

think smart... think voluntary sector!

Good Practice Guidance on Procurement of Services
from the Voluntary and Community Sector

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FOREWORD

by **Fiona Mactaggart MP**

As the Minister responsible for Race Equality, Community Policy and Civil Renewal, I am delighted to endorse this best practice guidance on procurement of services from the voluntary and community sector.


The Government regards the voluntary and community sector as a key partner in the search for excellence in the delivery of public services. Whether national or locally based, driven by the power of faith, of imagination or specific goals, our voluntary and community organisations demonstrate the skills, passion, and commitment to get things done. They have special talents in reaching and gaining the trust of disadvantaged groups in our society and their contribution undoubtedly makes our communities safer and more rewarding places to live.

I have seen at first hand the value for money and innovation which voluntary organisations can bring to the delivery of public services. But sadly, many voluntary sector organisations striving to secure contracts in support of the Government's agenda never get beyond first base. The necessary process of embedding this guidance requires, above all, a change of attitude by key decision makers and public sector procurement specialists. The assumption in procuring public services that the choice is just between public and private sector providers must be challenged. Greater awareness is needed of the valuable contribution which the voluntary sector can make if we are to place it firmly on the agenda as a potential provider, whether directly or through sub-contracting.

Also, we need to understand and address the barriers which the voluntary and community sector can face in bidding for Government contracts. Difficulty in finding out about opportunities, too little notice of forthcoming procurements, disproportionate paperwork and expense in tendering, lack of recognition of the capabilities of voluntary organisations are just a few of the problems which have been identified. Result? – the aspiration of supplying Government is consigned to the “too difficult” pile!

Finally, I believe the public sector must embrace the voluntary and community sector as a partner, not just in the procurement and delivery of services, but in the planning of required service outcomes and the development of effective procurement strategies. Continuing dialogue with the market and early involvement and consultation with suppliers, especially where new services are being planned, is crucial to the shaping of effective procurement strategies and the acquisition of innovative, responsive and value for money services.

I hope that everyone who is involved in any way in the procurement of services across Government will take note of this guidance and do their very best to implement the good practice recommendations it contains.



Fiona Mactaggart

INTRODUCTION

by John Oughton

Chief Executive of the Office of Government Commerce

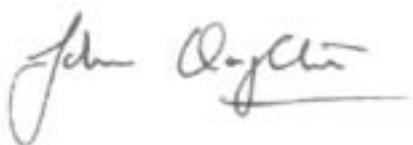
I am pleased to add my personal support to this guidance. The OGC recognises that diversity amongst our suppliers can lead to more innovation, better competition and ultimately better value for money. The special skills and added value which the voluntary and community sector can offer are important and I strongly support this initiative.

This guidance is not about departments giving preferential treatment to the voluntary and community sector. Rather it is about opening supply opportunities to all, regardless of their status; reducing barriers to market entry; and building effective and mutually rewarding procurement relationships. Central government and other public bodies must at all times adhere to Government procurement policy, which is designed to secure value for money.

The Minister has said that a fundamental change of attitude is required to place the voluntary and community sector clearly on the map as a provider to the public sector and as a delivery channel for public services. I would like to emphasise two further important factors. First, early discussion with potential suppliers about how to design the delivery of policy outcomes can be invaluable, provided it is done without giving advantage to any individual supplier. Second, the increased use of clear output or outcome based specifications is essential if we are to capture innovation and value for money, whilst maintaining the highly valued independence of the sector in how they work.

Much voluntary and community sector activity is focused locally, and delivered through a mixture of grant funding arrangements, contracts with local authorities to which Best Value principles apply, and participation in Local Strategic Partnerships. This guidance covers only procurement of services by Government departments and Non-Departmental Public Bodies. It can be used in conjunction with the OGC's "Successful Delivery Toolkit" to address many of the problems identified by the voluntary sector. OGC is also running some pilot work which is examining how to reduce the costs of contracting for all suppliers, including the voluntary sector. In particular, in line with the Government's report "Making a Difference – Reducing Bureaucracy" OGC is exploring the scope for one stop pre-qualification procedures and greater use of standard conditions of contract.

