



Communities and Local Government Committee's inquiry on Local Government Procurement

Written evidence submitted by the National Council for Voluntary Organisations (NCVO)

About NCVO

NCVO champions and strengthens the voluntary sector, with over 10,000 members, from the largest charities to the smallest community organisations. Alongside our sister councils in Wales, Scotland and Northern Ireland, we make sure the voluntary sector can do what it does best. www.ncvo-vol.org.uk

NCVO convenes the Public Service Delivery Network, Special Interest group of sub-contractor organisations involved in the Work Programme, and a Payment-by-Results working group that will be making recommendations in 2013.

Summary

- NCVO believes that local government procurement continues to be primarily driven by price rather than delivering true value for money.
- NCVO is concerned that only contracts above EU procurement thresholds are covered by the Social Value Act's provisions. Plans to increase EU procurement thresholds to €750,000 (circa £600,000) are likely to exacerbate this situation.
- Large contracts requiring capital (such as Payment by Results (PbR) contracts or contracts at significant scale) continue to present problems for the VCSE to participate in public service delivery.
- Many of the issues associated with developing effective procurement strategies lie not with commissioners alone, but with how commissioning and procurement teams work together.
- Currently there is no common standard for local authorities to report spending data. This lack of data can hamper effective policy formation and improvements to procurement.

Introduction: The voluntary sector's role in public service delivery

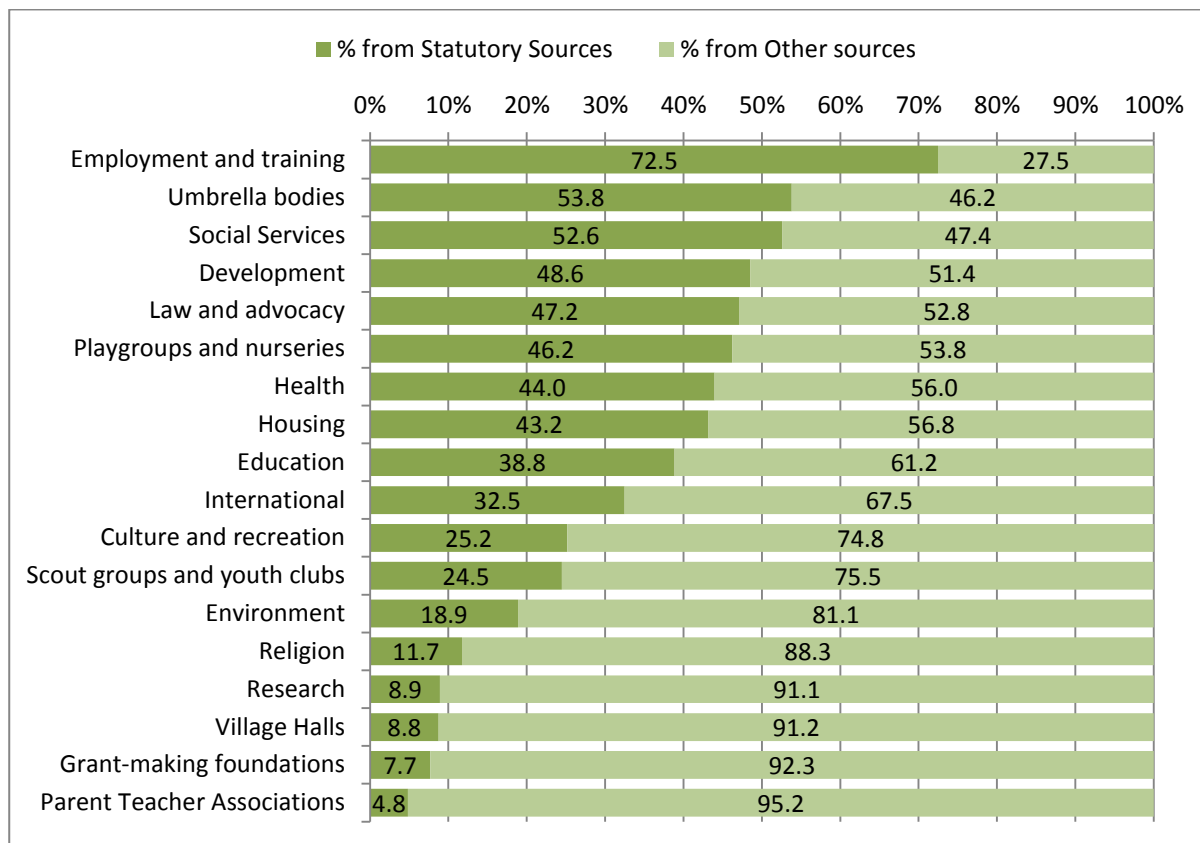
The voluntary sector has been involved in public service delivery for many years. As such, we have extensive experience of local government procurement policies and practice.

