



‘INTELLIGENT COMMISSIONING’
Keeping it small, local and inclusive

**A research report from
Manchester Council for Community Relations**

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1. Introduction

The purpose of this small research project is to complement other Greater Manchester (GM) ChangeUp Consortia projects on commissioning by identifying some of the lessons that can be learnt from the USA, with respect to good practices in commissioning and procurement.

The aim is to share lessons learnt and their applicability to Greater Manchester in an exploratory workshop for a small cross-section of voluntary and community organisations and commissioners.

2. Research Methods

1.1 Meetings

Members of the GM ChangeUp Consortium projects on Commissioning and Contracting:

Kathy Shaw, Rochdale CVS

Liz Welsh, Tameside Third Sector Coalition

Others:

Chris Heard, GMCVO

Hugh McWilliams, MCCR

1.2 Desk Research

Internet searches:

Review of commissioning policies and practices in the UK, USA, and Australia

Review of audiotapes of USA study

3. Background

Funding of the voluntary and community sector (VCS) is set to rise dramatically, due to government policy, which aims to increase and widen the sector's role in the delivery of public services.

Fiona Mactaggart (MP and Minister) noted, "*The assumption in procuring public services that the choice is just between public and private sector providers must be challenged. Greater awareness is needed of the valuable contribution which the voluntary sector can make, if we are to place it firmly on the agenda as a potential provider, whether directly or through sub-contracting*"¹

Capacity Builders and Future Builders programmes are examples of government funding initiatives designed to boost the sector through capacity building support and loans for premises.

Local Area Agreements should give the VCS a role, not just as service providers, but also as partners, to shape the strategy for designing services and advocates to ensure 'VCS friendly' commissioning processes. Early and constructive involvement

¹ 'Think Smart Think voluntary sector: good practice guidance on procurement of Services,' (Home Office Active Communities / Office of Government Commerce) June 2004

of the VCS will help to improve the way in which public services are commissioned, procured and delivered.

The stakes are high. In 2001, the sector's income from government was £2.5 billion, almost one third of the sector's total income (these figures exclude registered social landlords).² According to the Audit Commission, the figure for local authority spending was £3 billion³. The UK Voluntary Sector Almanac 2006 identified that of the £26.3 billion total estimated income of the voluntary and community sector (VCS) in 2003/04, almost two fifths (38%, almost £10 billion) is generated from the public sector.

Although large, these figures are dwarfed by US government grants to the non-profits sector of \$103 billion⁴ and the 'non profit sector' \$670 billion annual revenues, constituting 9% of the gross domestic product, making it a significant contributor to the U.S. economy.⁵

England has adopted many of the policies and programmes from the USA. These include Sure Start, Outcome Funding, and Capacity Building and are examples of initiatives practised in the USA long before they were adopted in the UK.

4. Findings, Conclusions and Recommendations

4.1 How contacts are managed to ensure that the local VCS gets a fair share of funding

Government Set Aside Programmes

In order to encourage supplier diversity, the US sets aside a proportion of government funds for small businesses, including businesses run by women, minorities and disabled people.

Under the Small Business Act, federal agencies conduct a variety of procurements that are reserved exclusively for small business participation. These transactions are called "small business set-asides" and include the Small Business Reserve, Set Asides above the simplified acquisition threshold, the Small Business Competitiveness Demonstration Program and the HUB Zone Empowerment Contracting Program⁶.

For all contracts exceeding the \$100,000 simplified acquisition threshold, prime contractors are required to make a "best effort" attempt to make use of small, disadvantaged and women-owned small businesses as subcontractors, if the opportunity exists under the contract. For contracts expected to exceed \$500,000 (\$1 million for construction) the winning contractor is required to provide the agency-

² 'Think Smart Think voluntary sector: good practice guidance on procurement of Services,' (Home Office Active Communities / Office of Government Commerce) June 2004

³ 'Hearts and Minds: Commissioning from the Voluntary Sector' (Audit commission) 2007

⁴ USA Government Grants 2008 – usagovernmentgrants.org

⁵ 'Nonprofits Agenda: A Blueprint for Action. (National Council of Nonprofits Associations) July 2004

⁶ The HUB Zone Empowerment Contracting Program is an initiative of the U.S. Small Business Administration (SBA) that gives preference in securing federal contracts to small businesses located in "historically underutilized business zones," or HUB Zones.

contracting officer with a written plan that establishes a small business-subcontracting goal. The plan details how the winning contractor will make use of small business in each subcontract category and provide for timely payments.

