

Evidence to the Committee for Finance and Personnel Inquiry into Public Procurement

1.0 NICVA

- 1.1 As the umbrella representative organisation for the voluntary and community sector in Northern Ireland, the Northern Ireland Council for Voluntary Action (NICVA) has over 1,000 members. Full members, of which there are 945, are independent voluntary and community organisations. NICVA also has 78 subscribers to NICVA services. These include all District Councils in Northern Ireland and some statutory bodies which have an interest in or relationship with the voluntary and community sector
- 1.2 NICVA is an independent body with charitable status and is a company limited by guarantee. The organisation is owned by its members who elect the board of trustees or Executive Committee. NICVA offers comprehensive advice to member organisations on charity law, funding, finance, personnel and policy matters. With a dedicated communications team, NICVA works to ensure the sector is represented at every level, and that the voice of the sector is facilitated through the media and into the corridors of power.

2.0 Summary

- 2.1 Voluntary and community organisations experience barriers in the pre-qualification process and the resources it requires. The one-size-fits-all approach means they are going through the same processes for a small contract as would be required for a multi-million pound contract.
- 2.2 The transaction costs of the bidding process are high and meeting them is difficult for organisations which may be penalised by other funders for maintaining suitable reserves. High transaction costs also raise issues of value for money.
- 2.3 The added value which a voluntary sector provider brings to a contract may not be continued when the service is re-tendered, but no part of the process seems to take account of this.
- 2.4 The public sector is not good at focusing on outcomes; rather it focuses on financial information and processes. This means that audit and monitoring during the delivery of a contract can be invasive and

disproportionate, as if a grant were being accounted for, rather than service being purchased.

- 2.5 Social clauses appear to be underused in Northern Ireland. There is enormous potential for them to drive social and environmental benefits. We provide examples of this in other places, including the Olympic Delivery Authority, and recommend social outcomes being tightly specified as part of the core deliverables of a contract. These considerations should be treated as seriously as other factors in the procurement process and this importance must be stressed to both purchasers and partners.
- 2.6 There is a lack of knowledge on the part of those responsible for procurement in public bodies about what the voluntary and community sector is and what it does. The sector is seen as a higher risk, cheaper option. In other parts of the UK major investment has been put into informing public procurement officials about contracting with the voluntary and community sector; the same should happen in Northern Ireland.
- 2.7 There are capacity issues within the voluntary and community sector. Aside from the issue of undercapitalisation and reserves mentioned above, there has never been any investment in Northern Ireland in preparing voluntary and community organisations to bid for contracts.
- 2.8 Northern Ireland should learn from the work done in Great Britain, including the Office of Government Commerce document *Social Issues in Purchasing* and the *Think Smart – think voluntary sector* guidance for contracting authorities

3.0 Voluntary and community sector experiences of procurement

- 3.1 Many voluntary and community organisations can be viewed as SMEs since they are tendering for business, providing employment and providing services in the local economy. NICVA has consulted its members on their experiences of public procurement from the perspectives of both tendering and of delivery and has found many common themes.
- 3.2 **Tendering**
- 3.3 Pre-qualification can be a problem. Organisations without a sufficiently large turnover or without a suitable history will not be able to pre-qualify – this creates barriers to entering the field. Voluntary organisations often submit joint bids and need to find suitable partners who will also pre-qualify successfully.
- 3.4 Resources required for pre-qualification are disproportionate for those only bidding for small projects. Requirements such as the need to

demonstrate environmental certification are irrelevant for small projects such as short-term community consultation contracts. The requirements for small contracts are the same as for multi-million pound contracts. A one-size-fits-all process places inappropriate burdens on smaller bidders and discourages diversity in bidders.

