



USING SOCIAL VALUE IN PROCUREMENT A 'HOW TO' GUIDE

This Guide has been produced from the findings of the **Social Enterprise Action Learning Group**, part of the **Leading Greater Essex programme**.

The **Leading Greater Essex programme** was working in partnership with the **Bridge to Social Investment project** (led by **Essex Social Enterprise Network** and **Social Enterprise East of England**).

Commissioning social enterprises or social value?

Social Enterprises (along with traditional voluntary organisations) deliver social value. They are organisations that earn income through trading, but also have a social purpose that is written into their governing documents and they are restricted in how their profits and assets can be distributed. Although some are large national organisations, the majority are smaller and have a local focus.

We do not seek to make a special case for social enterprises. Instead we seek to ensure that social value is at the heart of the commissioning process. We believe that this will enable public bodies to maintain a mixed and competitive economy of provider organisations, including social enterprises, and to transform service delivery to achieve long-term and sustainable savings.

Many public sector bodies already seek to encourage local businesses and SMEs to bid for contracts. Social enterprises are:

- Frequently locally focused
- Mostly SMEs
- Have social value at the heart of what they do

If all of these considerations are built into the commissioning process then social enterprises will be well-placed to bid for and win contracts.

Using the Social Value Act

The Public Services (Social Value) Act 2012 is a welcome instrument to enable commissioners to consider social value. It was reviewed in 2016 and there is currently a conversation taking place about how the act can be broadened.

Social enterprises are campaigning for the act to:

- Strengthen the language – the act currently calls for commissioners ‘to have regard to economic, social and environmental well-being’. This should be amended so that social value is a mandatory part of the process
- Have a lower threshold – this is currently in line with EU procurement processes and does not cover small contracts. Many social enterprises are bidding for smaller contracts that are not subject to the Act
- Ensure transparency – so that bidders can see how organisations are applying the Act and what they are seeking to achieve in their contracts

New guidance and what this means for social enterprises

Government has published The Outsourcing Playbook - Central Government Guidance on Outsourcing Decisions and Contracting (2019). The guidance it provides links closely to the findings of our Action Learning Group. This paper shows the recommended best practice for commissioning

public services and how this can be applied to ensure that social enterprises can compete for contracts on an equal basis.

Pipelines and market management

All contracts should be published in a timely manner including what is in the pipeline for the coming 3 – 5 years. This enables potential suppliers to understand what they will need to plan for.

What this means for social enterprises

Commissioners should link notices on mainstream procurement portals to social enterprise networks to advertise upcoming contracts. Commissioners should not define what contracts are suitable for social enterprises and voluntary organisations

Market Health and Capability Assessments

Commissioners should undertake an early assessment of the market

‘Good market management is about looking beyond individual contracts and suppliers. It is about designing commercial strategies and contracts that promote healthy markets over the short, medium and long term.’¹

This was a key feature of our discussions. Seeking to buy from the cheapest provider can distort the market and result in local providers going out of business. This affects the long term sustainability of the market. If only one supplier is left operating, this can have the perverse incentive of increasing prices.

What this means for social enterprises

Many social enterprises have evolved through providing a local solution to a specific local issue. They are rooted in the community and are there for the long term. They are known and trusted by their clients, especially those who are vulnerable or from hard-to-reach communities. If they are unable to bid for tenders to deliver these services then the quality of delivery could be reduced and a larger provider may not have an interest in bidding the next time the service is commissioned, by which time the local enterprise may no longer be trading. Consequently there may be a shortage of organisations able to bid to deliver in future.

Early engagement

‘Preliminary market engagement should actively seek out suppliers that can help to improve service delivery. Including Small and Medium Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs) who are experts in the needs of service users and widely involved in the delivery of public services across the country

¹ All quotes are from The Outsourcing Playbook - Central Government Guidance on Outsourcing Decisions and Contracting, The Cabinet office, 2019 <https://www.gov.uk/government/publications/the-outsourcing-playbook>

To enable inclusive economic growth that works for all, assessments of the market and pre-market engagement should consider opportunities for wider social, economic and environmental benefits to communities.'

