

## **Discussion Paper for Supporting People Expert Reference Group**

### **Procurement implications for small, specialist and HA providers**

**19<sup>th</sup> January 2006**

#### **Purpose of the paper**

1. To raise the issues and implications of commissioning and procurement processes for small, specialist and HA providers;
2. To seek to clarify what options and choices are available for both commissioners and providers.

#### **Background**

A number of questions are being raised through provider networks both by Voluntary and community organisations and also Housing Associations about the procurement processes for Supporting People. The recently published '*Guide to procuring Care and Support services*' assists but doesn't address the key questions being raised, as it has a narrower procurement management focus rather than on the wider strategic implications of the process. In fact it creates its own dilemmas as the advice provided in a number of instances takes a more directive approach compared with advice given in the earlier paper '*Think Smart...think Voluntary sector! A Good practice guide on procurement of services from the Voluntary and Community Sector*'.

Reference to original sources from OGC overlaid by different Local Authority standing orders are complex to follow for organisations without the expertise of corporate procurement professionals. This can mask the opportunity to challenge, where interpretation provides optional approaches.

#### **Key Issues**

- **Potential conflict with policy commitment to third sector and voluntary and community sector service provision**

Although the procurement guidance for care and support clearly draws on the 'Think smart...think voluntary sector' guidance, it takes a stronger view on procurement approaches and strongly implies that competitive tendering is the preferred option in order to ensure VFM for care and support. It distinguishes between a commissioning strategy and procurement strategy but omits any reference to an impact assessment on the wider business of the providers, in particular those who are specialist accommodation and support providers. This gives commissioners the impression that the critical issue for them is on a contract by contract basis without reference to wider strategic objectives of retaining a diverse market and customer choice. Many third sector organisations make innovative services stack up through a variety of

funding sources both statutory and charitable, each with their own targets and monitoring arrangements, for example Homelessness and LSC grant funding for prevention work including lifeskills and EET. Isolated tendering arrangements for individual service elements can jeopardise other service inputs.

- **Wider strategic implications for the third sector and the market**

Within the guidance, there is an implicit assumption that accommodation related support in specialist accommodation can be tendered separately and the accommodation provider will continue to remain viable and provide the accommodation and housing management should they lose the support contract. This may be the case for some generic providers who already have managing agents providing support. It is not however the case for many small and specialist providers whose entire raison d'être is to provide a holistic approach to their residents. There is no consideration of the impact that the loss of accommodation might have, should the provider no longer remain viable. No guidance tackles this specific issue which is of major concern to providers.

There are a number of potential scenarios:

Eg1 - the provider has provided satisfactory services during the period of the SP 'contract' which has come to an end. No provision was made in the initial contract for unlimited extension. The provider owns the accommodation and wishes to continue to provide support services. They meet cost, quality, outcomes and strategic relevance criteria as laid out in the Commissioning Body's VFM framework.

The care and support procurement guidance does not cover this issue but implies that opening up competitive tendering is the preferred route. **What are the procurement options and what role does the accommodation owner have in the commissioning process? Can they be both joint commissioner and provider?**

Eg2 – the provider has not satisfactorily met the SP contract criteria and the commissioning body no longer wishes to commission support from the provider, however the accommodation is a significant resource in the area. The provider's viability would be threatened if support is decommissioned. **What is the accommodation owner's role in the commissioning process?**

EG 3 – The provider's overhead costs and viability are dependent on a spread of provision across a number of Local Authority areas, each with different approaches and timescales for procurement of existing contracts due for renewal. **How are the overall impacts considered for tenants, for investors and for regulators such as the Housing Corporation as well as for housing supply, which is likely to have public as well as private investment.**

- **Grant or contract – has this really been bottomed out?**

Most commissioning authorities have taken the approach of issuing steady state contracts which provide certain securities during the contract period but are likely to bring the commissioning authority and its providers within EC procurement requirements. Extensions and exemptions are likely at some point to run out, we are told.

The guidance makes a distinction between a grant programme and a procurement process. It also acknowledges that these lines are increasingly blurred as grant awarding programmes become more demanding both in terms of specification and application and monitoring and delivery. Nevertheless, large awards over and above EC threshold values, are still made by central and local government through grants and service level agreements. The procurement of care and support guidance implies that contracts are the only route for SP services, however, has this really been tested? Birmingham City Council has recently invited applications from third sector providers for major contributions to homelessness prevention over a three year period. Advice from their legal and procurement experts was that as this was a specialist segmented market, it was appropriate to commission through the grant awarding approach rather than procurement and contracts. There seems little difference between this type of service and SP services. Both sums are awarded via central government grant programmes to Local Authorities to support them in achieving their community objectives. Is there any requirement in the guidance to LAs which requires SP to be managed through contracts.?The latest consultation guidance to LAs refers to agreements not contracts with providers. **Are we therefore promoting a ‘one club approach’ when other options are possible?**

- **Consultation with tenants**

There is little mention anywhere and not in the procurement guidance, of consultation with tenants about whether or not their support service should be subjected to competitive tendering. Whilst tenants of supported accommodation may also be support service users, they are unlikely to be aware of the inter-relationship between their housing management and support package. **Should they not be given the opportunity to have a say in the procurement approach proposed?**

- **TUPE**

There is little mention in the guidance of TUPE and the impact of this on procurement of housing related support in accommodation based projects, particularly when posts are split between housing management and support and staff are trained to deliver in both areas. This adds a layer of complexity which is not always found in other service areas. It also adds to costs of change and confusion for residents.

## **Summary**

Providers are very committed to achieving Value for Money, fairness and transparency. Housing Associations in particular have efficiency targets to meet. Indeed, this assists and supports their business objectives and many

are actively participating in developing service improvement and VFM approaches. Whilst they recognise that there are procurement regulations, there is considerable inconsistency in the understanding and interpretation of those regulations. The recently issued guidance does not address some of the key questions raised by providers identified in this paper. It may be that the VIP programme will address them but it would be helpful to have a discussion at the reference group meeting in order that experience can be shared and advice provided.

Jean Templeton  
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