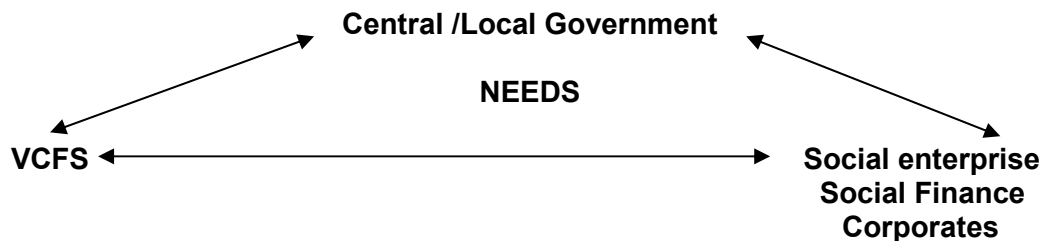


## **Commissioning – the Importance of Partnership Oct 2011**

### **Introduction**

1. Commissioning has once again become a key tool in the box for public authorities – it having been tried before in the 1980s. It is an alternative to in - house provision, now regarded as unaffordable and as taking strategic authorities away from core business, and also to grants which are perceived to give insufficient delivery and accountability. NAVCA/ NVCO have emphasised<sup>1</sup> that grants can be given under well- being powers and especially where innovation is sought, and these are not circumscribed by EU rules. However “we are where we are,” and commissioning is the new norm.
2. However the reality of being a contractor to the Commissioning body will make it feel different for the voluntary community and faith sector (VCFS) and it should be careful to see beyond any commissioning process to the Sector’s wider role. The “binary model” of grants/ contacts will remain important, but so too will self – generated funding. There needs to be a very significant change in all of our mindsets to grasp the new triangulation between:



3. The outworking of this model is called “co – production” – the process of deciding how to use the TOTAL resource available”.....<sup>2</sup> The assessment of NEEDS and designing a proper commissioning process, and not just the final stage of procurement, is called co- design, and depends on real partnership, based upon trust.

### **Procurement**

4. Procurement is towards the final stage of the commissioning should be noted that whilst public authorities operate under the same EU procurement rules, there are choices to be exercised, so for example tenders may be:
  - Open procedures ( open universal competition)
  - Restricted - through a two stage Prequalification(PQQ) process leading to an Invitation to Tender(ITT)
  - Negotiated- allowing post- bid negotiations with selected bidders

<sup>1</sup>“ Pathways through the maze – A guide to procurement law”, 2<sup>nd</sup> edition 2010- NCVO/NAVCA,p.6

<sup>2</sup>“Commissioning and the Big Society: the role of the community sector”. Oct 2010, Kindle,p2

5. Moreover a service may be in categories of either Part A or Part B – the latter including personnel and legal services that do NOT have to follow full EU procurement processes.
6. The essential point is that there are CHOICES within the procurement process.

## The changing political context

**The Localism Bill**<sup>3</sup> emphasises the importance of decentralising services and community empowerment. It includes has six principal actions from which the following is quoted:

- *“Local control over local spending requires a choice of public service providers: The right to do things differently in different places means that different people should be allowed to do them. Public sector monopolies not only limit the choice available to service users, but ration the opportunities available to other potential providers – especially those in the voluntary sector.”*

**The Green Paper on Commissioning**<sup>4</sup> was the follow up to the Bill, and proposes a new concept of commissioning in consequence that allows the wider community benefits to be taken into account:

*“To underpin the Government’s commitment to the introduction of **payment by results** across public services, commissioners must have a full understanding of the value of the potential results. Understandings of value should be driven by citizens and communities, wherever appropriate. This will enable commissioners to focus services on the social, environmental and economic priorities of the people they serve. This may include issues relating to the promotion of equality, diversity and meeting the needs of disadvantaged groups.*

*“While taking full social, environmental and economic value into account when making commissioning decisions is recognised good practice and commissioners routinely consider and compare the apparent and comparative monetary costs of services, **they do not always consider the wider effects of a commissioning decision on individual beneficiaries, communities, the wider economy or the environment. As a result, the potential added value of some commissioning decisions is not always maximised and the expenditure of public money does not always deliver optimum value.***

**White Paper (July 2011) on Open Public Services** followed the Green Paper, and sets out 5 important principles:

- **Choice** – Wherever possible we will increase choice.
- **Decentralisation** – Power should be decentralised to the lowest appropriate level.
- **Diversity** – Public services should be open to a range of providers.
- **Fairness** – We will ensure fair access to public services.
- **Accountability** – Public services should be accountable to users and taxpayers. “

<sup>3</sup> “Decentralisation and the Localism Bill –an essential guide”, Dec.2010, DCLG,p.