Early engagement can lead to better services being delivered for the end user and to all parties having the ability to identify and manage any risks at an early stage.

What this means for social enterprises

Social enterprises are frequently developing innovative solutions to social problems and they can contribute a wider perspective, informed by user feedback, into discussions about what is needed. If a decision is taken to scale up contracts then social enterprises need sufficient notice to form good quality delivery consortia.

Make or buy?

'As a minimum, we must:

- Understand the service and what we want to achieve by changing the delivery model.
- Be clear on how any change will benefit the end user (for instance new investment and innovation).
- Understand the costs and long-term implications.
- Have completed a comprehensive market health and capability assessment.'

This is a welcome focus on the needs of the end user and that intention that the procurement process should focus on their requirements.

What this means for social enterprises

Social enterprises are frequently led by users, who are often part of the management group or are consulted regularly on the services they receive. Social enterprises seek regular feedback and design their services based on user need. This knowledge can be used to inform decisions about what is needed.

Using 'Should Cost Models' to understand costs

Commissioners should understand the real costs of delivering a service or of making significant changes to the delivery model, for example requiring small providers to set up a bidding consortium. If the requirement is to transform a service then providers should be part of the discussion.

Key Performance Indicators should be identified and advertised as part of the commissioning process

What this means for social enterprises

As described above, social enterprises consult with and get feedback from clients and, in some cases, undertake detailed social impact measurement. They reinvest profits back into the services and often generate other sources of income to provide added value for service users. They are well-placed to identify KPIs and appropriate and proportionate forms of measuring performance.

Piloting the delivery of a service

‘Where government is outsourcing a service for the first time there is now a presumption that a pilot should be run first.’

Pilots can be used to test proof of concept and innovative delivery methods, mitigate risk and learn more about what is needed.

‘We should adopt models that promote competition and contestability over time, so that those that win the first contracts know that they must deliver value for money or risk government taking its business elsewhere in future’.

What this means for social enterprises

Social enterprises are frequently providing innovative approaches to delivering services and constantly seeking to develop new ways of doing things. Many are suspicious of being asked to share their practices and models with commissioners who write these innovations into contract specifications and then award the service to another provider. Piloting a process can enable social enterprises to share their innovative practice without feeling exploited and they should then be able to write competitive proposals when the service goes to open tender.

Preparing to go to market

Good commissioning and procurement processes are supported by good data. Commissioners should have evidence of previous performance where appropriate, such as from in-house services prior to externalisation. This should be available to bidders. This should be used to produce a clear technical specification.

‘Without this shared understanding, we cannot expect to be able to relate the price offered by bidders to our own understanding of costs. And if we cannot do that, then we will always be open to risk that we will not get the outcomes we want at the price we need ...

With the right KPIs in place, it should follow that contracts are designed to incentivise delivery of the things that matter, to minimise perverse or unintended incentives and to promote good relationships ... It is important that KPIs are relevant and proportionate to the size and complexity of the contract.’

The guidance recommends that proportionate and transparent assessment takes place, ensuring that social, environmental and economic benefits are assessed; that the right ratio of quality and costs is used and that the scoring reflects the whole life costs of the contract. This includes consideration of whether to scale up contracts which might preclude bids from smaller social enterprises. Commissioning in lots is more enabling for small organisations.

What this means for social enterprises

Social enterprises should be collecting data on the social, environmental and economic impacts of their work. They should be able to demonstrate the costs, savings and added value created over the whole lifetime of the project so that this evidence is available to them when writing their tenders.

They should use robust methods that show evidence of what changes their services make to end users and what is valued by users and the people around them.

Keeping bid costs down

While it is important to be robust and transparent in the commissioning process, public agencies should consider how much work is required to submit a tender, particularly for smaller contracts. Creating complex commissioning frameworks through which successful applicants are merely permitted to bid for work can result in many excellent providers withdrawing from the process.