Around a quarter of voluntary sector organisations receive funding from government. In 2010/11 the voluntary sector received £14.2 billion (37 percent) of its income in the form of contracts and grants from statutory bodies. 50% (£7.0 billion) of this came from local authorities, highlighting the important relationship that exists between the two sectors.

Since 2000, the voluntary sector's statutory income has grown faster than total public spending, suggesting that the voluntary sector has become an increasingly important contributor to economic growth and a significant actor in the provision of public services.

In 2010/11 (the latest year for which data is available), the voluntary sector provided services across a broad range of areas:

Income from statutory sources, by sub-sector, 2010/11 (% of each sub-sector's income)



Source: [NCVO/TSRC, Charity Commission](#)

Further information on the voluntary sector can be found in NCVO's UK Civil Society Almanac: <http://data.ncvo-vol.org.uk/>.

Our report *Open Public Services: Experiences of the Voluntary Sector* provides recent case studies on: commissioning, supply-chain management, sharing information, managing scale, new forms of finance, managing risk and ensuring quality.

http://www.ncvo.vol.org.uk/sites/default/files/open_public_services_experiences_from_the_voluntary_sector.pdf

Q1. To what extent is local government procurement organised to deliver value for money and social, economic and environmental objectives, including stimulating the local economy? To what extent are local authorities achieving the involvement of local residents in delivering value for money? To what extent are local authorities able to develop long-term relationships with contractors?

1. NCVO believes that local government procurement continues to be primarily driven by price rather than delivering true value for money. Despite the Social Value Act 2012 now placing a legal requirement on local authority commissioners to account for the social, environmental and economic

well-being of an area when designing a service (i.e. pre-procurement) and deciding to award a bid, feedback from our members, Compact Voice, the Public Services Delivery Network and voluntary sector partners suggests this is not happening nearly enough.¹ Importantly, local authorities are not obliged to monitor or report on the implementation of the Act so it is difficult to accurately evaluate the extent to which procurement is taking account of value for money and social outcomes.

2. Through discussions with providers, commissioners, procurement staff and independent solicitors, we have identified the following barriers for why local authorities often prioritise price over value for money and social outcomes:
 - There is often a disconnect between the two key parties involved in leading the procurement of public services: the commissioning team and procurement team. Commissioners seeking to achieve broader social value or trial new methodologies, such as outcomes-based commissioning, can have their business case blocked by procurement or finance teams.
 - Failure to involve all relevant actors (providers, commissioners, procurement, contract managers) in the design stages of commissioning, when need is first reviewed and commissioning solutions discussed.
 - Failure to adequately communicate the problem and solution being procured, and the outcome to be achieved.
 - Failure to systematically map risks in procurement, and agree monitoring and management of these risks.
 - Failure to acknowledge across commissioning authorities that risk is a necessary part of change and improvement in commissioning should be valued.
 - Limited or no engagement of procurement and finance teams directly with providers, so they do not understand the commercial context and structures of their provider markets.
3. NCVO is also concerned that only contracts above EU procurement thresholds are covered by the Social Value Act's provisions.² If public service contracts below EU thresholds are not subject to the Act's provisions then local authorities will not feel obliged to consider social value during procurement processes. This has implications for the charities looking to deliver these contracts (many of whom are already feeling the brunt of cuts to local authority spending) and importantly, the quality of the public services being procured.
4. A lack of available government data makes it difficult to ascertain how many contracts fall below the EU thresholds. However, FOI requests made by Compact Voice in 2012 show that of the 124 local authorities that disclosed having contractual relations with the voluntary sector, 42 (34%) said their *total* spending on VCS contracts fell below the EU threshold of £173,934.³
5. There are currently plans to increase EU procurement thresholds to €750,000 (circa £600,000)⁴. While this is a positive development for the VCS in that fewer local government contracts will need to be

¹ A recent survey by Compact Voice found that almost 90 percent of voluntary sector respondents believe that public bodies will still focus on lower cost rather than social value when funding
<http://www.compactvoice.org.uk/blogs/compact-voice/2013/08/07/local-compact-survey-results-2013-briefing-3-social-value>

² These thresholds are central government and NHS contracts worth more than £113,057 (€130,000) and local authority contracts worth more than £173,934 (€200,000).