Currently, the overall small business goal is 23%. This includes the specific goals of 5% to Women-Owned Small Businesses (WOSB), 3% to service disabled veterans, 5% to small disadvantaged businesses and 3% to Hub zone firms⁷.

In **Connecticut** the State's Supplier Diversity programme targets that at least 25% of the state's business is transacted with small businesses including those owned by minorities, women and the disabled. In **New York**, small businesses must be located in the City or have substantial business in the city to benefit from set-asides. State business runs into billions of dollars. **The State of Texas** awarded over \$1.8 billion in contracts to minority and woman-owned HUB zone-certified companies and over \$785 million through subcontracting opportunities.

The Office of Government Contracting (GC) is the federal agency that ensures maximum participation by small, disadvantaged and woman-owned businesses in federal government contract awards and large prime and subcontract awards. It is the advocate of small business in federal procurement policy and practice. The Small Business Administration (SBA)⁸ negotiates the goals annually with each federal agency on an individual basis to ensure policy goals are agreed and delivered.

Set aside programmes can benefit the not-for-profits sector, including social enterprises, as they are usually small organisations, often located in disadvantaged areas. Women, minorities or disabled people run many such organisations.

Although there are no programmes in the UK that are labeled as "set aside", there are many grants programmes that are restricted to the not for profits sector (Capacity Builders and the NHS section 64 grant schemes, as well as local authority grants are examples).

Ring fenced funding would be an invaluable mechanism for stimulating the growth of the supplier base (VCO's or small businesses) to meet minority or specialist support needs. At present, these needs are rarely prioritised or so poorly funded that there are few or no providers in the market.

This could be a good mechanism for dealing with both market failure and in meeting specific community needs (where numbers of clients are relatively few in number and/or support needs are special). Increased grant aid to fund the development of suppliers of such services would also achieve similar ends. Larger organisations in the VCS and the private sector should also be encouraged to offer sub-contracts to smaller local VCO's in local communities, to improve service quality and supplier diversity. This would help develop the local VCS. Such initiatives have to be monitored, as studies in the USA show that larger suppliers sometimes exploit small

⁷ The HUB Zone Empowerment Contracting Program is an initiative of the U.S. Small Business Administration (SBA) that gives preference in securing federal contracts to small businesses located in "historically underutilized business zones," or HUBZones.

⁸ The U.S. Small Business Administration (SBA) was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise and to maintain and strengthen the overall economy.

businesses by including them in bid proposals, but marginalise them after the contract is awarded.⁹

If effective safeguards were in place, sub-contracting with VCO's would enable support services to develop to meet the specific needs and preferences of different clients groups or communities. The VCS should look to supporting such arrangements. Present arrangements do not encourage personalisation of services, as there is no incentive to do so.

4.1.1 Fair Commissioning and Procurement Practices

Commissioning and procurement practices vary between departments and organisations in Greater Manchester. In the area of commissioning, user/voluntary sector, involvement in needs identification and prioritisation is patchy and often opaque. It often remains a mystery as to how funding is prioritised at the local level, with respect to the VCS.

The quality of research on the needs of vulnerable and minority groups is often inadequate or not available. This creates additional barriers to VCO's that are required to submit "statistics and hard evidence of need" within these groups. Needs identification for minority communities appears to be every statutory body's second cousin, but nobody's baby.

Procurement practices are also embryonic in terms of development to meet national policy requirements. Few of the public bodies in Greater Manchester have adequate information or support available on their websites for groups to be able to easily find contract opportunities and overcome the barriers to meet requirements.