‘The cost of bidding for government contracts is frequently cited as a reason for not bidding and as a barrier to entry for SMEs and VCSEs. Procurement processes should be of proportionate duration and effort to the size and complexity of the contract opportunity. By making our procurement processes unnecessarily complicated or protracted, we risk minimising the pool of bidders and stifling competition.’

What this means for social enterprises

If social enterprises are planning to bid for contracts they need to invest in their technical evidence (insurances, certification, policies, costing exercises, impact measurement, etc.) before the bidding process. Participating in early market management exercises should include discussions about whether the proposed procurement process is manageable by smaller organisations.

Risk allocation

‘Ensuring that risks sit with the party best able to manage them is central to the Government’s approach to delivering value for money and partnering with the private sector.’

This also relates to payment mechanisms, when smaller organisations can be excluded by retrospective or slow payment systems.

What this means for social enterprises

This is one of the most frequently mentioned areas of contention for smaller organisations bidding for public sector contracts. Smaller VCSE organisations are often run by voluntary boards which are traditionally regarded as ‘risk averse’. This is because they are often supporting fragile and vulnerable people and managing resources that are held ‘in trust’ as charitable or community assets. The balance of risk/reward is different to those running a private, profit-distributing company, in which owners or shareholders benefit from profits.

Case Study - Phoenix Homes Colchester

Background

Phoenix Homes Colchester (PHC) has been running since 1966. Its main function is to provide housing for up to 17 people with high levels of support needs. Since 1993 it has been running an alcohol project in North East Essex and this has supported between 350 and 450 people a year. The alcohol project has been funded through a contract from Essex County Council.

The commissioning process

In 2014/5 PHC was asked to submit a tender to continue to deliver this service. It was a two year contract, later extended for another two years. There was some indication in spring or early summer 2018 that the contract would be advertised again but it was assumed that, as had been the case previously, PHC would be bidding to run the same services again, as would other providers in other parts of Essex.

At the end of September 2018 PHC was officially informed that the contract would end in March 2019 and that there would be a full tendering process. A market engagement event was held in October, at which it was announced that the contract would be for a county-wide service. The deadline for submitting tenders was the end of November. The tender was published within one week after the engagement event. The value of the contract was £5 million over 5 years but the contractor had to demonstrate diminishing costs in each year. £1 million per year is less than the current contracts are worth.

ECC's rationale for offering one contract for the county was that they wanted to do something different but potential bidders were told that syndicate bids would be accepted. The aim was to cut the cost of the provision and to reduce the management function by working with one organisation rather than four (one provider delivered two contracts).

The CEO of PHC made contact with other providers to see if it would be possible to form a consortium to bid for the contract and the current provider organisations in South West and South East Essex, and West Essex were willing to discuss a joint bid. With PHC, this consortium represented three of the four existing contract holders. The fourth organisation wanted to bid alone for the whole county contract.

Phoenix Homes Colchester's response

The potential syndicate members met the week after the engagement event. All the organisations were structured differently with different salary levels and there was some concern about the cost any TUPE arrangements that would be needed. Also they worked in different ways with PHC providing outreach support in the community and others working from their own premises.

The CEO and Chair of PHC worked out their position regarding what they would expect from the syndicate. It soon became clear that they would have to be the lead bidder and accountable body. In such a short time it proved difficult to share costs and agree a structure for delivering a joint contract and the CEO became increasingly concerned that the syndicate would not be able to deliver the service at the current level with the requirement that costs be cut over the following years.

Once the proposal was put to the board of PHC they decided not to bid. Board members thought it would be immoral to try to deliver a service that was under-funded in the first instance and where the provider would have to make further cuts in subsequent years. Board members were upset that the many years of experience they had in delivering the service counted for nothing in the tendering process. They did not want to take on responsibility for the other provider organisations and felt that there were too many differences in the ways that they delivered their services.

The other partners in the syndicate were unhappy about PHC pulling out at short notice and decided to buy in a consultant and bid anyway but were unsuccessful.