- 3.5 The introduction of the new Frameworks appears to be driving towards centralisation.
- 3.6 The status of CPD guidance is an issue – on one hand it is just guidance, but on the other auditors are likely to check if it has been followed and thus de facto it is mandatory.
- 3.7 The transaction costs of the contracting process are very high and this is a particular problem for not-for-profit organisations. Substantial resources must be put into even the earliest stages of a bidding process. This raises two issues – value for money and voluntary reserves.
- 3.8 Many voluntary and community organisations are undercapitalised. This is because it is difficult to raise additional money to retain as reserves and grant funders will penalise an organisation for holding even minimal reserves. The Charity Commission for England and Wales recommends that each organisation have an appropriate reserves policy – this may be 6-9 months in most cases. It is difficult for a voluntary or community organisation with limited reserves to make the investment required in competitive tendering, putting them at a competitive disadvantage with regard to the private sector.
- 3.9 The issue of value for money in using competitive tendering for all services is not straightforward. Aside from the recognised high transaction costs of any competitive process, public bodies seem to be using competitive procurement more to ‘cover’ themselves in case of future audit, than to achieve value for money. In one example, a voluntary sector body brought a project proposal to a public body with an offer of 40% contribution to the funding. The public body was in favour of the proposal but insisted on putting it out to tender. Since the proposing organisation was the only one in a position to deliver for 60% of the cost, they were the successful bidder. This unnecessary process was clearly not a good use of public money.
- 3.10 The clarification process has been found to be helpful and organisations have benefitted from the feedback they have received. This should be continued.
- 3.11 Where voluntary and community organisations deliver contracts, often to or with specialised user groups, there may be issues of continuity when the contract passes to another organisation. This is not a straightforward matter when, for example, an organisation delivering a

contract has been able to provide added value by using the service delivery as training for people with mental health problems.

- 3.12 Experience of procurement seems to vary widely across public bodies, with some staff very experienced and familiar with procedures and some less so. These latter need to rely heavily on CPD who are experts in the procurement process but not knowledgeable about the specific service or product being procured.
- 3.13 Voluntary organisations, having submitted a compliant bid, often find they can suggest additional options which the tendering body had not included but which would improve the service. This is important for organisations who are not entering into contracts purely to make profit, but who want to see exactly the right service to meet the needs of users. In this way they can bring expertise and added value to the process.
- 3.14 Organisations who have received feedback on unsuccessful bids have found this helpful. This should be continued to enable organisations to develop in the process of submitting bids.
- 3.15 Since little procurement is undertaken jointly by departments, there is no way of recognising the 'joined up' benefits that a contract with one department may deliver to another.

4.0 Delivery

- 4.1 The public sector is not good on the whole at focusing on outcomes. It is easier to concentrate on financial information and process. Some departments insist on a very invasive relationship even after a contract has been signed. Rather than simply vouching that the service being purchased is being delivered, they demand information on many process issues (which would not be the case for a private sector provider) and may audit the same project up to four times per year.
- 4.2 Monitoring and audit requirements during project delivery may be disproportionate to the value of the contract, causing staff to spend public money designing systems for recording information and maintaining records for monitoring purposes (one NICVA member recently calculated that these used over 30% of the resources of the project). This is not balancing accountability with value for money.
- 4.3 Audit appears to be focused on issues that departments feel they might later need to defend and not on what is being achieved by the contract.
- 4.4 Organisations report experiences of goal posts being moved after a contract has been signed, without additional resources being made available.

5.0 Social clauses

- 5.1 Social clauses do not seem to be a common feature of contracts, despite much discussion, particularly around investment in infrastructure. It might be more helpful to think of this issue in terms of clearly specifying social outcomes as part of the core deliverables of a contract, so that a contract outcome would specify, for example, involvement of users in design, planning and monitoring of a service.
- 5.2 NICVA would like to see procurement used to help deliver the sort of society we hope to create in Northern Ireland, for example, one that is more fair and equal; one with good relations; one which is free of paramilitary influence; one in which all people enjoy the benefits of economic growth and feel they have a stake; one in which people enjoy excellent public services; one in which public bodies are open and accountable to a local democratic government.
- 5.3 Government departments and their agencies have the power, as purchasers and contractors, to ensure that social and environmental considerations become an integral part of the procurement and delivery of any investment project.
- 5.4 Social and environmental considerations should be integrated into every step of the process and especially in the initial drafting of the specification or terms of reference. They should be treated as seriously as other factors in the procurement process and this importance must be stressed to both purchasers and partners. In any case the social and environmental issues that a contract should be impacting on, such as long term unemployment, equality of opportunity and gender issues and creating shared spaces, will be issues that Government already identifies as important priorities and form part of their requirements under Section 75 and New TSN.
- 5.5 Procurement could be used as a delivery mechanism alongside Northern Ireland's Anti-Poverty Strategy *Lifetime Opportunities*.
- 5.6 We note useful examples from other places, such as Raploch Urban Regeneration Company in Stirling, Scotland, which insists that contractors use local people, including young unemployed people and older jobless people, to renew the estate with legally binding "community benefit" clauses in contracts with developers. In a 10-year programme costing £120m, the scheme includes providing 900 new homes and building new roads, public squares and parks. The company decided 10% of jobs must go to local people, creating 225 jobs over 10 years. That means contractors, each year, must provide five apprenticeships, 10 jobs for semi-skilled operatives and 10 training places through legally binding guarantees. This is possible within EU laws outlawing anti-competitive behaviour since a contract can specify that x% of jobs must go to the long-term unemployed, or new entrants to the labour market, or people needing vocational training. The project

has been welcomed as tackling skills shortages in the construction sector.