In conclusion, I urge Directors and senior managers in Government departments and NDPBs to promote this guidance, and incorporate its key elements in their departmental strategies and training programmes for Senior Responsible Owners, project and procurement professionals.



John Oughton

EXECUTIVE SUMMARY

1.1 Introduction

- 1.1.1** The Government is committed to extending the role of the voluntary and community sector (VCS) in the delivery of public service contracts. *“The Role of the Voluntary and Community Sector in Service Delivery: A Cross Cutting Review”*¹, published by HM Treasury in September 2002 identified ways in which the VCS can add value and some of the barriers they face in securing contracts. It called upon the Active Community Unit of the Home Office, in liaison with other Government Departments and the Office of Government Commerce (OGC) to develop this good practice guidance and for all Departments to agree a common approach in line with it.
- 1.1.2** Although the primary focus of this guidance is to improve the participation of the VCS in public service contracts, it is also highly relevant to procurement relationships with small and medium size enterprises (SMEs), and black and minority ethnic enterprises (BMEs).
- 1.1.3** Government procurement policy requires that all procurement must be based on value for money (VFM) – that is the optimum combination of whole life costs and quality to meet the user’s requirement. However, VFM and supplier diversity are not in opposition to each other. Public procurement is generally more effective if it is open to ideas and tenders from all potential supply markets.
- 1.1.4** This Guidance is not about giving preferential treatment to voluntary and community organisations (VCOs). It is about opening supply opportunities to VCOs, building effective relationships with them, and removing some of the barriers they face in the successful delivery of Government service contracts. **Essentially what is needed is a change of approach to the sector by Government decision makers. Too often the choice is between public and private sector solutions – and the potential contribution of the VCS is overlooked.**

1.2 Who should read this Executive Summary

- 1.2.1** This summary should be read by all those whose activities are likely to involve them in any way with the procurement of services. But it is particularly aimed at Directors, Senior Responsible Owners, policy, programme and project managers, members of Gateway review teams and other senior staff who may be engaged in the design or approval of policies and programmes that lead to the shaping of procurement strategies.
- 1.2.2** It is also for the staff and Trustees of VCOs to read, to be assured that Government is determined to improve engagement with them and to understand how it plans to achieve that change.

¹ http://www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_voluntary



1.2.3 Although the guidance is principally for Government Departments, Executive Agencies and NDPBs, those involved in local authority procurement, and partnerships commissioning at local level (such as Local Strategic Partnerships, Drug Action Teams and Crime and Disorder Reduction Partnerships) may also find the principles contained here of some interest or relevance to their work.

1.3 Purpose of this summary

- *to raise awareness of the importance which the Government places on increasing the participation of the VCS in the procurement of services.*
- *to emphasise some of the special expertise and VFM opportunities that the VCS can offer.*
- *to highlight some of the barriers faced by the VCS in competing successfully for public sector contracts.*
- *to summarise what can be done to boost participation by the VCS in the successful delivery of service contracts, and to provide a high level checklist to help maintain focus on the VCS at all stages in the procurement cycle.*

1.4 What benefits can the VCS provide

This will depend on the circumstances of each particular procurement but it is generally accepted that the VCS offers benefits in the following key areas:

- **Established links with the community** – *VCOs, especially locally based ones, although not necessarily large national providers, are often deeply embedded in local communities with a thorough understanding of the political and social environment in which they operate. They can be especially skilled at drawing upon resources in the community and gaining local support for new projects.*
- **Understanding the needs of specific client groups** *and real passion, focus and commitment to action on a specific issue. Greater capacity to reach and earn the trust of excluded or disadvantaged groups. This is often facilitated by recruiting those with direct experience of the user perspective.*
- **Independence and freedom from institutional pressures** – *VCOs are generally not constrained by complex structures and rules. They are independent and driven by their charitable aims rather than the search for improved profit margins. This can make them enthusiastic, committed, and especially flexible and responsive to customers needs.*
- **Innovation** – *the VCS is well placed to offer fresh and innovative solutions. They may be less risk averse and have a stronger motivation, through their charitable aims and objectives, to identify better ways of doing things.*

