

## **Hampshire County Council Officer Response to the Cabinet Office's consultation on Modernising Commissioning - January 2011**

### **Introduction**

This response to the Modernising Commissioning consultation is an officer response. It is extremely disappointing that the consultation timescale has been totally inadequate to allow a comprehensive response which has been discussed in a formal setting by elected Members. Furthermore, the purpose of the questions and to whom they relate is sometimes unclear. For these reasons the County Council is not responding directly to the consultation questions but making general comments instead.

### **Commissioning and Procurement**

There are important differences between procurement and commissioning and the language and meaning should be explicit so that all key audiences are clear. This paper is unclear as to who it considers to be the 'commissioners' and tends to use the term 'commissioning' instead of 'procurement'. Procurement, while mentioned in the Foreword, is absent in most of the remainder of the document..

### **Role of civil society organisations (CSOs)**

Hampshire County Council like many local authorities already procures and commissions many services from CSOs and anticipates there will be increased opportunities for CSOs to deliver services particularly in health and social care. The County Council is actively working to improve stakeholder engagement with CSOs across the voluntary and community sector but is mindful of the need to maintain the independence of CSOs so that they do not just become a delivery vehicle for the public sector.

The consultation appears to only consider the role of CSOs as deliverers of commissioned services. The County Council's experience is that CSOs can often play vital roles in other parts of the commissioning process and, importantly, that CSOs value these opportunities.

Often CSOs may not want to be commissioned to run a service and would instead prefer to be involved in local government decision-making, the needs assessment process, and supporting the way in which the commissioning of services is undertaken. their objective is often around influencing the nature and quality of services rather than delivery. The County Council finds that CSOs can bring different perspectives, expertise and experience and are able to help reflect a diversity of stakeholder views. They can be especially effective in helping to reach interest groups and communities more effectively and build community capacity. CSOs can facilitate consultation and customer-based re-design of services and systems. They can also providing support for volunteers and training for individuals and communities.

It is important to retain a strong system of accountability for public money and the provision of local services. Councillors are accountable for decisions, investment and for balancing interests. It is therefore important to build relationships links between CSOs and elected members as apart of overall stakeholder management..

The County Council supports strategic and local infrastructure bodies as these are seen as essential to help build capacity in the smaller organisations and take an active role in providing training for consortium working.

The consultation document's questions on CSO support for citizen and community involvement in commissioning open up an entirely different debate. Various Whitehall Departments are making policy changes which will have a significant bearing on citizen and community involvement. Notable examples are the Health White Paper and accompanying consultations, the Localism Bill and the work of the Participatory Budgeting Unit. The Cabinet Office should ensure a robust, consistent approach which is not duplicated across the numerous Departments.

### **Locally Integrated Services**

This concept could be extremely effective however budgetary pressures will still be a key factor in appointing a service provider. The need to select providers on their ability to deliver a local solution is not always feasible based on the evidence gained from a tender process. Some of the best SME providers can present extremely poor tender applications.

There could also be a potential conflict of interests if the County Council was allowed to appoint providers to design, develop and deliver solutions. Other providers may challenge this action as unfair.

### **Payment by results**

In principle, payment by results is a sound method to achieve desired outcomes. However, to be successful in practice, payment by results schemes rely heavily on effective measurement of outcomes and need to have appropriate caveats to allow for situations where the failure to achieve the outcome is outside the control of the CSOs..

CSOs may struggle if they become reliant on income which is purely performance related – it may stifle innovation. For some CSOs delayed payments could create a significant problem with cash flow. Smaller organisations may be unable to cope with deferred payment and would therefore be excluded from the commissioning process, even though they may be the best placed to deliver a particular service. CSOs would need to understand that payment by results is exactly that and achievement is not guaranteed. The best approach may be to recoup for underperformance rather than defer subject to achievement. It is important that the most effective organisations are not discouraged or excluded from such arrangements

### **Managing risks and liabilities**

There are significant risks associated with the proposal for greater roles for CSOs in commissioning and procurement. The document assumes these risks are one-sided and borne only by the CSOs. The County Council would argue that there are risks on both sides.

Risks to the CSO sector are both financial and outcomes-related. The commissioning route would force CSOs to deliver the outcomes required by the public sector, and not necessarily the outcomes the CSOs want to achieve. Hitherto the sector has differentiated itself by generally not wanting to be treated solely as a provider under contract..

