

The Complete Guide to

Surviving Contracts

for Voluntary Organisations

DSC

**Alan Lawrie
Jan Mellor**

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Foreword

For any charity, it is likely that at some point you will be offered the chance to undertake an activity which will be funded through a contractual arrangement. Indeed, over the last decade, that likelihood has increased significantly as the nature of statutory funding has both increased and become more dependent on conditions.

For the charity, its staff and trustees, the prospect of contract income can be extremely attractive. It may offer the opportunity to deliver that project, or employ that member of staff that really allows you to achieve your goals. It may be the stepping stone to a larger, more influential organisation. On the face of it, writing a tender for funds with four, five, six or even (rarely) seven figures, looks a hell of a lot easier than a tin rattle outside Tesco in the rain in November raising £25.40.

However, the possibilities do have their down sides. The risks are numerous – have you got the funding balance right? Have you built in sufficient overhead costs? Have you undersold yourself? Have you oversold yourself?

Perhaps the biggest question is – have you considered the impact upon your organisation? I know of organisations that started with just a couple of contracts, then it mushroomed, and suddenly it's 85 per cent of their income. Is that what you want to do as a charity? Might this threaten your independence? In the drive for more money, do you run the risk of losing sight of your values? Oh, and when was the last time, you tin-rattled in Tesco?

That's why this book is so timely. I know from working with Mind's 180 local associations, that the realities of contracting are both exciting and frightening, opportunities and risks. As the recently published *NCVO UK Voluntary Sector Almanac* showed, it's the only area where income generating is growing for the voluntary sector, and it looks like it's here to stay. In my personal experience, the organisations I've worked for have managed to be clear that they may well receive contract income, but it doesn't compromise their campaigning work.

You can't ignore it, but if you decide to play the game, you have to go into it knowing the rules and with your eyes wide open. So read on and enjoy!

Paul Farmer
Chief Executive
Mind

Introduction

This book aims to help managers and trustees of voluntary organisations navigate their way through the various decisions, concepts and implications of bidding for and negotiating contracts and agreements with public sector organisations.

It is mainly based on interviews with managers who have successfully (and in some cases unsuccessfully) been involved in contracting, and with commissioning staff in local authorities, the NHS and other organisations. While researching the book we came across a lot of confusion, anxiety and over-involvement in detail, all of which obscured managers' engagement in the bigger picture. At the heart of the book therefore is the message that if voluntary organisations choose to bid for contracts they must do so in a way that protects and develops their independence and ensures the longer-term sustainability of the organisation. No voluntary organisation wishes to end up as little more than a subservient and low cost sub-contractor of the public sector. We hope that this book will play some part in helping your organisation avoid such a scenario.

We are grateful to all the individuals who gave up their time to share their experiences, and to our various consultancy clients and participants in training programmes who have helped us to shape our ideas.

We would particularly like to thank Lynne Laidlaw, London VCS Project Manager at Clinks, for commenting on an early draft and Lawrence Simanowitz and Mairead O'Reilly, partner and solicitor respectively, at Bates Wells & Braithwaite for their comments and advice.

Jan Mellor
Alan Lawrie
October 2007

Jan Mellor and Alan Lawrie are independent management consultants specialising in management and organisational development.

Approaching contracts

The idea of voluntary organisations bidding for and negotiating contracts with statutory bodies has generated a considerable amount of debate, controversy and anxiety. It has raised questions about the different roles of statutory bodies and voluntary agencies. Are voluntary organisations little more than just another service provider? It has made many people think about the future development of their organisations – how do we retain an independent view and a critical voice when operating within a contract culture? It has also raised a whole host of organisational, legal and managerial issues for trustees and managers of voluntary organisations to grapple with.

The themes of this book

This book does not argue a position one way or another about whether voluntary organisations should or should not enter into contracts with public sector bodies. Instead it has three main themes.

- 1 To emphasise the need for all parties to understand fully the nature of the changes involved in negotiating and managing contracts.
- 2 To clarify the ideas, terminology and approaches involved in the contracting process (including a distinction between how they are meant to work and how they often operate in practice).
- 3 To help voluntary organisations identify how they can take a proactive approach to contracts rather than allowing the other party to set the agenda and determine the pace.

It is important to recognise that there is no single model or uniform approach to contracting. In some areas individual organisations have managed the process with little understanding of the services for which they are contracting. They have used and only slightly adapted the techniques used by public authorities to buy in other services or commodities. In other areas contractual relationships have been developed over a number of years as the conditions around grant aid have become tighter.