1.5 What are the barriers

VCOs face numerous barriers, both perceived and real, in their search for a greater role in the delivery of public service contracts. These include:

- *Lack of early and effective consultation with the VCS in the development of policy, programmes and strategies, leading to poorly packaged or unattractive procurements.*
- *Failure to properly assess VCOs' capabilities and to consider them as serious contenders. Insufficient recognition given to their strengths and skills. Public sector procurers too risk averse and worried that VCOs lack the resources, organisation, and business skills to deliver.*
- *Difficulty in finding out about contract opportunities and who to approach about becoming a supplier. VCOs often lack knowledge and experience of Government procedures and have great difficulty in breaking into the market.*
- *Trend towards use of large scale contracts, such as national or regional frameworks, and rationalisation of the supplier base, rules out many VCOs. Difficulty in forging alliances with prime contractors prevents them from playing a support role in the supply chain.*
- *Complex and costly pre-qualification and tendering procedures with unrealistic timescales, prescriptive specifications and excessive contract terms. Means invitations to tender can be consigned to the "too difficult" pile.*
- *Lack of a level playing field in procurement, particularly relating to the unwillingness of some procurers to accept full cost recovery, including management charges, in VCOs tender prices.*

1.6 So, what can be done to help?

1.6.1 A great deal can be done before procurement begins, during the contracting phase, and after contract award to increase VCS engagement and competitiveness. The challenge is to think about how you can harness innovation and best practice from the VCS at the following key stages:

- *When policy is first being formulated (**early supplier consultation**);*
- *When programmes and strategies are being shaped (**seek supplier input in developing policy outcomes/outputs**);*
- *During pre-procurement (**better procurement strategies**);*
- *During tendering phase (**better tender documents**);*
- *Post contract (**feedback, review and continuous improvement**).*



The attached chart provides a check list on the positive and practical steps which can be taken at each stage of procurement. The critical success factors are:

- **Understand the market** *through on-going dialogue. Get to know the VCOs within it, their organisation and capabilities, their problems in dealing with you.*
- **Consult early** *on viability of policies, programmes and procurement strategies.*
- **Open contract opportunities** *to VCOs by providing information about how to become a supplier, wide publication of contracts in accessible media, training and support.*
- **Focus procurement on outputs/outcomes** *rather than processes to incentivise VCOs and capture their expertise and innovation.*
- **Keep it simple and proportionate** – *reducing complexity and bureaucracy in turn reducing costs of procurement to the VCS.*

1.6.2 Directors should ensure that the steps they are taking to increase engagement with the VCS are included in their strategies and business plans. Senior managers must be prepared to ask challenging questions at each stage in the procurement cycle including as appropriate:

- **Are these proposals likely to be of interest to the VCS**
- **What is the potential impact on the VCS**
- **What is the extent of any existing service provision and do the proposals complement/build upon that provision**
- **Could we benefit from informal consultation with the VCS now**
- **Has enough been done to inform the VCS at this stage**
- **Are we learning from our successes (and failures!) in contracting with the voluntary sector and sharing best practice accordingly**

Checklist

Ongoing Work

• Developing the supplier base

- Get to know the market and the players within it
- Consider “Meet the Buyer” events – good for VCOs to form alliances with prime contractors
- Produce a “how to do business with” guide
- Publish a named contact for enquiries from potential suppliers

Shaping Programmes & Strategies

• Establishing policy and defining the need

- Consider likely impact on VCS and benefits they could offer
- Ensure early supplier involvement to gain a supplier perspective when shaping policies and programmes
- Informal consultation is to be encouraged provided nothing is done to give a supplier an advantage in later competition

• Developing procurement strategy

- Consider benefits of dividing contract into smaller lots
- Give early signal to market that VCS involvement in supply chain would be welcomed
- Give careful attention to optimum length of contract

Pre-Tender Phase

• Publishing contract opportunities

- Provide early notice of forthcoming procurements
- Publicise opportunities widely, especially on departments’ procurement websites
- Encourage key suppliers to publicise opportunities for sub contracts