Added value provided by Phoenix Homes Colchester

PHC did not feel that they were entitled to deliver the service but thought that they had provided a good service for many years and offered significant added value to the council's specification. The basic requirement was to provide support to individuals and their families around alcohol abuse. What they offered in addition to what was specified was:

- Social support
- Helping people to access benefits
- Helping with paperwork for court appearances
- Providing trained staff to work alongside Social Services to work with vulnerable families
- Providing outreach services to people living in disadvantaged areas, enabling them to access services
- Working with street drinkers in partnership with the police and local shop owners
- Attending hospital staff team meetings
- Attending Mental Health team meetings
- Building links with GP practices to enable them to make referrals
- Accepting referrals from family members as well as individuals (this is unusual)
- Making referrals to residential detox programmes and chasing to provide supporting paperwork
- Undertaking group work with clients in, Clacton and Harwich (in addition to contract specifications to work in Colchester and Tendring

PHC delivers a six week course to help people reduce their drinking in a safe way. This enables people to attend detox programmes, which they are not able to access if they are still drinking.

The ECC contract led to PHC being commissioned to work in the Accident and Emergency unit at Colchester Hospital. They had no guidelines to state how they should deliver the service but worked with the hospital staff to develop a service. Staff were at the hospital every day and worked with people starting or ending detox programmes or who arrived at A&E with a possible drink problem. They made people aware of the support available on the alcohol pathway.

Many of these actions were not counted towards the monitoring and evaluation data required by ECC.

The new contract

The new contract includes some of these areas of work but does not make specific requirements of what support must be given. It specifies that support must be provided in each of the five areas of Essex but not in which specific towns. There is no requirement for outreach services to be provided. PHC's experience is that people struggle to travel more than short distances to access services.

The new contract was announced in mid-January 2019 and was awarded to a national charity and PHC is working to transfer the service. Clients are worried because they are being referred to an organisation that they don't know. PHC are not aware of exactly what services the clients will be able to access. Currently clients can ring staff at PHC at any time in any condition and they are worried that they won't be able to do this in future.

Key concerns

Why was it decided to only advertise one, county-wide contract? This reduced the opportunity for local organisations with a track record of delivering services and understanding of the area and provider networks to bid. A new provider will take time to learn about these issues and there will be additional costs for setting up a new provider

Why was a major change announced at such short notice? With more time and less pressure, local providers might have been able to negotiate setting up a syndicate to bid successfully.

Was this an attempt to deal with concerns about the quality of the existing provision? No concerns had been raised with PHC. The added value of the services they provided was not acknowledged by ECC, nor were these outcomes reflected in the specification.

Why was no weighting given to experience and a track record of delivering services in the specification?

Will these services be sustainable under the new arrangement? What will the long term impact be on the market place? Commissioning services from a national agency to the area could increase the likelihood of them walking away from the contract if it proves unprofitable. The requirements to cut costs year on year means that the re-commissioning is resulting in significant impact on the quality of provision

What will be the costs to other providers: GPs, Colchester Hospital, Mental Health services, police, etc.? PHC was delivering added value and this has not been monetised. It will be difficult now to measure the cost of this to other providers

"The contract was won by Phoenix Futures, a charity that works within prisons in our area. Our interactions with PF have been friendly and we have made efforts to establish a good relationship with them. Phoenix Homes is not doubting PF's abilities or competencies – they are a national charity with a multi-layered infrastructure who are rapidly expanding their work. We just cannot compete with an organisation with those kinds of resources behind them." (Phoenix Homes)

Since the contract has been awarded, the two other organisations who Phoenix Homes were thinking of going into a consortium with have announced that they are now going to close.

Case Study – Trust Links

Background

Trust Links is a Charity and Limited Company that supports mental health and well-being in south Essex. Its work includes delivering training programmes, running 4 therapeutic community gardens and supporting carers. Its income is from public sector contracts, grants, users paying through their personal budgets or privately and a small amount of traded income through a shop selling garden produce. Its Rochford centre was inherited from the closure of Disability Essex, which folded when it lost a major contract.