The work involved in bidding for and managing contracts is not a new feature for many organisations; for years they have had to bid for work, deliver services to an agreed standard and criteria and manage a series of expectations and demands from different stakeholders. However, contracting requires an increased level of organisational and managerial clarity and competence.

Features of traditional grant-aid relationships

A useful learning point is the difference between the traditional arrangements and more recent contractual arrangements set up between voluntary organisations and statutory bodies.

There is a range of definitions of the status of a grant, but most suggest that a grant is given freely by the donor on the understanding that the recipient will use it well to further the purpose of the organisation.

The traditional relationship between a statutory body such as a local authority and a voluntary organisation was one of grant aid. There was often little explicit direction on how the grant was to be used – the main sanction possessed by the donor was the threat of *not* giving future grants.

Grants made by statutory bodies to voluntary organisations often have the following features:

Voluntary organisations seen as ‘on the fringe’

The main work was carried out by statutory organisations in house. Local councils and the NHS ran their own services and employed their own staff. Voluntary organisations filled the gaps by organising extra or niche services or by campaigning for better services.

Annual funding

Most grant-aid arrangements were for one year. Although some grants were renewed on a regular basis, grants have increasingly become project based or fixed term.

Grants to aid the organisation

Grants were a mechanism to encourage and sustain an organisation. The grant paid for or contributed to the running costs of the organisation so that it could then do ‘good things’.

Paternalistic relationship

In some places the process of allocating and giving grants was a highly subjective one. Often public authorities expected a certain level of control and influence in the management of the organisations they funded.

Little direct monitoring

The monitoring of grants was often done on a fairly ‘light touch’ basis. The emphasis was on showing that the grant was being spent, or on measuring activity rather than results.

Features of contractual relationships

A contractual relationship has the following features:

Voluntary organisation as delivery partner

The focus is on delivery. The organisation is contracted to provide a service that is needed and can be measured. The service it delivers links into the statutory organisation’s priorities or plan.

Longer-term or often fixed-term funding

Some commissioners have moved away from short-term programmes. There is some recognition that year-to-year funding causes uncertainty, is time consuming and makes planning and development hard. Contracts are often for a longer period.

Contracts as a binding agreement

Contracts are legally binding agreements with clear expectations and obligations on *both* sides and have stricter enforceable remedies if the contract is breached.

Arm’s-length or business arrangement

The relationship between the parties should operate in a business-like way. Both parties need to respect each other’s role and interests. It should be recognised that both partners are independent and are responsible for managing their own affairs.

Emphasis on measurement and outcomes

Most contracts include a requirement to produce regular monitoring information to show that the contract has been properly delivered and that standards have been met. Increasingly there is an interest in producing evidence of outcomes (what difference or change the service made) as opposed to a simple record of the activity or output.

Contracts for specific services or clients

Grant aid usually funded an organisation or a project. Contracts tend to be more specific and focused on the delivery of a service to a defined client or community.

VAT

Most contracts are regarded by the tax authorities as requiring the supply of a service to the funder; the supply of services is in many cases subject to VAT.

CASE STUDY**Managing the 'cultural shift'**

On reflection we failed to realise the cultural shift involved in moving from grant to contracts. We focused too much on the legal and managerial issues involved in drafting contracts – things like insurance requirements, bidding timetables and so on. We overlooked some of the bigger changes in roles and relationships.

In the authority we still have not really worked out what we mean by commissioning. We were comfortable about directly managing and running services, but all of the changes involved in identifying future user needs, managing the market, outcome evaluation and developing choice are still being talked about. It is a whole new way of working for us.

For our voluntary sector colleagues I think that they need to appreciate that a contract relationship is significantly different from a grant-aid one. We saw grants as a way of supporting the sector. A contractual relationship can and should be a collaborative partnership, but we need to feel confident that the organisation is able to deliver targets and maintain a consistent and reliable standard of service.

Senior local authority manager for adult care

What is driving the move to contracts?

Several factors have combined to encourage voluntary organisations to take on a much greater role in delivering public services. Some of the key factors regularly quoted include:

Emphasis on working together

In the past agencies often worked in isolation. There was often poor communication and rivalry between services. Government has put great emphasis on 'joined-up government' and partnerships between sectors. As the government's 2006 White Paper on local government put it: 'We want the best local partnership working between local authorities and the third sector to be the rule, not the exception, and for the sector to be placed on a level playing field with mainstream providers, when it comes to local service provision.'¹

A strategic and thoughtful process of commissioning

A major development in the management of public services has been the emergence of a commissioning role. Commissioning should include all the activities involved in assessing current and future needs, consulting with service users and designing and securing an appropriate service. Commissioning should be a strategic and thoughtful process. It should be much more than simply finding the cheapest supplier and ticking the boxes to ensure that the supplier delivers the specified service on time.

