



## Background and Legal Issues:

Changes in UK government policy and the implementation of European Union laws have led to public bodies introducing commissioning and procurement processes for the delivery of public services.

### Changes to UK government policy:

Over the past 20 years public services have increasingly been 'contracted out'. Instead of public bodies delivering public services themselves, they invited other organisations to go through a competitive tendering process to win a contract to provide these services. The introduction of 'contracting out' was based on an assumption that this would bring greater efficiency and 'value for money' and enable public bodies to focus on a more strategic role.

Initially, this mainly involved contracting out services such as rubbish collection to the private sector. However, in the past ten years, the Labour Government put greater emphasis on working in partnership with the voluntary and community sector to improve a wide range of public services. For example:<sup>1</sup>

- As part of the 2002 Comprehensive Spending Review, the Government looked at the role of the voluntary and community sector in providing public services and recognised that sometimes they can be more effective than either the public or private sectors
- In 2004, the Gershon Review recommended that the public sector use resources more efficiently by spending less on management and administration and more on frontline services. The review specifically recommended increasing the role of the voluntary and community sector in delivering public services.
- In 2006, the Office of the Third Sector was set up and produced an Action Plan outlining proposals for involving the voluntary and community sector in delivering public service delivery.
- The 2006 White Paper on Local Government emphasised the importance of 'joined up' government and improving communication and partnership working between sectors to improve public services.
- The 2007 Audit Commission study 'Hearts and Minds: Commissioning from the voluntary sector' identified the 'added value' the voluntary and community sector can bring to public services.

### Implementation of European Union law:

Public bodies must also comply with European Union (EU) law regarding the procurement of goods and services. The aim of EU law is to prevent European member states from discriminating against individuals or businesses or restricting the free movement of workers, goods and services within the EU.

All public service contracts are covered by the EU Treaty which outlines 4 'principles':

1. Fair and equal treatment: everyone who is tendering for a contract should be treated fairly and equally at every stage of the process

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<sup>1</sup> See London Voluntary Services Council website: [www.lvsc.org.uk](http://www.lvsc.org.uk) (History and Policy Behind Commissioning)

2. Transparency: information about contracts, selection criteria etc. should be openly available to all those interested in applying.
3. Mutual recognition: standards, specifications and qualifications in use throughout the EU receive equal recognition.
4. Proportionality: demands required of providers should be relevant and directly related to the size and value of the contract being awarded.

The Treaty is backed up by a number of European procurement rules or 'Directives'. In 2006, these rules became part of UK law. The rules set out procedures for how public goods and services should be purchased.

It is not always necessary for public bodies to follow the full EU procurement rules; this depends on the type and value of the contract.

The rules categorise services as either 'Part A' or 'Part B' and set a minimum financial threshold for when the rules should apply.<sup>2</sup>

Most of the services women's organisations provide will be part of the 'Part B' category, such as:

- health and social services
- recreational, cultural and sporting services
- education and vocational education
- legal services
- personnel placement and supply

It is not necessary for public service organisations to follow the full EU procurement rules for 'Part B' services. They can use a less complex procurement process, which makes it easier for voluntary and community sector organisations to bid for funding. However, they must always make sure the process is fair and transparent, in line with EU Treaty principles.

'Part A' services that may be relevant to women's organisations include:

- computer and related services
- research and development services where the benefits are received exclusively by the public service organisation awarding the contract
- management consultancy services

The full EU procurement rules do apply to 'Part A' services if the value of the contract is over £101,323 (if the contract is being awarded by a central government agency) or £156,442 (for contracts awarded by all other public service organisations).<sup>3</sup> The value of a contract is calculated by adding up the amount to be paid over the whole contract period, so if the contract is for 3 years, it is the total amount (not the amount paid each year).

Public service organisations will also have their own internal procedures for purchasing services that they must follow. For example, Local authorities should have a written strategy or policy outlining its approach to procuring (or buying) services which is available on their websites.

Although funding for services that most women's organisations provide do not have to follow the full EU procurement rules, many public service organisations have *chosen* to follow these rules for most of the contracts they award. They have the right to do this.

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<sup>2</sup> For a full list of 'Part A' and 'Part B' services, see: ???

<sup>3</sup> These thresholds were set in January 2010. They will change in January 2012. For updated information, go to the Office of Government Commerce [www.ogc.gov.uk](http://www.ogc.gov.uk)

Central government has produced several reports and guidance on commissioning, encouraging good practice (or “intelligent commissioning”) but unfortunately, this is often not being followed at a local level. Sometimes, commissioners themselves are not totally familiar with the legal issues and will say that they have to follow the EU procurement rules, when this is not the case. It may be possible for voluntary and community organisations to discuss funding options and present the case for ‘intelligent commissioning’.