Since 2016 Trust Links has worked with a consortium of six other charities and Essex Partnership University NHS Trust (EPUT), the mental health trust for the area, to run a pilot Recovery College service commissioned by local Clinical Commissioning Groups (CCGs), Southend-on-Sea Borough Council and Essex County Council.

Matt King, the CEO of Trust Links has extensive experience of the commissioning and procurement process, including having previously worked for Drug and Alcohol Action Teams' joint commissioning in London Boroughs and in a strategic partnership commissioning at Essex County Council.

Background to Recovery College

Recovery Colleges were developed in the United States as a new method of focusing on recovery of people with mental health challenges and have been growing in the UK since 2009. The principle of recovery requires providers to move beyond a narrow focus on symptom reduction to helping people to rebuild lives that they find satisfying, meaningful and valued. This approach is underpinned by the desire to end the revolving door system, whereby people's mental health problems can recur over many years and either they only seek treatment, or treatment is only provided, when they go into crisis.

Recovery College places its focus on long term recovery and the empowerment of individual mental health service users to take control of their lives. A fundamental change that is being addressed within mental health services is that lived experience is of equal value to professional, clinical knowledge.

Commissioning the Recovery College pilot

Trust Links and others had been in discussions with mental health commissioners for some time about setting up a Recovery College in South Essex. A partnership of voluntary organisations and EPUT set up a formal consortium to take on joint contracts, however, the commissioners in this instance required one organisation to be the accountable body. Following a competitive process, Trust Links were commissioned to take on this role, completing the application and being awarded the contract to be the strategic lead for the Recovery College pilot in 2016. The bidding process consisted of a fairly short form and an interview with commissioners and service users. There was then a six month delay in starting the project as the money from the various commissioning partners was not in place.

The Trust Links CEO drafted the service level agreement for the pilot with a focus on: whether usage was increasing or decreasing, what outcomes were achieved and to what extent the outcomes could be attributed to the Recovery College activities.

The pilot was for a two year period. Initially Trust Links employed two people to run the project it quickly became clear that they needed a bigger team. Southend Borough Council already commissioned other services from voluntary sector providers and the commissioners decided that a small team from one of the other providers should be TUPE'd to Trust Links in order to bolster the Recovery College team and better use resources. Another mental health service was commissioned by the CCGs and Trust Links had strategic responsibility for this team's work but did not have line management over the staff, so there was some tension built in between the delivery partners. The additional staff were not working to Recovery College criteria, such as requiring all work to be developed through co-production.

An Occupational Therapist was seconded from EPUT to Trust Links and this formed a valuable link with EPUT, particularly as the OT had access to NHS data. The sharing of NHS Numbers enabled Trust Links and EPUT to track progress and service usage of NHS services, with the aim of de-escalating people from secondary mental health services.

An evaluation of the pilot was commissioned from Anglia Ruskin University, to quantify and capture the impact of the service.

Commissioning the substantive Recovery College contract

The commissioners decided that the pilot had been successful and a five year contract, plus two additional years if the delivery was successful, would be put out to tender. Trust Links decided that they should bid alone rather than through the consortium. This was mainly because there wasn't sufficient money in the contract to cover the increased management costs of different partners collaborating in the delivery. Trust Links decided that they had sufficient skills within the organisation to bid alone and that they would continue to work with the consortium members who were invited to join a partnership board and whose resources they would still utilise.

Trust Links were shocked then to discover that instead of commissioning one integrated Recovery College service, the commissioners had decided to split the contract in two, separating the educational activities from the well-being activities (primarily a café). The two lots would not necessarily be awarded to the same provider. Apart from concerns as to how these areas of work might be delivered separately, it was necessary for Trust Links, as a relatively small organisation, to complete two separate tender documents that were lengthy and highly technical within a short tender deadline.

The CEO made a list of concerns about the consequences of this commissioning decision, which were discussed with colleagues and the board but it was decided to proceed with the bidding.

Trust Links attended the market engagement events, which were attended by large, national providers but there was no additional consultation or engagement with them as the existing lead of the Recovery College pilot regarding the decision to split the contract into two. The CEO assumes that this was because the procurement team were concerned that they might be accused of favouritism.

