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BSA - The Business Services Association

Consultation Response - 'Commissioning Green Paper'

January 2011

The BSA - The Business Services Association - represents leading UK organisations providing business and outsourced services in the private and public sectors. A list of our members is provided as an Annexe. The UK outsourcing industry is estimated to be worth in excess of £100 billion and directly employs more than 6 million people. BSA members have a long history of operating in the public sector, delivering services to hospitals, schools and the Ministry of Defence, as well as across local government sectors.

We welcome the opportunity to respond to the Cabinet Office's Commissioning Green Paper. We have responded to the question most relevant to our membership - Question 2.

How could government make existing public service markets more accessible to civil society?

Introduction

The BSA welcomes the government's drive to increase diversity of provision in public services. Mutuals are already a significant sector in the UK economy, with annual revenues exceeding £95 billion per year, employing 940,000 people around the country.¹ Current government policy is set to increase the role that mutuals already play in delivering UK public services.

We believe the best way to improve public services is through competition. Academic literature suggests the cost savings from competitive tendering are typically between 10% and 30% with "no adverse affect and sometimes an improvement in service quality" - including where an in-house team wins that bid.²

This response makes the following points:

1. Reducing barriers to market entry is crucial if new providers are expected to compete.
2. Private providers are well placed to assist civil society organisations with the financial and property resources they require in order to enter public service markets.
3. Private providers can help civil society organisations be lawful and efficient in their management practices, enabling them to grow and innovate.
4. Government must provide greater clarity on the legal and financial structures it anticipates civil society organisations taking for business to engage with this concept.

¹ Mutuo - The mutuals yearbook - 2009.

² Dr DeAnne Julius - Public Services Industry Review - 2008.

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2nd Floor, 130 Fleet Street, London, EC4A 2BH

T: 020 7822 7420 F: 020 7786 6309 www.bsa-org.com

1. Reducing barriers to market entry is crucial if new providers are expected to compete

As previous studies have argued, “for new start-ups within the private sector, or for shared ownership organisations competing with the public and private sectors, much depends on the fairness of the commissioning environment.”³ There are three main barriers which must be tackled if new providers are to compete for public sector contracts - the high costs of procurement, access to market data and transferring public sector workers.

BSA members have considerable experience of procurement across the public sector. In many cases it is overly-lengthy, complex and rigid. For example, procurements for private prisons are estimated to cost £1 million per bid.⁴ Similarly, under the now defunct Building Schools for the Future (BSF) programme, the process of setting up a Local Education Partnership was estimated to run to between £3 and £5 million for local authorities and private providers combined.⁵

The BSF process also highlights the potential for procurement reform to reduce bid costs. The reduction of average procurement length from 82 to 75 weeks and limiting the number of potential school designs submitted to two (rather than four previously) is estimated to have reduced costs by £3 million per bid.⁶

The government has stated its intentions to move to outcome-based contracting. However, to do this some serious issues must be addressed, such as how to improve government procurement skills, how to procure on the basis of long-term value rather than short-term cost, and how to overcome the risk-averse culture that exists.

Increasing access to data within government can also reduce bid costs and expand opportunities for civil society organisations to enter public service markets. Transparency is now the key theme to improving public service delivery and the government has taken steps to increase access to data.⁷ However, too often public services which are provided in-house are not tested for value for money against potential external providers. This leads to inadequate data and a lack of cost benchmarking which makes it harder for external providers to demonstrate they can provide a better-value service. A recent National Audit Office report has highlighted the weakness of the NHS in this regard⁸ whilst other studies have suggested that “*extremely poor data*” and “*base administrative systems*” have allowed some NHS in-house providers to undertake predatory pricing strategies by shifting “*their overhead costs around to remove costs from services where they will want to win competitive contracts, downloading them on to others where there is no competition.*”⁹

A further barrier is the cost of transferring public sector pension liabilities. The government is aware of this and Lord Hutton is due to finalise his recommendations in the early part of this year. The BSA has made recommendations on this which would benefit employees, government and external providers.¹⁰

2. Private providers are well placed to assist civil society organisations with the financial and property resources they require in order to enter public service markets

With minimal trading history and/or experience of running an organisation, civil society organisations are likely to find it difficult to secure the resources they need to flourish and grow. For example, a recent study showed that one-third of civil society organisations reported

³ Office for Public Management - New models of public service ownership: A guide to commissioning, policy and practice - August, 2010.

⁴ Centre for Social Justice - Locked-up Potential: A strategy for reforming prisons and rehabilitating prisoners - 2009.

⁵ CBI - Submission to the House of Commons Education and Skills Committee - 2006.

⁶ Policy Exchange - Building Blocks? An investigation into Building Schools for the Future - 2009.

⁷ Cabinet Office - Government spend data published in drive to create the most transparent and open government ever - November, 2010.

⁸ National Audit Office - Management of NHS Productivity - December, 2000.

⁹ Civitas - Refusing Treatment - 2010.