A quick review of relevant websites reveals that some are adequate, but most fall way short of the standards of US counterparts. Statutory bodies in Greater Manchester should be asked to learn from best examples in the USA with respect to information provision, e-procurement and needs' assessment.

4.1.2 Open and Fair Procurement Practices

Open and fair procurement practices are essential, if the majority of small VCO's that constitute the VCS are to compete effectively with the private sector (especially large private sector) and large established VCO's.

There are many parallels here with the experience of small and medium size enterprises. Small and medium sized enterprises (SME's) often find themselves overlooked when public authorities award contracts.

This was a key finding from a report published by the Better Regulation Task Force (BRTF) and the Small Business Council (SBC) in May 2003. The report recognised the importance Government attaches to SME's in economic growth and the billions it spends on support through tax relief, grants and support services. It also argued that the help is not followed through in procurement practices, as SME's have to overcome considerable barriers to win government contracts.

9 Barriers Facing Minority, Women, & Disabled-Owned Businesses in Procurement and Contracting. The Office of the Controller, Philadelphia, Nov 2007

The report showed that public sector procurement is skewed against smaller firms and recommended the government to encourage a more level playing field for SME's in gaining public contracts by:

1. Creating a single central government web portal advertising lower value central civil government contracts and each local authority to have its own 'selling to the council' website
2. Offering support to small businesses to help them negotiate the public sector tender process
3. Developing a single common core pre-qualification information document for lower value contracts
4. Identifying particular markets where SME participation is important, because it stimulates innovation and competition

Implementation of the above recommendations, if applied to the VCS as well as SME's, will help both sectors to compete more effectively for Government contracts. The Office of Government Commerce (OGC)¹⁰ and the Active Communities Unit of the Home Office report "Think Smart, Think Voluntary Sector!" a good practice guide on the procurement of services from the voluntary and community sector, June 2004, followed the Better Regulations Task Force report.

It produced a checklist of good practices, which included:

Developing the Supplier Base

- Ensure early supplier involvement to gain a supplier perspective when shaping policies and programmes

Developing Procurement Strategy

- Consider the benefits of dividing contract into smaller lots
- Give careful attention to optimum length of contract

Publishing Contract Opportunities

- Provide early notice of forthcoming procurements
- Publicise opportunities widely, especially on departments' procurement websites
- Encourage key suppliers to publicise opportunities for sub-contracts

Pre-Qualification Procedures

- Ensure that pre-qualification procedures are proportionate
- Request only 2 years accounts
- Chose evaluation criteria carefully to ensure they do not rule out small or inexperienced, but otherwise competent, VCO's

Drawing up the Specification

- Focus on outputs/outcomes to maximise VFM and innovation
- Involve relevant stakeholders in drawing up specifications
- Underpin by appropriate consultation with suppliers
- Be careful about assigning risk to those best placed to handle it
- Avoid jargon and paper overload

Invitation to Tender

- Ensure tender documentation is clear, concise and jargon free
- Base procurement on a sound business case, approved budget and stakeholder buy-in to avoid aborted or delayed procurement
- Consider offering training to potential suppliers, outside of any particular procurement, to enable them to improve tenders.

Contract and Payment Terms

¹⁰ *An office of HM Treasury, responsible for improving value for money by driving up standards and capability in procurement*

- Be aware that some VCO's have problems with working capital. Be prepared exceptionally to make advance payments, e.g. for start up costs, where the need has been demonstrated
- Consider use of frequent milestone payments, where appropriate
- Use contract terms which are proportionate to the scale and complexity of the contract - standard ones, wherever possible
- Allocate risks to those best placed to deal with them

Evaluation and Clarification of Tenders

- Explain the evaluation process to tenderers at the outset, including the criteria to be used and their relative importance
- Allow VCO's freedom to determine their own price in competition, including the inclusion of overheads and management fees

Award of Contract

- Let tenderers know that feedback can be provided
- Offer feedback that is as helpful as possible and designed to promote future improvement

Post Contract - Contract Management

- Seek supplier involvement in the design of contract management procedures and ensure they are proportionate
- Focus management reporting on measuring key outcomes
- Encourage and incentivise VCO's to make proposals for service improvement
- Review current contracts with prime suppliers to see if there is any scope for involving the VCS
- Develop a good working partnership, avoiding undue escalation of problems

These recommendations appear to have been derived from examples of good practice in the USA.