• Pre-qualification procedures

- Ensure that pre-qualification procedures are proportionate
- Request only 2 years accounts
- Chose evaluation criteria carefully to ensure they do not rule out small or inexperienced but otherwise competent VCOs

• Drawing up the specification

- Focus on outputs/outcomes to maximise VFM and innovation
- Involve relevant stakeholders in drawing up specification
- Underpin by appropriate consultation with suppliers
- Be careful about assigning risk to those best placed to handle
- Avoid jargon and paper overload



Tendering Phase

• Invitation to tender

- Ensure tender documentation is clear, concise and jargon free
- Base procurement on a sound business case, approved budget and stakeholder buy-in to avoid aborted or delayed procurement
- Consider offering training to potential suppliers, outside of any particular procurement, to enable them to improve tenders

• Contract and payment terms

- Be aware that some VCOs can have problems with working capital. Be prepared exceptionally to make advance payments, eg for start up costs, where the need has been demonstrated
- Consider use of frequent milestone payments where appropriate
- Use contract terms which are proportionate to the scale and complexity of the contract – standard ones wherever possible
- Allocate risks to those best placed to deal with them

• Evaluation and clarification of tenders

- Explain the evaluation process to tenderers at the outset, including the criteria to be used and their relative importance
- Allow VCOs freedom to determine their own price in competition, including the inclusion of overheads, management fees.

• Award of contract

- Let tenderers know that feedback can be provided
- Offer feedback that is as helpful as possible and designed to promote future improvement

Post Contract

• Contract management

- Seek supplier involvement in the design of contract management procedures and ensure they are proportionate
- Focus management reporting on measuring key outcomes
- Encourage and incentivise VCOs to make proposals for service improvement
- Review current contracts with prime suppliers to see if there is any scope for involving the VCS
- Develop a good working partnership, avoiding undue escalation of problems

DETAILED GUIDANCE

1 INTRODUCTION

1.1 The Voluntary and Community Sector (VCS)

1.1.1 At the time of writing, there are approximately half a million voluntary and community organisations (VCOs) in the UK, ranging from small, local community groups to large, established, national and international organisations. Of these, 188,000 are registered charities. VCOs are independent organisations run on a not for profit basis. Some have no income at all and rely on the efforts of volunteers. Others are, in effect, businesses run by paid professional staff. VCOs pursue a broad range of purposes including health and social welfare, sport and recreation, environmental protection and the arts.

1.1.2 The VCS, under contracts with Government, is delivering an increasing number of public services. In 2001, the sector's income from government was £2.5 billion – almost one third of the sector's total income (these figures exclude registered social landlords – voluntary bodies with a longstanding funding relationship with government).

1.2 Government focus on the VCS

1.2.1 Government strongly believes that the VCS has a crucial role in the delivery of public services. *“The Role of the Voluntary and Community Sector in Service Delivery: A Cross Cutting Review”*¹ explored how central government can work more effectively with the VCS to deliver high quality services, and identified barriers the VCS face in securing contracts.

1.2.2 The Review called upon the Active Community Unit of the Home Office in liaison with other Government Departments and the Office of Government Commerce (OGC) to develop good practice guidance on the procurement of services from the VCS and for all Departments to agree a common approach in line with this guidance.

1.3 Purpose of the guidance

1.3.1 The purpose of this guidance is to raise awareness of the value for money (VFM) that the VCS can offer, to explore some of the issues that can make it difficult for it to compete successfully for public sector contracts and to set out some ideas about how you (the reader) can help.

¹ http://www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_voluntary



1.3.2 The guidance is not about giving preferential treatment to VCOs. It is about opening supply opportunities to VCOs, building effective relationships with them, and removing some of the barriers they face in the successful delivery of Government service contracts. Departments and NDPBs should at all times adhere to Government procurement policy, based on VFM and equal opportunity for all suppliers regardless of their formulation.