³ Compact Voice - Freedom of Information Act responses 2012 <http://www.compactvoice.org.uk/foi2012>

⁴ Report on the proposal for a directive of the European Parliament and of the Council on public procurement

advertised through the Official Journal of the European Union (OJEU)⁵ it could have the perverse effect of even fewer contracts being captured by the Act. If the proposed threshold increase is applied to the 2012 Compact Voice FOI requests, 70 (56%) local authorities would have fallen below the EU threshold in their *total* contract spending to the VCS. Furthermore, it is important to note these figures mask the extent to which individual contracts below the EU threshold occur within the total local authority spends that are above £173,934.

6. If the government is serious about embedding social value in local government procurement processes - as indicated by its ongoing commitment to the Compact and Best Value guidance – it should amend Section 1 (13) of the Social Value Act to make clear that local government is legally obliged to consider social value when procuring all public service contracts, irrespective of financial value. This change could make a big difference to the efficiency of public services and the lives of the people that use them. It should also make plans to put in place mechanisms to support and monitor the implementation of the Social Value Act by local authorities.
7. NCVO does not hold data on the direct involvement of residents in public procurement. However, it is worth noting that the VCSE is often born of the community when needs are unmet. As such the VCSE ‘sector’ is ideally placed to identify local needs and shouldn’t be viewed only as potential providers.^{6,7} However, while involving the VCSE at each stage of commissioning and procurement is a key method of engaging communities and residents, this does not mean that engagement with the sector can be a proxy for engaging all residents.
8. There are currently significant barriers that restrict the quality and efficacy of relationships between commissioning authorities and VCSE providers. These include:
 - More decisions based on price, rather than quality and value for money. For example, a recent NPC report highlighted an example from Bradford. The City Council had reduced the number of homelessness services providers from 11 to 4, and required providers to demonstrate their financial strength while squeezing pricing. With contracts becoming leaner, this resulted in fewer VCSE providers deciding to bid.⁸
 - Supporting a diverse and effective market is essential for achieving value for money in local government procurement. While many commissioners express a desire to avoid creating oligopolies of large providers, funding cuts are driving them to commission at scale, putting system efficiency before frontline quality. A 2013 VCSE survey by Locality found that nearly 42% of respondents believe contracts have become larger in the last five years and a further 52% expect them to become larger still over the next five years. 80% said this would provide them with less opportunities and a lower range and quality of services in their area.⁹

<http://www.europarl.europa.eu/document/activities/cont/201301/20130110ATT58822/20130110ATT58822EN.pdf>

⁵ Official Journal of the European Union (OJEU) <http://www.ojec.com>

⁶ For a step by step guide to harnessing best practice and innovation from the voluntary sector throughout the commissioning process see http://www.ncvo-vol.org.uk/commissioning/commissioner_checklist

⁷ A recent report by Nesta ‘Networks that work: partnerships for integrated care and services’ highlights how the VCSE brings particular expertise in community engagement, responding to the needs of service-users and using volunteers and peers to deliver services

http://www.nesta.org.uk/publications/assets/features/networks_that_work_partnerships_for_integrated_care_and_services

⁸ <http://www.thinknpc.org/publications/governance-in-the-new-commissioning-landscape/>

⁹ The survey is yet to be published online. However, its findings can be provided to the committee on request.

- Large contracts requiring significant capital (such as Payment by Results (PbR) contracts or contracts at significant scale) can squeeze out VCSE providers or lead organisations to seek loans at rates less favourable than those the public sector can acquire. Compact Voice’s 2013 survey of Local Compacts found that 42.1 percent of voluntary sector respondents believe that the capital requirements and financial risks involved with PbR ‘completely’ limit the sector’s capacity to compete for contracts with 28.2 percent of local authority respondents agreeing.¹⁰
- Commissioners need to engage with and facilitate development of their local provider markets. Providers need a clear steer about future commissioning opportunities, plenty of notice if certain types of structures that will be required to bid (e.g. consortia), and information about their market position to help them decide whether to develop new services and take on investment.
- PbR contracting is being rolled out without testing viability and impact on the market beforehand. Without sufficient research and learning, commissioning authorities can exclude VCSE providers or impose disproportionate and wasteful contracting processes. It remains true that in many cases (for example, pilot or innovation projects) grant funding would be more appropriate and efficient than competitive contracting.
- Poor quality decommissioning without proper explanation. VCSE providers are sometimes left to conclude that decisions about decommissioning have been made on the basis of short-term savings, rather than a strategy to improve service provision and quality. This can lead to providers leaving the market.

Q2. Do authorities take sufficient advantage of collaborative and joint procurement opportunities, including those available from central government? In addition, the Committee would welcome information on PFI contracts and their operation with local government.