Two examples of practices are summarised below:

1. New York City has a wealth of information for suppliers, including:

- Up-coming tenders
- Procurement rules
- Supplier registration forms
- Pre-qualified lists
- Business opportunity programmes
- Training support

The City website also links to the "City Record" where many tenders are advertised. All bidders, or at least random samples of suppliers that have registered with the city, are sent notices of up-coming contracting opportunities above \$5,000.

Once registered with the City, the supplier's details are available, electronically, to over 80 City agencies. The detailed eligibility and selection criteria are given, as well as detailed feedback to unsuccessful bidders.

New York has a Procurement Policy Board that creates and enforces the rules. It encourages and requires prime contractors to sub-contract with small businesses in the city. It permits agencies to develop and solicit from pre-qualified lists of suppliers, under certain circumstances, but before such a list can be selected, the agency has to publish a notice in at least five issues of the printed "City Record", inviting suppliers to apply.

2. **The State of Texas** also has a comprehensive approach to procurement. Texas Procurement and Support Services (TPASS) awards and manages hundreds of statewide contracts on behalf of more than 200 state agencies and 1,700 local government agencies.

A Texas Vendor Advocacy Committee (VAC) was established in a continuing effort to foster fairness, simplicity and accessibility in the state procurement process for all prospective and active suppliers. The committee represents the supplier community before TPASS, provides information to vendors and obtains vendor input on state procurement practices.

To be eligible for appointment, vendors must possess a broad-based knowledge of their business, be able to represent the entire vendor community doing business with Texas and be a vendor who has done business with the state of Texas. The state also provides training for suppliers.¹¹

It is perhaps not surprising that, compared to major cities in the USA, information and support on procurement policies, practices and tender opportunities in Greater Manchester (and the UK as a whole) is patchy.

The USA has had a “mixed economy” for many years and much of public service delivery has been through contracts with the private or not-for-profits sectors.

However, it is disappointing to note that, despite the wealth of guidance that has been available over the last 5 years, in Greater Manchester few local authorities, PCT’s, Health Trusts, Universities or government agencies have comprehensive and up to date information on tendering opportunities across departments.

- Website information is generally limited, incomplete or not easily accessible
- Support to suppliers in understanding the rules or requirements are often no more than a general policy statement
- Procurement guidelines accompanying tenders are often couched in jargon and contain conditions that are unnecessary or onerous in relation to the value of the contract
- The actual process of procurement is not very transparent

In contrast cities and states, in the US (and in Australia) usually have highly developed, user-friendly procurement portals. There is more openness about selection criteria. Support is usually available to smaller organisations, through seminars designed to explain the rules and how to put together good bids, etc.

The UK, therefore, has a lot to learn from the USA, but the issue is not a lack of guidance. Instead it is probably a combination of relative lack of experience, skills and confidence of commissioning professionals employed by public authorities and inertia.

The GM ChangeUp Commissioning and Procurement projects in Rochdale and Oldham demonstrate that much can be achieved with relatively modest resources, if the VCS takes a lead and encourages statutory partners to work together to develop better practices.

Other VCS infrastructure groups in Greater Manchester should consider making commissioning and procurement a top priority in the next year and seek funding from

¹¹ WebPages on *purchasing* (www.window.state.tx.us/procurement/)

purchasers to develop joint approaches to improve policies and practice, the local knowledge and skills base.

The requirement is not to “do the VCS a favour”, but to ensure that a diverse range of support and services are available to communities and provided through a mix of grants and contracts, as appropriate.