- 5.7 Likewise, Argent, developer of the £3.5bn regeneration project behind King's Cross St Pancras in London, which is delivering a new business and residential district embracing a range of facilities, has a binding agreement with Camden Council. This specifies a minimum 15% of jobs on the construction project will go to people from what it calls the "wider impact area" - in other words, locals and those from greater London. But in certain skilled areas this will rise to 30%.
- 5.8 NICVA also notes the equality and diversity strategy of the Olympic Delivery Authority in London. The ODA requires its contractors to collaborate in actively promoting race equality, disability equality and gender equality and to operate in accordance with all legislation on equality in employment, including preventing discrimination on the grounds of age, faith and sexual orientation. It requires its contractors to demonstrate practical implementation of equalities duties and legislation through: the development of an equality action plan, with suitably qualified and experienced personnel to oversee it; the operation of effective policies and procedures in relation to equal opportunities, recruitment, workplace harassment, reasonable adjustments and flexible working; the operation of effective equality monitoring; and the development and implementation of diversity training plans. The ODA has developed a balanced scorecard for evaluating potential contractors. Equality and diversity forms one element of the evaluation, as it is a necessary part of effective delivery of the programme. This means that all potential and actual bidders for ODA contracts are encouraged to address equality in employment issues. All companies unsuccessful at pre-qualification stage receive feedback on each aspect of the balanced scorecard, including the equality and diversity component. This feedback includes signposting to sources of information and guidance on how to further develop their equal opportunities practices.
- 5.9 We would also refer the committee to the report funded by the Joseph Rowntree Foundation *Achieving community benefits through contracts: Law, policy and practice*.

6.0 Recommendations

- 6.1 There needs to be more clarity around the circumstances in which competitive tendering is being used. Public bodies fund voluntary and community organisations via a range of methods including grants, grant in aid and contracting. However, within contracts there are competitive procurement processes, service level agreements and outcome agreements, all different in process.

- 6.2 As increased responsibilities pass to local authorities under RPA, voluntary and community organisations would like to encourage councils to continue to use them for service provision rather than move everything in-house.
- 6.3 There seems to be a lack of knowledge on the part of those responsible for procurement in public bodies about what the voluntary and community sector is and what it does. The sector is seen as a higher risk, cheaper option. In other parts of the UK major investment has been put into informing public procurement officials about contracting with the voluntary and community sector (for example, the work done by the Office of the Third Sector and Cabinet Office in England – see below) but nothing has happened in Northern Ireland. England also has a target for service delivery through voluntary and community organisations, but no such target exists here. This should be remedied.
- 6.4 The inability to account effectively for outcomes means that the public sector finds it difficult to recognise the added value being brought by voluntary and community organisations as the metrics simply do not exist to measure it. Investment should be made in developing suitable metrics to enable more intelligent procurement.
- 6.5 We are aware that for contracts below £100k, if two bids are the same on everything but price and one bidder is involving marginalised groups or individuals then that bidder can be given opportunity to reprice. There should be exploration of the scope to expand this within EU regulations, and to make it more widely known.
- 6.6 There are capacity issues within the voluntary and community sector. Aside from the issue of undercapitalisation and reserves mentioned above, there has never been any investment in Northern Ireland in preparing voluntary and community organisations to bid for contracts. This should now happen to create a level playing field.
- 6.7 We recommend consideration of the document *Think Smart – think voluntary sector*. This is guidance for contracting authorities issued by the Office of Government Commerce in 2004. It states: ‘The myth that the EC Procurement regime is a barrier to effective procurement from the VCS must be dispelled. Firstly, most contracts with the VCS [Voluntary and Community Sector] are likely to be in the field of social services, health, education and other community services. Such contracts, although subject to the EC Treaty principles of transparency and non-discrimination, are not subject to the full application of the EC procurement Directives, but to a lighter regime.’
- 6.8 The document lists the advantages of contracting with the voluntary and community sector as:

