other health care professionals and to line the key working relationships.

Health promotion

A commitment is made here to promote quality of life and a healthy living lifestyle for children and young people.

Community team support

This names and describes a full list of support roles including the community team worker, the sibling team, the adolescent community team, and the Asian and African-Caribbean liaison officers.

Levels of activity

This sets out the basis for monitoring and recording what services are provided. “The hospice will provide a quarterly statistical return detailing the following levels of activity:-

- number of new referrals
- source of referral
- the number of bed nights
- the number of counselling hours
- deaths/discharges
- any other information the hospice or commissioners feel is relevant.”

Note: This is not contractual information that affects payment or service delivery performance. It is a factual record of what has happened.

Quality

This specifies the regulatory requirements, compliance factors and performance thresholds for standards to be met.

“More specifically, this requirement is taken to include the provision of:

- The Care Standards Act
- management of food services and food hygiene in the NHS (HSG(92)34)
- health and safety at work legislation and enforcement notices
- control of substances hazardous to health legislation (COSHH)
- nursing home registration requirements
- environmental health and infection control monitoring and correction
- arrangements for the prevention of infection, toxic conditions or spread of infection at the unit
- data protection and access to information legislation
- fire regulations, including training obligations
- national codes of practice, for example, as issue by the National Council for Hospice and Specialist Palliative Care Services.

The Hospice will recognise within its organisation the principles of the Guide to the NHS as appropriate.”

Quality audit

Acorns will provide internal audit and the purchaser will provide external assessment or delegate it to the main commissioner, the PCT or regional health authority.

Funding arrangements and levels of activity

This sets out the detail of the payment arrangements against performance levels of activity to the required standards of care under the agreement, and the basis for variation in line with volume of service provided. A tolerance level is set.

Performance review

“The Commissioners and the Hospice will jointly review, on a routine basis, the performance of the service agreement. Where a significant variation in activity, service volume or agreed standards is identified, ad-hoc joint reviews will take place at the request of the Commissioners or the Hospice.”

Duration of the agreement

This includes provision for a three-year commitment, subject to annual review.

Resolution of disputes

This sets out a process, which can go up to as far as the regional health authority as the ultimate arbiter.

Signatories to the agreement


This provides a formal record signed by the chief executives.



Sustainable Funding Project

The Sustainable Funding Project encourages and enables voluntary and community organisations to explore and exploit a full range of funding and financing options to develop a sustainable funding mix.

The Sustainable Funding Project
funding in the round
Website: www.ncvo-vol.org.uk/sfp
Tel: 020 7520 2519
Email: sfp@ncvo-vol.org.uk

 Futurebuilders England helping voluntary and community organisations deliver better public services

Futurebuilders England is the Government-backed investment fund to help the voluntary and community sector deliver better public services.

The fund provides loan finance, often combined with grants, for organisations aiming to deliver public services and earn revenue by forming contracts with public sector agencies.

www.futurebuilders-england.org.uk

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