1.3.3 The guidance generally reflects best procurement practice in working together with all types of supplier in the search for VFM public services. Although the primary focus of the guidance is on the VCS, it is also, with the exception of the “procurement or grant issue” relevant to small and medium enterprises (SMEs) and black and minority ethnic enterprises (BMEs). In practice, many of barriers faced by the VCS are similar to those faced by these organisations.

1.4 Who should make use of this guidance?

1.4.1 The guidance is primarily aimed at senior managers, SROs, procurement professionals, programme and project staff, and policy-making officials whose work may lead to procurement from the VCS. It is a detailed reference work, underpinning the Executive Summary. Procurement specialists will already be well acquainted with much of the detail, especially that relating to Government policy and the EC regime. The detail has been included for the benefit of policy and project staff who may not be so familiar with procurement policy and best practice.

1.4.2 Although the guidance is principally for Government Departments, Executive Agencies and NDPBs, those involved in partnerships commissioning at local level (such as Local Strategic Partnerships, Drug Action Teams and Crime and Disorder Reduction Partnerships) may also find the principles contained here of some interest or relevance to their work.

1.4.3 The guidance may also be of interest to VCOs keen to develop the provision of services to the public sector – and to local authority practitioners involved in the procurement of services from the VCS in accordance with Best Value principles and practice.

1.5 Other documents to be aware of

1.5.1 A wide range of guidance and reports has been produced which aims to make a positive impact on the Government’s relationship with the VCS and other suppliers of public services. Key documents which you should be aware of are:

- *“The Compact on Relations between Government and the Voluntary and Community Sector in England”*
- *“Guidance to Funders: improving funding relationships for voluntary and community organisations”*
- *“Smaller Supplier...Better Value”*

- *“Government – Supporter and Customer”*
- *“Getting Better Delivery”*
- *“Making a Difference – Reducing Bureaucracy in Central Civil Government Procurement”*
- *‘Kelly’ report – “Increasing Competition and Improving Long-Term Capacity Planning in the Government Market Place”*

1.5.2 Full details of these and other relevant publications can be found at Appendix A.

2 GOVERNMENT PROCUREMENT POLICY

- 2.1** The Government's overarching policy on public procurement is to achieve VFM having regard to propriety and regularity. VFM is not the lowest price – it is defined as the optimum combination of whole life costs and quality to meet the user's requirement. Responsibility for procurement policy rests with the OGC. The Procurement Policy Guidelines² which provide an overview of the policy framework within which public procurement is to be conducted, make it clear that each Departmental Accounting Officer is responsible for meeting the VFM objective.
- 2.2** Although all public procurement decisions must be based on VFM with no favourable treatment of any supply market, VFM and supplier diversity are not in opposition to one another. Public procurement is generally more effective, and VFM is more likely to be secured, if it is open to ideas and tenders from all potential supply markets including the VCS.
- 2.3** A great deal of work has been undertaken by the OGC in producing practical guidance designed to ensure that the procurement process is fair, proportionate, cost effective and results in mutually beneficial contracts and partnerships. OGC has produced a comprehensive toolkit for Government procurement professionals entitled “Successful Delivery Toolkit”³ the use of which is strongly recommended and should in itself help to alleviate many of the problems faced by the VCS in the successful delivery of service contracts.
- 2.4** The OGC is also active in reducing barriers to participation in public procurement, for example through the action plan for the ‘Kelly’ report, the report ‘Making a Difference: Reducing Bureaucracy in Central Civil Government Procurement’, and the government's response to the report ‘Government: Supporter and Customer?’ These initiatives will all help to level the playing field for the VCS in public procurement.

² See Ch 22 of Government Accounting at www.government-accounting.gov.uk

³ www.ogc.gov.uk/sdtoolkit



3 THE EC PROCUREMENT REGIME

- 3.1** The myth that the EC Procurement regime is a barrier to effective procurement from the VCS must be dispelled. Firstly, most contracts with the VCS are likely to be in the field of social services, health, education and other community services. Such contracts, although subject to the EC Treaty principles of transparency and non-discrimination, are not subject to the full application of the EC procurement Directives, but to a lighter regime.
- 3.2** Where the EC Directives do apply in full, they serve only to reinforce existing Government policy, securing VFM and competition in the procurement process. They normally require advertising of contracts across Europe and set out detailed rules for specifications, selection of tenderers and award of contracts. They should be seen not as a barrier, but rather as a benefit to all organisations, large or small, voluntary or private sector, seeking to engage in public sector service contracts.
- 3.3** See Appendix B for more detailed information about the EC regime and its application.