- **Established links with the community** – VCOs (voluntary and community organisations), especially locally based ones, although not necessarily large national providers, are often deeply embedded in local communities with a thorough understanding of the political and social environment in which they operate. They can be especially skilled at drawing upon resources in the community and gaining local support for new projects.
- **Understanding the needs of specific client groups** and real passion, focus and commitment to action on a specific issue. Greater capacity to reach and earn the trust of excluded or disadvantaged groups. This is often facilitated by recruiting those with direct experience of the user perspective.
- **Independence and freedom from institutional pressures** – VCOs are generally not constrained by complex structures and rules. They are independent and driven by their charitable aims rather than the search for improved profit margins. This can make them enthusiastic, committed, and especially flexible and responsive to customers needs.
- **Innovation** – the VCS is well placed to offer fresh and innovative solutions. They may be less risk averse and have a stronger motivation, through their charitable aims and objectives, to identify better ways of doing things.
- **Responsiveness** – VCOs may be highly focused on particular services or sectors of the community making them alert and responsive to changes in those markets.
- **Economies of scale** – because some VCOs are often specialists in a particular field, they can provide services in a way which benefits from economies of scale.
- **Niche markets** – many VCOs survive by supplying highly specialist services which private sector suppliers find unattractive or outside their competence.

6.9 In terms of the barriers to involving the sector in procurement it lists many of the issues that NICVA members have identified including:

- Lack of early and effective consultation with the VCS in the development of policy, programmes and strategies, leading to poorly packaged or unattractive procurements.
- Failure to properly assess VCOs' capabilities and to consider them as serious contenders. Insufficient recognition given to their strengths and skills. Public sector procurers too risk averse and worried that VCOs lack the resources, organisation, and business skills to deliver.

- Difficulty in finding out about contract opportunities and who to approach about becoming a supplier. VCOs often lack knowledge and experience of Government procedures and have great difficulty in breaking into the market.
 - Trend towards use of large scale contracts, such as national or regional frameworks, and rationalisation of the supplier base, rules out many VCOs. Difficulty in forging alliances with prime contractors prevents them from playing a support role in the supply chain.
 - Complex and costly pre-qualification and tendering procedures with unrealistic timescales, prescriptive specifications and excessive contract terms. Means invitations to tender can be consigned to the 'too difficult' pile.
 - Lack of a level playing field in procurement, particularly relating to the unwillingness of some procurers to accept full cost recovery, including management charges, in VCO tender prices.
- 6.10 In relation to the issue of pre-qualification the *Think Smart* document advises that “*Pre-qualification criteria should be carefully chosen to avoid unnecessary ruling out at this stage of competent suppliers. Whilst it is important to select suppliers that are financially sound and capable of delivering the solution, this does not necessarily mean the largest suppliers with the most extensive track record.*”
- 6.11 Another Office of Government Commerce document *Social Issues in Purchasing* suggests that staff should be trained in/made aware of social issues “*Eg if the user requirement was to build a hospital, a contracting authority’s awareness of regional neighbourhood renewal issues might lead it to consider locations in certain deprived areas in order to facilitate their regeneration*”. Both guidance documents advocate making procurement opportunities widely known and ensuring they are accessible to small and medium business, social enterprises and the voluntary sector. “*Encouraging increased competition through assisting these kinds of bodies should help deliver value for money benefits for contracting authorities and at their best these kinds of organisations can provide innovative, responsive and cost effective solutions to the kinds of outcomes sought by public bodies through procurement. Bodies such as social enterprises and voluntary organisations may often be placed well to deliver certain types of contract eg services to deprived sections of the community*”.
- 6.12 Additionally in Great Britain, a National programme for Third Sector Commissioning has been established with funding from the Cabinet Office. It attempts to ensure that government bodies and councils follow the guidance in three main documents: the *Compact Code of Good Practice for Funding and Procurement* (Commission for the Compact, 2003), *Small Business Friendly Concordat* (Office of the

Deputy Prime Minister, 2005), and the eight principles of good commissioning (Cabinet Office, 2006, paragraph 30). It works partly through training public sector commissioners and procurement professionals on the role of the voluntary and community sector. We recommend that the Committee consider this work and recommend similar training in Northern Ireland.

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