The bidding process was significantly more onerous than for the pilot. The bids each had twelve questions requiring one thousand words for each answer and two presentations were required. There was a four week period to submit the tenders and Trust Links found that this was extremely short for an organisation of their size, without access to full-time bid writers. The CEO and the Recovery College manager worked more or less full time on the bids throughout this period. They only had three days' notice of the date of the presentations, the time they were allocated, the questions they would be asked and that they were required to bring a service user to each presentation. They were concerned about inviting service users to a formal presentation in the civic chamber which was very intimidating for people with fragile mental health.

Trust Links' CEO thought that there was too much emphasis on ticking boxes about processes in the bid and too little requirement to demonstrate the added value that the bidder could bring to the contract.

Trust Links were also concerned that the budget for starting up a community café was only £10,000, which they thought was insufficient. There was also some suggestion that the café should be located in central Southend, which Trust Links staff thought was inappropriate for some Recovery College students who would be using the service.

Once the tender was submitted there was a wait of two and a half months for the decision.

In January 2019 Trust Links was awarded the Recovery College (education) contract but it was announced that the well-being café contract would not be awarded at that time because it had been decided that changes were needed in the specification and the contract should include a crisis element. It was also announced that the education contract would be delayed by six months so that the two contracts could commence simultaneously.

The CEO re-visited his list of predicted consequences, written when the two tenders were published and they had all taken place.

In the meantime the pilot project has been extended to continue the services until both new contracts are in place. This means that the length of the original contract will be reduced from five years to four and a half years.

By June 2019 the commissioning process for the second contract was under way. The bidders were required to complete a suitability questionnaire and if this is accepted they will be asked to submit a full tender. This was announced at a market engagement event at the end of March. Bidders had eight and a half working days between receiving the suitability questionnaire and full specification and the deadline for submission, a period that included the spring half-term holidays. The questionnaire required to confirm the name of partner organisations during this period.

Trust Links are currently in a position of having to consider:

- How to manage the increasingly complex TUPE arrangements which are affected by the division of the two areas of work and include TUPE from two different services into two new contracts
- The burdens on a small organisation of the highly bureaucratic NHS contracting process – which may have to be managed twice

- Issues with planning for staff, accommodation, central capacity/core administration and management functions

Trust Links' CEO recognises that there are rules governing the way contracts can be discussed once they are out to tender and that the current delivery organisation cannot be seen to be given an unfair advantage. Nevertheless there are some clear lessons from this process.

Key concerns

The commissioners do not appear to have decided what they wanted to commission before the tender was published. Changes were made to the specification and the rationale behind it that suggests there was no clear understanding of what was needed.

Why wasn't there sufficient engagement with providers and beneficiaries before the tender was published? These are the people with expertise and they could have assisted the commissioners in their thinking. This could have been done without giving the provider an unfair advantage but being able to contribute their expertise.

There is a case for outcomes based commissioning. Delivery organisations find it frustrating when commissioners want to over-specify what is needed, rather than saying what outcomes they want to have achieved and letting those with experience and knowledge of the subject and local knowledge have the opportunity to explain how these outcomes will best be achieved.

Why was there such a short time for providers to write their bids? Trust Links struggled with this, having limited capacity as a small organisation and they were arguably better placed to understand what is required as the current provider. Creating two contracts doubled the amount of work that was required. The bidding schedule for the second contract proved particularly challenging as it included a time when many people take annual leave for the school holidays.

Why was there limited requirement to demonstrate added value? The nature of this contract should have required bidders to state how their provision would contribute additional value to the tender, such as their engagement in the local community, use of volunteers and the benefits of other activities they are delivering from the same premises. There should also be a requirement for bidders to demonstrate the social value they can achieve through their proposed methodology.

Staffing arrangements can be complex and difficult to manage. Trust Links is a relatively small provider but was able to manage complex processes such as TUPE. These were made more difficult because of the changes in the commissioning process after it had been launched. Having a seconded member of staff from the mental health trust assisted greatly in accessing and using information.