Risk averse public bodies often specify very high levels of insurance (public liability, employer's liability and professional indemnity) to ensure that there is no residual liability for the authority. Higher levels of cover are considerably more expensive and deter smaller CSOs from bidding for contracts.

The County Council has sought to encourage CSO growth by tendering services with favourable payment terms of a 10% advance payment the start of each contract year followed by 12 mid-monthly payments. This eases cash flow for small providers who could otherwise find this a problem.

The County Council has also sought to help the sector by retaining the exceptional costs clause when moving from grants to contracts allowing for additional payments where there were exceptional circumstances, such as a vehicle engine replacement or long term sickness of members of staff.

### **Accessibility of public service markets to CSOs**

Hampshire County Council welcomes the Government's target that in future 25% of central government contracts should go to SMEs, removing barriers that currently prevent smaller businesses and organisations from tendering for contracts.

There is scope for a much more joined up approach to guidance to procurement guidance. Guidance on procuring with SMEs and working with consortia should be simplified and where there is duplication documents should be deleted or amalgamated.

CSOs have difficulty with the cost of borrowing and often need very favourable loan terms to service the debt. The Big Society Bank needs to be more proactive, lending at realistic rates than the current 'big four' banks, if it is to enable CSOs to expand their businesses and take on a larger role in the provision of public services. In the current uncertain climate CSOs may be reluctant to access loans with no definite guarantee of ability to maintain repayment.

Smaller CSOs wishing to grow need to have the appropriate skills and experience within their organisations in order to do so. There is a need to build social capital, ensuring that appropriate and affordable training is available to the sector.

Commissioners should be trained to have, for example, a clear understanding of the circumstances when it may be preferable to award a low level grant rather than a contract.

### **Reducing bureaucratic and regulatory burdens**

Any steps to eliminate red tape and bureaucracy are welcome and simplifying the tendering process should attract smaller businesses or CSOs to submit tenders. However this does seem to be in contradiction to the overarching EU Procurement Directive requirements (such as ensuring transparency of the tender process by adhering to a set timetable and evaluation regime)

In discussions with CSOs, TUPE and pension issues have been raised and it is clear that the sector is concerned about having to consider these liabilities.

Given that the TUPE regulations are there to provide statutory protection to employees, the liability and risks are very difficult to reduce. Risks could be shared between the commissioning body and the contractor in some way.

In the current financial climate, bidders/contractors are worried that contracts may not run to their full term or may not be renewed when they expired, leaving the last contractor bearing all the redundancy costs. The legal advice given to the public sector is that it must not provide advice on TUPE to bidders who have to obtain their own specialist advice, which can be expensive. The relative lack of TUPE case law since the change in the regulations (and some of the case law is conflicting) means that there will always be an element of risk for bidders, which could include expensive legal cases if an employee, for example, claims unfair dismissal.

Similarly, matching pension scheme costs are also high. CSOs should have access to specialist advice, ideally at modest cost.

### **Assessing social value**

It is extremely difficult to obtain accurate information on the social value of the work of CSOs and to measure their social impact. The County Council recognises that CSOs provide services that add value, but CSOs are often unable to realistically quantify or monitor the actual social value they bring to a service. Locally and nationally the Voluntary and Community Sector has struggled to come up with any formula that truly reflects the appropriate value that they add in these areas and models such as Social Return on Investment are open for interpretation.

There seems to be the underlying assumption in the consultation document that provision of public services or participation by Civil Society Organisations (CSOs) is a good thing in itself. In our experience the outcome of commissioning/procuring community services from CSOs can vary considerably in the same way that there are commercial providers that are caring, focused and offer good value, while others do not reach those same standards. In terms of involvement in the wider commissioning process there can also be conflicts between the interests of CSOs and indeed unhelpful pressures which need to be recognised and balanced.

Some medium to large sized CSOs already hold public sector contracts and wish to expand further. There are other CSOs, particularly smaller ones, that are clearly focussed on their traditional voluntary sector role and for whom tendering for contracts or forming a consortium with others would be a major culture shift. Some CSOs will make that transition and others will not. The danger is that some sectors of the market could become dominated by a small number of providers (whether individual CSOs or consortia), who may not necessarily always offer particularly good value.

### **Conclusion**

Government need to recognise that the local government system to support CSOs needs proportionate and appropriate checks and balances and needs to respect local democratic representation. Local government needs to have a strategic view of standards and how services are provided and be accountable for them. We hope that the forthcoming Public Sector Reform White Paper will reflect these points.