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Workshop for One East Midland “Big Event” 4.3.11

Intelligent Commissioning: developing effective commissioning cycles that involve and engage

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Derbyshire Contracts Advice Network is a project of Links CVS, funded initially by Capacity Builders and now by the Big Lottery Fund under the BASIS programme. It is a network of voluntary sector advisers, voluntary sector providers and public sector commissioners. It covers the whole of Derbyshire including Derby City and have been running for five years with a year and a half of funding left. As well as Big Lottery funding, income is generated from consultancy work and additional grants e.g. to develop Social Return on Investment models.

We produce a monthly electronic newsletter – available at the workshop - a weekly electronic tender alert and do one to one advice work with voluntary sector providers. We also liaise with commissioners and procurement officers to improve opportunities for the voluntary sector to gain contracts. This has included joint training on tendering processes. Our freelance budget enables us to gain legal, financial or other expert advice to help groups choose the best legal structures for consortia or to challenge TUPE or VAT decisions. We are able to work with the private sector if they are engaged with the voluntary sector via consortia or sub-contracting.

We have given evidence to the previous government at the round-table discussion convened by John Denham, Secretary of State for Communities and Local Government, on the barriers faced by the voluntary sector in securing tenders.

What have we learnt?

That “intelligent commissioning” is an aspiration rather than an achievable goal as the goalposts are being constantly changed, usually by the government rather than by local agencies – although this is not unknown!

First, what is “intelligent commissioning”? According to p.2 of the NAVCA guide, “A Bridge Between Two Worlds” 2010, there is no single description or definition of “intelligent commissioning” but certain characteristics have been identified including:

- Commissioning is not at the expense of grant aid
- Local voluntary organisations and service users must be involved in the planning of the service to be commissioned
- Service specifications are outcome focussed rather than outputs
- Commissioners consider the full value offered by providers
- Commissioners consider the whole-life costs of decisions
- Commissioners consider the impact of the commissioning processes on the diversity of the local voluntary sector
- Commissioning processes and monitoring requirements are proportionate to the value of the contract
- Commissions acknowledge that there is not a 'level playing field' and seek to address this in their commissioning processes
- Measuring 'success' and 'value for money' happens in a variety of ways including social, environmental and economic impacts.
- Intelligent commissioning is not about securing the lowest cost and it does not assume 'bigger is better'

In the Health Service the term 'World Class Commissioning' is used in a very similar way.

A virtuous circle can be drawn showing service users influencing commissioning and procurement (the sourcing of providers) following the priorities with service users again being involved in monitoring and review to influence the development of the cycle.

One example from Links own organisation is the engagement of BME groups in the commissioning of services by Derbyshire County Council. For over six years, Links has been talking to the County Council about how BME groups can be overlooked in service provision design, commissioning and procurement. A number of projects have been commissioned by Derbyshire County Council to overcome these barriers including the formation of Race Equality Forums to inform policy and service developments. A full report on this work will be available at the workshop.

Throughout the voluntary sector there are many examples of this process e.g. people with disabilities advocating for appropriate service delivery, groups of residents arguing for accessible services in their locality, and the LINK forums providing a venue for patients and health service users to articulate needs. It is a tradition of the voluntary sector to campaign, advocate and champion the causes of particular communities. It is also a tradition of voluntary sector support agencies to liaise with the public sector to smooth the path for the voluntary sector. On p. 40 of "A Bridge Between Two Worlds" a local commissioner says of Derbyshire Contracts Advice Network that we have supported her in what she is trying to do. Commissioners are not the enemy!

Derbyshire Contracts Advice Network has been focussed on the **provider end of the process**, giving technical advice to voluntary sector providers and working with commissioners and procurement officers to encourage a level playing field for the voluntary sector.

What we have achieved:

- In three and a half years, over 50 voluntary groups have gained contracts following support from the project
- 247 voluntary groups and 22 voluntary sector support agencies have received training and information about contracts
- 239 people receive the electronic newsletter and 127 receive tender alerts.

If these look like outputs, where are the outcomes? Well, one was supposed to be a better funded voluntary sector which was true for a while but we are now seeing some of those successful groups losing contracts. And we wanted a more highly skilled, well informed voluntary sector who understood the mechanics of commissioning and procurement. This has been achieved to some extent but it can feel like running on a hamster wheel as the external environment outside the cage changes faster than the titbits entering the feeder!

So why is everything changing so fast?

The **very process of competitive tendering** throws up challenges from those who want a slice of the cake. Even before the present government's drive to open up bidding for the private sector, we had seen a move to the "mixed economy of care" and the "purchaser - provider split" in the NHS. European rules about tendering for contracts over a particular limit stop contracts being reserved for the voluntary sector. "Any willing provider" was a phrase current under the previous government which is now being enshrined in the reorganisation of health services leading to GP commissioning.