9. NCVO has long argued that procurement of public services could be improved with more collaborative and joint commissioning across policy areas and between public bodies. Whole Place Community Budgets show great potential for transforming services and we are encouraged by government plans to extend Community Budget-style pooled spending to 18 councils across nine areas with support from the government’s new Public Services Transformation Network. Other examples include the Big Lottery Fund’s Improving Futures programme which has sought to commission whole-family services from a range of VCSE and public sector partners working together. However the pace of further development has been somewhat slow. NCVO believes that collaborative commissioning would benefit from further piloting, evaluation and development.

Q3. How can local authorities access the skills, expertise and capabilities to implement effective procurement strategies, including value for money and social and economic objectives? More specifically, does local government have sufficient understanding of its procurement expenditure and the markets for goods and services to deliver quality procurement strategies—locally and regionally. If not, how can deficiencies be addressed?

10. The Public Administration Select Committee report into government procurement recently found that civil servants often lack an understanding about how to gather requirements, evaluate supplier capabilities, evaluate relationships or specify outcomes when procuring services and goods¹¹. At a local

¹⁰ <http://www.compactvoice.org.uk/blogs/compact-voice/2013/08/13/local-compact-survey-results-2013-payment-results> The survey also found that 87 and 82 percent of voluntary sector and local authority respondents respectively do not believe that PbR contracts will improve service quality.

¹¹ <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublic/123/12302.htm>

level, greater involvement of VCSE in the pre-procurement service design could help to address these issues.

11. With their close connection to local communities and service users VCSE organisations can offer expertise to local bodies in:

- enabling community engagement and consultation
- identifying new and emerging needs within the community
- providing and identifying early intervention and preventative services that work for individuals and marginalised communities
- mobilising local people as volunteers.

12. NCVO's on-going research into the viability and challenges of PbR has highlighted issues around commissioners' understanding of and engagement with provider markets. While of course not universal to all authorities, these issues may be indicative:

- Commissioners often hold misconceptions about the probity of speaking with providers at the pre-procurement stage. This continues despite 'mythbusting' guidance from the Cabinet Office.¹² As a result, contracting approaches and requirements may be selected that are not appropriate for the provider market. What is needed is a more systematic approach to gathering market intelligence pre-procurement and greater co-designing with the market.
- Commissioners lack an understanding of the commercial and governance arrangements of VCSE organisations and how this affects attitudes, management of risk and loan finance. A basic understanding of charity law and restrictions on charities would help.
- Poor data creates challenges for constructing performance baselines and outcomes targets. This can result in targets being set that skew provider behaviour ('gaming') away from the originally intended outcome.
- Misuse of contracts as the driving mechanism for relationships. Contracts should convey agreed values following a period of meaningful dialogue between the relevant parties. Variations during service delivery (for various reasons) are commonplace, so it is important that contracts are constructed by both sides to provide a flexible and supportive framework for when change occurs.

13. Many of the issues with outsourcing appear to stem from how commissioning and procurement teams work together. Procurement professionals are obviously critical in achieving better value for money in public procurement, but we would recommend that they are involved in earlier stages of commissioning process to ensure that the contractual approach will fulfil the outcomes intended (including social value considerations).

14. Feedback from participants of the Cabinet Office's Commissioning Academy suggests the initiative has not yet done enough to address the disconnect between procurement teams and commissioning teams. The Commissioning Academy at the current rate will only reach a limited number of local commissioners in the coming years. We would recommend extending training to a wider audience – and understand that DCLG has been considering a web-based approach to doing this.

15. Local government would benefit from external recruitment or secondments from both the private and voluntary sectors, in order to bring in specialist expertise. NCVO runs a work shadowing programme

¹² <http://procurement.cabinetoffice.gov.uk/policy-capability/key-procurement-policies/procurement-growth>

that pairs approximately 1000 staff from the voluntary sector and government staff from nine government departments: DEFRA, BIS, MoJ, the Cabinet Office, DCLG, DECC, DfE, DWP and the Home Office. This scheme is aimed at civil servant in central government, but its success¹³ suggests a similar initiative at the local level would greatly improve understanding and practice on both sides. We are currently in negotiations with Birmingham City Council to develop a local work shadow scheme with their local voluntary sector and would welcome the opportunity to work with DCLG to broaden the scheme across other local authority areas.

Q4. To what extent is risk in local government procurement and contracting understood and managed and contracting strategies adopted, which are tailored to product and supplier market places? More specifically, do local authorities maintain and operate effective client management functions and have they entered contractual arrangements which allow the flexibility to meet changing circumstances such as budget reductions or changes in the way a service has to be delivered?