Economic gains

Traditionally, when faced with a need or demand or with a legal duty, public service organisations (PSOs) have usually set up their own service organisation and employed their own staff to deliver these services. The past two decades, however, have seen whole services go out to competition; such services are eventually delivered by either private sector companies or other independent agencies such as voluntary organisations. There is an assumption that contracting services out can bring economic gains and free up PSOs to take a more strategic view rather than be involved in the detail of managing a service directly.

Enhanced role for the voluntary sector

The voluntary sector is being encouraged or expected to play a much greater role in society. Voluntary organisations come in many shapes and sizes. The sector is now a significant employer in many localities and is often the key local expert.

¹ *Strong and Prosperous Communities – The Local Government White Paper, DCLG 2006*

A belief that voluntary organisations can offer more

The government needs a voluntary and community sector that is strong, independent and has the capacity, where it wishes, to be a partner in delivering world-class public services. To help achieve this, the government will increase funding to build capacity in the sector and increase community participation.

Comprehensive Spending Review, 2002

There is a view that voluntary organisations can add more to a service. The use of volunteers, an organisation's local roots and its credibility with the community can add extra value to the core service.

An Audit Commission study in 2007² identified three main reasons why government and commissioners want to encourage contracting with voluntary organisations:

- 1 Voluntary organisations operating alongside public and private sector providers can make for a larger, more diverse and more competitive supply base for public services.
- 2 In some service areas, voluntary sector organisations may have a particularly good understanding of users' needs or a distinctive delivery capability. This is likely to produce high-quality services, well targeted to the specific needs of diverse groups of service users.
- 3 A healthy voluntary sector can make valuable contributions in a local area beyond the delivery of public services, notably to public participation, social inclusion and community engagement.

Several commentators have suggested that the main driving force behind voluntary organisations having a much greater role in public service delivery is the perception that they will do it more cheaply or that by contracting a service out to an external agency the public body can also transfer risk or any difficult management responsibilities.

The five prerequisites of successful contract management

The move to contracts usually generates a lot of work. A new vocabulary of words such as 'specification', 'preferred bidder' and 'performance indicators' has to be learnt, services have to be defined, costed and measured and bids have to be written.

However, in the midst of the detail there is a real need to think and act strategically. As a result of our research for this book we have identified five prerequisites that organisations need to have in place if they choose to enter into contracts.

1 Early involvement in the process

All too often voluntary organisations are 'bounced' into the contracting process. Commissioners require bids to be submitted with ridiculously short deadlines. Credible organisations that could deliver a service are overlooked, are not invited to bid and not included in the process.

Managers need to invest time in building effective working relationships with relevant commissioners and purchasers before the contracting process shifts into gear. They need to ensure that their organisation has a good profile with commissioners and also that their organisation and its users are able to play a positive role in influencing commissioning practice and priorities.

² *Hearts and Minds: Commissioning from the voluntary sector*, Audit Commission July 2007

Further reading and resources

Publications

Compact – Getting it right together, Home Office, 1998

Hearts and Minds: Commissioning from the voluntary sector, Audit Commission, 2007

Improving financial relationships with the third sector: Guidance to funders and purchasers, HM Treasury, 2006

Introductory Pack on Funding and Finance – Guide to procurement and contracting, Institute of Public Finance for the Finance Hub, 2006

Lawrie, Alan, *The Complete Guide to Business and Strategic Planning for Voluntary Organisations*, Directory of Social Change 2007

Partnership in Public Services – An action plan for third sector involvement, Office of the Third Sector, Cabinet Office, 2006

Stand and Deliver: The future for charities providing public service, Charity Commission, 2007

Watt, Brian, *Win Win Negotiation Strategy and Tactics for Third Sector Leaders*, acevo, 2007

Useful websites

Business Link
www.businesslink.gov.uk

Public Law Project
www.publiclawproject.org.uk

Office of Government Commerce
www.ogc.gov.uk

NCVO's Sustainable Funding Project
www.ncvo-vol.org.uk/sfp

Fit 4 Funding (The Charities Information Bureau)
www.fit4funding.org.uk

The Finance Hub
www.financehub.org.uk

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