<sup>4</sup> Modernising Commissioning: increasing the role of charities, social enterprises, mutuals and co – operatives in service delivery, 2010, Cabinet Office  
White Paper “Open Public Services”, HMG, July 2011

The White Paper is highly relevant to the TLI Bid and to new discussions with Surrey CC and other funders about the commissioning of infrastructure services: for example the following expectations are placed on local government:

***“7.4 We will engage with local authorities to develop a shared vision about the new opportunities and possibilities for stronger local government created by this open public services agenda. As part of this engagement, we will want to explore the opportunities for local authorities to:***

- *be the people’s champions for all public services in their area, irrespective of whether they are directly accountable for those services. This will focus on their potential to secure fair and open access to a choice of quality services in the local area;*
- *be empowered to shape their local area through greater local freedoms on planning, finance, regulatory powers and infrastructure;*
- *be as financially self-sufficient as possible*
- *be able to integrate the full range of public resources to solve complex social, economic or environment issues, such as the needs of people on housing estates who have multiple disadvantages;*
- *benefit from the maximum possible decentralisation of central government services to the local level;*
- *champion direct democracy and transparency of public data;*
- *act as the principal representatives for their communities;*
- ***actively decentralise power to individuals and neighbourhoods and inspire successful responses to these new opportunities;***
- ***be excellent and open commissioners of those services which cannot be devolved to individuals and communities; and***
- ***combine forces with neighbouring local authorities and lower-tier councils within their area to improve the success of the wider area. “***

**Best Value Statutory Guidance** - this latest guidance on Best Value (Sept 2011) is widely perceived to shift the ground in the evaluation of tenders away from “lowest cost” , or even “value for money” towards an assessment of the wider **social impact**, and **“additional benefit”**...that **local** procurement can offer. The document<sup>5</sup> is only two pages, the second of which contains five points which the Minister (Eric Pickles) is expecting local authorities to observe.

As it’s only one page it’s reproduced verbatim below, with my emphasis:

*“1. Best Value authorities are under a general Duty of Best Value to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”*

*2. Under the Duty of Best Value, therefore, authorities should consider overall value, including economic, environmental and social value, when reviewing service provision. **As a concept, social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves.***

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<sup>5</sup> “Best Value Statutory Guidance”, Sept 2011, DCLG

3. To achieve the right balance – and before deciding how to fulfil their Best Value Duty – authorities are under a Duty to Consult representatives of a wide range of local persons; this is not optional. Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. This should apply at all stages of the commissioning cycle, including when considering the decommissioning of services. In the interests of economy and efficiency, it is not necessary for authorities to undertake lifestyle or diversity questionnaires of suppliers or residents.

4. **Authorities should be responsive to the benefits and needs of voluntary and community sector organisations of all sizes** (honouring the commitments set out in Local Compacts) and small businesses.

5. **Authorities should seek to avoid passing on disproportionate reductions - by not passing on larger reductions to the voluntary and community sector and small businesses as a whole, than they take on themselves - and in particular:**

- *An authority intending to reduce or end funding (where 'funding' means both grant funding and any fixed term contract) or other support to a voluntary and community organisation or small business should give at least three months' notice of the actual reduction to both the organisation involved and the public/service users.*
- **An authority should actively engage the organisation and service users as early as possible before making a decision on: the future of the service; any knock-on effect on assets used to provide this service; and the wider impact on the local community.**
- **Authorities should make provision for the organisation, service users, and wider community to put forward options on how to reshape the service or project. Local authorities should assist this by making available all appropriate information, in line with the government's transparency agenda."**

## Conclusions

1. Many public authorities have opted for commissioning and contractual arrangements over grants. There are still choices to be made about the way commissioning/ procurement is undertaken
2. The transaction costs of commissioning are often shifted to the contractor – in defining / demonstrating the outcomes, and incurring the performance management costs
3. The commissioning of infrastructure organizations will feel very different for the VCFS **as contractor. In particular it will necessitate some form of consortium as the sector as presently constituted will be too small to bid successfully against external competition.**
4. BUT the trend in Government legislation and guidance is towards the local VCFS taking a wider delivery role; this should be beneficial to Surrey infrastructure services. Trust and genuine partnership will be essential to success.

Mike Abbott, Chief Executive, Surrey Youth Focus.