For all the pious talk about bigger not being better, we are increasingly seeing contracts being awarded in ever larger lots. Examples:

- two years work with BME groups and Derby CVS to prepare for an interpreting contract was ditched when the contracts were let regionally (but from the commissioners point of view and the service users – wasn't this better?)
- endless variations on welfare to work programmes have now led to the Work Programme being let regionally with only 5 voluntary sector in the short list of 35 preferred "prime" contractors (previously voluntary groups could be their own "prime" but now the process is split between primes, sub-contractors and hosts with the hosting organisation possibly receiving no fee for supporting the placement)
- similarly the "Community Organisers" programme of £52m has been let nationally with partners, "kickstart organisations" and hosts possibly receiving smaller fees.

And the **cuts make the move to bigger even more desirable.**

1. **Costs of commissioning and procurement:** at the Guardian North Public Sector Procurement Conference on 17.2.11 the audience was asked to estimate the cost of a tendering exercise. Reactions varied between £25,000 to £30,000. How logical is it therefore to put everything over £10,000 on the new central government Contracts Finder website? Our project spent years lobbying Derbyshire County Council to raise its threshold from £10,000 to £50,000, something which has only just been achieved.
2. **Cuts in commissioning staff** have increased the logic of bigger is actually better. 25% of staff from Derbyshire County Council commissioning teams have gone: this means less contracts staff able to deal with less contracts. Re personal budgets and opportunities for micro providers in the voluntary sector, it became clear that the council did not have the resources to accredit over two hundred providers.
3. **Economies of scale:** larger organisations can cope with larger tenders because they can move resources round, they can cash flow payments in arrears and they can raise loan finance more easily. Asking charity trustees to take out bank loans can alarm them even though this is common business practice. In workshops run by Serco on the Work Programme, it became clear they saw themselves as the financier with sub-contractors performing delivery. How many voluntary sector bodies can take on this prime role? Futurebuilders invented 3SC as a national consortium to do just this but has failed to get through the Work Programme filter.
4. **Expertise and specialisation:** larger organisations have tender writers who do nothing else, and have legal departments, HR and VAT expertise. Smaller groups struggle with TUPE and pensions.

So what about the rhetoric of the “Big Society”? and the encouragement of social enterprise and charities providing public service?

-----Space for you to decide-----

What has Derbyshire Contracts Advice Network learnt are **real** opportunities even in these difficult times?:

- **Take off the rosy glasses:** no one is going to fund you just because you a voluntary group. We are in a recession at a time of massive public spending cuts. Get real: understand the commissioning and procurement environment. There are lots of books and training courses available at low cost. For the time being.
- **Be a niche supplier:** there really will be some things only the voluntary sector can do or can really do better than everyone else – this means selling yourself to prospective buyers (see later in the list)

- **Use evidence:** assess needs using nationally accepted information e.g. Public Health Observatories , and community research (see the BME example from Links work) and produce evidence that your delivery option actually works (track record/evidence from elsewhere)
- **Know the true costs of your service:** unless you accurately forecast the total cost you will not know whether to go for a cheaper price (growth of reverse e-auctions) or walk away from the contract
- **Assess the risks** – get good advice about TUPE, pensions and VAT – ACAS good on the first two topics
- **Cosy up to commissioners;** they care about the community too
- **Challenge unfair decisions:** the Public Law project and NAVCA can help you e.g. judicial review in Nottingham seems to have resulted in a lowering of the cuts figure, London organisations have won a judicial review of decisions, but remember, review is only about the fairness of the process not about the actual decision so only means a delay
- **Campaign against the cuts** – think TREES!!! (backtracking on sell off forests) Think DEBT ADVICE (£27 m found for CABx). Think Egypt! Things can be changed! But you need support and mass action -even if electronically - e.g 38 degrees collected over 500,000 signatures re forest sell off and is now campaigning about NHS changes.
- **Talk to partners, look at mergers and consortia bidding but chose the quickest option e.g lead agency rather than laboriously creating new legal structures (unless you have to)**
- **Talk to the private sector:** these may soon be the main providers left to talk to anyway following the outsourcing of public services e.g. one fifth of Chesterfield Borough Council staff is now employed by private companies, some councils moving to “pure” enabling role.
- **Swallow your pride:** you may need to accept a lower price to survive or a forced merger for the good of your service users
- **Change your direction:** if you feel as though you are selling out, maybe it is a signal to decide what is really important – e.g. Links refused to go along with the NAVCA Community Organisers bid as we saw it as selling out in relation to CVS services plus top down approach
- **Downsize:** this may be an opportunity to go back to the original mission and see if you can fulfil it without the panoply of contracts
- **Consider closure:** this may be better than selling out your organisation’s mission or values. Is closure an opportunity? **Yes, to do something else with your time, energies and commitment!**

And remember what brought you into the voluntary sector....

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February 2011

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