## **How is commissioning and procurement different from applying for grants?**

- Commissioners decide what is needed then buy a service, instead of organisations convincing funders that a project is needed and asking for money to run it
- The process is more complex
- Commissioners require organisations to meet certain standards (e.g. re: finances, governance, etc.) and these are generally more demanding than those required by grant funders
- Emphasis on achievement of outcomes for service users
- Emphasis on achievement of public bodies’ strategic aims and specific targets
- Funding is often for longer periods
- More demanding monitoring requirements

If the commissioning process involves a full procurement process:

- Contracts are legally binding on both sides
- Contracts can involve legal issues re: trading and VAT

Each public body will have its own approach to commissioning and procurement and many have introduced aspects of a procurement process into their grants schemes.

Many grant funders have also introduced more complex application processes and monitoring requirements, focus on the achievement of outcomes and provide longer-term grants.

This means it is very important to find out what kind of commissioning process is used by the commissioners who fund your type of work, and in your local area (if you work locally).

This guide aims to help you become familiar with the main features of a commissioning and full procurement process so that if you come across these, you will be in a better position to deal with them. The guide will also provide examples of less complex procurement processes.

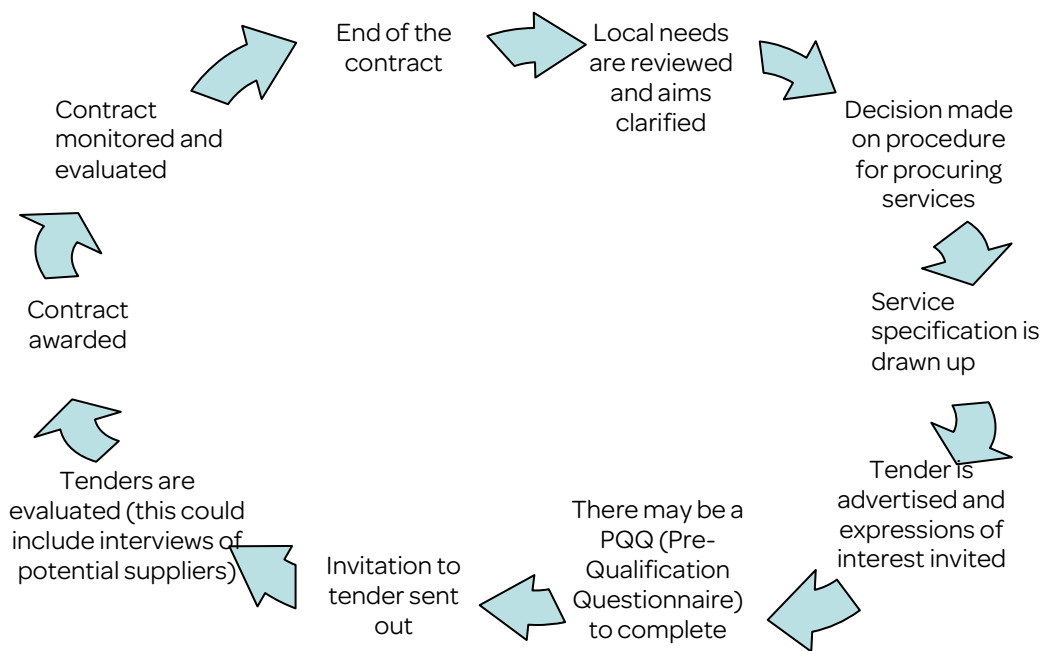
## **Why do we need to get involved with commissioning?**

- To continue to get government funding for a service that you are already running
- To get government funding (or win a contract) for a new service

Almost all government funding now involves a commissioning process, with the exception of small grants (usually less than £10,000).

Many local councils had been funding the same local organisations for many years. Most have now introduced a commissioning process, including a local needs assessment. This may mean that some local organisations lose funding and new organisations are funded. If your organisation has been funded for many years, you cannot assume you will continue to be funded and will have to provide a strong case for the benefits of your services.

## The commissioning cycle



Commissioners are responsible for doing a needs assessment, deciding on the service specification, evaluation criteria, how tenders will be assessed and the timescales for the process.

Procurement officers ensure the legality of a procurement process, decide on the paper work (e.g. format of tenders), ensure all tenders are treated equally, and timescales and procedures are followed correctly.

In reality this isn't always happening; sometimes procurement officers (who will usually know nothing about the services being bought) dominate the process, and sometimes commissioners themselves do not know a lot about the services they are commissioning.

Most commissioners are people who have been transferred from other jobs e.g. many commissioners in local authorities worked in grants units before – so they are learning too!