4.1.3 Training for Suppliers (and Commissioners)

Most states in the USA provide training for potential suppliers on how to do business with the government. This works in everyone’s interests and keeps costs down. Public bodies gain by having qualified suppliers and suppliers’ gain by having a better understanding of government requirements. In addition, procurement officials are kept up to date with best practice through internal and external training programmes and interaction with suppliers.

Examples of training include Pathways to Procurement; a free workshop is designed for businesses that are interested in learning about the bidding process for Statewide Contracts, as well as departmental contracts in the **Commonwealth of Massachusetts**. The Affirmative Market Program (AMP) invites all Minority and Women-Owned Vendors to attend a seminar that focuses on the procurement and bidding processes and the basic tools needed to do business with them. This training includes an in depth overview of Comm-PASS, the Commonwealth’s eProcurement system. These sessions are offered once a month in various locations across the Commonwealth.

Texas, New York and other states and districts offer similar support programmes for small organisations in general, those run by women, minorities and disabled and small businesses in poor areas.

The myriad foundations and philanthropic trusts, such as Funds for the City of New York and United Way provide additional training and support for developing not-for-profits organisations that want to grow and manage their own staff and budgets.

The Commissioning and Contracting projects run by CVS Rochdale, and Tameside Third Sector Coalition are helping to improve skills of VCS organisations in commissioning and contracting and involve local partners, such as the local authority and PCT’s.

Other public authorities in Greater Manchester should be encouraged to work closely with VCS support agencies in their area to provide support, information and training to the VCS in both commissioning and contracting.

4.1.4 Keeping it Local

Public authorities around the world encourage local organisations to bid for local contracts. Part of that encouragement may be in the form of setting aside a proportion of business to local groups, e.g. small business, as is the case in New York and Queensland^{12,13}. In New York they specify that only those small businesses based in New York or have substantial business in the City will be allowed to be certified as a set aside vendor or HUB zone business. In Queensland

¹² *How to do business with the Queensland Government. Dept of Public Works 2000.*

¹³ *Advancing Government Priorities through Purchasing. Queensland Government 2000.*

the preference is to look no further than is geographically necessary to secure competitive supplies (town, region, or state).

It is entirely appropriate to assume that some services are best delivered locally by local organisations. This is especially the case where the building of relationships and local knowledge is essential (small-scale personal care for vulnerable elderly people, support, and advocacy groups for vulnerable sections of the community, etc).

Small local white providers are likely to be much better placed to provide care for local white elders from the same community than a large BME provider from outside the area and vice versa.

Local VCS should consider encouraging “Keep it Local” campaigns in circumstances where it benefits local citizens and the local economy.

4.1.5 Minority, Women, and Disabled led organisations.

Many good practices originate in the USA. However, policy intentions are not always delivered as planned. This applies to the UK as well as the USA.

The example below shows how policy rhetoric fails to match reality.

The City of Philadelphia is a racially and ethnically diverse city of 1.4 million people of whom 55% are minority ethnics. It is policy to provide equal opportunity for any business to compete for City contracts.

However, a study conducted for the City found that from 1998 to 2003 less than 2% of contract funding had been spent with businesses owned and controlled by minorities or women, despite the availability of qualified businesses.

A special investigation by the City Controller, on issues facing minority, women and disabled owned businesses in City Procurement and Contracting, November 2007, found significant barriers in three key areas:

1. Barriers to participation in the procurement and contracting process
2. Barriers during participation in the procurement and contracting process and
3. Barriers to the growth of these businesses

These barriers included practical one such as:

1. Lack of affordable insurance
2. Overly complex bid packages
3. Lack of adequate monitoring or enforcement of participation targets
4. Inclusion in prime contractor bids, but exclusion after bids have been won
5. Limited access to capital or technical assistance before and after contract awards

If the VCS is to work together effectively to improve successful access to tenders and contracts, mainstream VCS infrastructure and advocacy bodies will need to examine the extent to which they:

1. Understand the issues facing minority and discriminated against groups, and are
2. Prepared to work with these groups to ensure commissioning is transparent and non-discriminatory.