16. A consequence of the Government's Open Public Services agenda has been the large-scale transfer of risk to VCSE providers. The effects of this are most evident in the Payment by Results (PbR) mechanism. This model often means that providers are required to shoulder the financial cost of delivery until payment for outcomes is received, and 'pick up the bill' for pensions and other liabilities.¹⁴ This creates particular challenges for VCSE organisations which generally have less working capital and access to finance than their private or public sector counterparts.
17. In a series of recent interviews with VCSE providers delivering PbR contracts NCVO found that most contracts contained more – rather than fewer – terms that transferred risk to the provider from the commissioner. Examples of this include overly prescriptive service specifications (while still demanding significant increases in results); disproportionate indemnities against failure to deliver; or increased termination rights on the part of the commissioner. Despite this, VCSE providers are often expected to innovate in their service delivery to deliver better quality outcomes.
18. Procurement law exists to ensure probity of process, not to ensure quality of service outcome. This can lead to risk aversion – particularly around supplier dialogue and engagement - that limits the opportunities for innovation or co-design that could result in better outcomes. NCVO's current research on PbR contracting has heard many providers stating that the contracts and processes they have entered into have been disproportionate or unviable because - either in part or in whole - of their commercial structuring. These situations arose in situations where the contracting authority failed to enter into dialogue with the supplier market before developing their contracting strategy. Successful PbR commissioners also echoed the importance of meaningful pre-procurement dialogue and research.
19. Feedback from our members suggests local authorities that limit pre-procurement dialogue also tend to struggle to maintain and operate effective client management functions, including negotiating variations within contracts. Contracts set out shared objectives and terms between the contracting parties – but should not be seen in isolation from the need for good, mature relationships with the supplier. This is particularly important to enable in-term variations and amendments to take place,

¹³ <http://www.ncvo-vol.org.uk/workshadow>

¹⁴ These issues and others were identified in an NPC report 'Governance in the new commissioning landscape' <http://www.thinknpc.org/publications/governance-in-the-new-commissioning-landscape/> and a report on Charities' experiences of public service commissioning 'When the going gets tough' <http://www.thinknpc.org/publications/when-the-going-gets-tough-2/>

where improvements could be made to the service; we have been working in this area to develop market stewardship principles with key VCSE and private sector partners.

20. Freedom of Information requests made by Compact Voice show that 71 out of 141 (50%) local authorities that responded disproportionately cut VCSE grant funding in 2011/12, with little discussion about the risk or reward of such reductions. This is despite DCLG's statutory Best Value guidance stating that disproportionate cuts should not be made. Compact Voice also found that only 59% of local authorities that responded reported holding consultations on changes to policies and funding, with 32% reporting consultations less than 12 weeks in duration.¹⁵ Without appropriate consultation or impact assessments the risks to voluntary organisations and their beneficiaries are unlikely to be fully understood.¹⁶

Q6. Is local authority procurement fully transparent, audited effectively and does it provide appropriate mechanisms for redress? Specifically, are the arrangements for securing the accountability of procured services and goods to local authorities and local residents adequate and effective? More specifically, to what extent are local authorities able to provide assurance to central government that value for money (in the broadest sense of the term) is delivered?

21. Currently there is no common standard for local authorities to report spending data about its procurement activities – i.e. contracts and grants - with the voluntary sector. To address this lack of data Compact Voice each year submits FOI requests to 352 local authorities¹⁷. While we are encouraged by DCLG's consultation in late 2012 on improving local authority data standards, we are still awaiting response and action.
22. NCVO strongly believes that open and transparent procurement data is essential for effective policy formation, driving improvements in procurement and providing accountability to the taxpayer for the performance of public services. Given the role public procurement can play in enhancing local economies, we urge Government to make such data more freely available. This will enable Government to track the value of SMEs and the VCSE in local procurement and to support procurement – where necessary – which achieves local growth and greater value for money.

¹⁵ Compact Voice (2012) Freedom of Information Responses <http://www.compactvoice.org.uk/foi2012>.

¹⁶ A 2012 survey by New Philanthropy Capital shows that cuts to charity funding have left 65% of respondent charities either expecting to close services or already closing services, and nearly three quarters have made redundancies or will do in the next 12 months. 62% of respondents also claimed to have used their reserves or plan to use them to cover shortfalls in income. <http://www.thinknpc.org/publications/when-the-going-gets-tough-2/> p.4

¹⁷ <http://www.compactvoice.org.uk/foi2012>