¹⁰ See www.bsa-org.com for more details

difficulty in accessing finance for investment.¹¹ Secure Healthcare, a once-successful mutual provider of health services to prisons collapsed in 2009 due to inability to either raise capital or secure lending.¹²

Whilst specific sources of finance do exist such as FutureBuilders and Co-Operative Community Finance, studies have suggested these remain inadequate.¹³ The proposals in the Green Paper to create a Big Society Bank would go some way to mitigating this barrier to market entry. However as the Green Paper itself states it is unclear how much funding such a bank would be able to provide.¹⁴

The government will need to ensure that sources of finance are available to civil society organisations delivering public services. A potential model would be to encourage a partnership between established private providers and emerging civil society organisations. This would increase the confidence of banks to lend.

Public concerns about the potential for 'two-step privatisation' based on the way in which building societies evolved following the 1986 Building Society Act which permitted demutualisation, could be reduced by, under the above arrangement, retaining assets within the public sector under an 'asset lock'.¹⁵ The experience of the Central Surrey Heath NHS Trust suggests that PCT provider arms are able to make the transfer into employee ownership without having to take responsibility for capital assets.¹⁶

In addition to finance, a basic requirement for a civil society organisation to flourish is access to property. Discussions with BSA members have revealed an appetite to participate in the development of civil society organisations. They have available property, spread nationwide, which would allow such organisations to join together in one space, share best practice, and access economies of scale to allow them to run more efficiently.

3. Private providers can help civil society organisations be lawful and efficient in their management practices, enabling them to grow and innovate

The management and bureaucracy associated with delivering a public service is unlikely to be what motivated employees to establish a civil society organisation. Skills such as human resources management, contract negotiation, property management, IT systems and internal audit are complex tasks in which inexperience can not only dampen enthusiasm and hinder the growth of civil society organisations, it could also result in them breaking the law.

Private providers experienced in working with clients delivering public services could work with civil society organisations to ensure that the fundamental requirements of such organisations are met, rather than placing *"strain on a small organisation with an inexperienced management team."*¹⁷

The government has ensured business mentoring from organisations such as KPMG, PricewaterhouseCoopers and Turning Point as part of its 'pathfinder mutuals' programme.¹⁸ This is an encouraging development. However, the civil society sector has itself recognised that such support will be insufficient to tackle the day-to-day detailed problems which emerge from running a business for the first time. As a recent blog for the Social Enterprise Coalition website stated, new organisations will require *"a much deeper and more intensive set of external*

¹¹ Burns - The Employee Operated Experience - 2006.

¹² Patrick Butler - Mutual decision: Better healthcare or the end of the NHS? - *The Guardian* (November, 2010).

¹³ Demos - Reinventing the Firm - 2009.

¹⁴ Cabinet Office - Commissioning Green Paper - December, 2010.

¹⁵ Policy Network - Bringing mutualism back into business - December, 2010.

¹⁶ Nuffield Trust - NHS Mutual: Engaging staff and aligning incentives to achieve higher levels of performance - 2009.

¹⁷ Adrian Brown - The feeling's mutual - Institute for Government (November, 2010).

¹⁸ Cabinet Office, September 2010.

supports - around change management, rebranding, marketing, sales and value-chain management" in order to develop and grow.¹⁹

Enabling civil society organisations to purchase business services from specialist private providers could significantly ease their transition into the public services market.

4. Government must provide greater clarity on the legal and financial structures it anticipates civil society organisations taking for business to engage with this concept

Through discussions with BSA members, it is clear that an appetite exists amongst existing private providers of public services to engage with civil society organisations as they develop in the public service marketplace.

The potential benefits this engagement can provide are set out in points 3 and 4 above. However, both entering into a partnership with a civil society organisation to leverage finance and secure property (point 3) and offering business services at a competitive rate in a more conventional client-provider relationship (point 4) would both require financial outlay on the part of the private provider.

The government must therefore offer clarity about the financial opportunities contained within this sector. A civil society organisation can constitute a range of financial and legal structures each of which is subtly different. Crucially, private providers need to be able to make a profit if they are to engage with these organisations - either through partnership or the direct delivery of services.

The government therefore needs to provide more clarity in this area. The Conservative Party manifesto in the 2010 general election stated that civil society organisations would "*operate on a not for profit basis and fully owned by staff.*"²⁰ Following this statement, key questions where private providers require clarity include:

- Under such a model, would partnership between a civil society organisation and a private provider in the delivery of a public service be prohibited?
- If partnerships were permitted, would the private provider concerned be able to take a profit according to their share in the partnership, with the dividend stemming from the employee shareholding being reinvested in their local community?
- Will civil society organisations be able to outsource certain functions to a private provider (as a sub-contractor) if they chose to do so. In such an instance, would that private provider be able to make a profit?

¹⁹ Social Enterprise Coalition - Will the new public service mutuals succeed? - August 2010.

²⁰ Conservative Party - General Election Manifesto 2010 - April, 2010.

Annexe

BSA Members & Associates - January 2011

Full Members

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Capita
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Davis Service Group
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