4 DISTINGUISHING BETWEEN GRANTS AND PROCUREMENT

- 4.1** Procurement is defined as being the acquisition of goods and services from third party suppliers under legally binding contractual terms where all the conditions necessary to form a legally binding contract have been met. Such acquisitions are for the direct benefit of the contracting authority, necessary for the delivery of the services it provides or for the running of its own business. In addition, the EC procurement directives provide specific definitions for supplies, services and works contracts covered by them.
- 4.2** VCOs may receive grants from a variety of sources, including Government departments and other public bodies, to enable them to carry out their work. The grants may be general grants, to assist with the expenses of developing and running a VCO (often called “grant in aid”) or specific grants to enable it to carry out a particular project or service. The grant giver is not contracting for a service which forms part of its own business. It is offering financial support to a VCO in an area of work, designed and proposed by the VCO, which it wishes to sponsor. The work to be carried out by the VCO would be deemed to add value to a public body’s overall aims or objectives. For example, to reduce the fear of crime in a community, grants may be awarded for improved local lighting schemes.

- 4.3** The terms of the grant are likely to require the VCO to use the money only for a particular project or service, and might require the VCO to pay back the grant, or part of it, in some circumstances. But the VCO might have no other specific legal obligations to the public body that made the grant to it, and retains considerable freedom in the way in which it carries out the work. Frequently a grant awarded for a project or service will cover only part of the cost and will need to be “matched” by other funding. Thus, a Government department may be one of several public or private bodies contributing funds to the same project.
- 4.4** Over the last decade, it has become more commonplace for grants to be awarded following competitive bids for funding. Also grant giving bodies often now require some form of written grant agreement, detailing roles and responsibilities of both parties. These may be non-legally binding agreements (often referred to as grant agreements or service level agreements) or in some cases, legally binding grant contracts. During the life of the grant, there may be more “hands on” management of progress than was the case in the past, as grant givers come under greater pressure to justify the proper disposal of public funds.
- 4.5** Increasing use of competition and written agreements in the award of grants has led to some confusion with public procurement contracts. It is important to distinguish between procurement and grants and consequently to apply the appropriate procedures. Expert advice should be sought in cases of doubt.
- 4.6** **It should be stressed that the following guidance applies only to the procurement of services from the VCS and not to the provision of grants.**

5 VALUE THE VCS CAN ADD IN SERVICE PROVISION

- 5.1** The specific value which a VCO can add to a particular procurement will only become apparent after fully evaluating all the bids received. VCOs will only be awarded contracts where they offer the best VFM solution in meeting the requirement. However, it is generally accepted that VCOs, particularly small organisations, are potentially able to offer valuable or unique benefits in the following areas:
- **Established links with the wider community** – *VCOs, especially local ones, but not necessarily large national providers, are often deeply embedded in local communities, and skilled at drawing on resources within them. They can have considerable understanding of the needs of specific client groups and a greater capacity to reach excluded or disadvantaged groups. They often have a thorough understanding of the political and social environment in which they operate and can be effective in gaining local trust and support for new projects.*



- **Specialist knowledge and experience** – *this may come through their in- depth and single minded passion and commitment to a specific issue, and is assisted by some VCOs recruiting more extensively from those with direct experience of the user perspective, for example ex-offenders working with young criminals. In some specialist fields, the VCS can have a higher level of expertise than either the public or private sector is likely to be able to provide.*
- **Independence and freedom from institutional pressures** – *VCOs are generally less bound by structures and rules than the private or public sector. They are independent and driven more by altruistic aims rather than the search for improved profit margins. This can make them both innovative and flexible in their approach.*
- **Innovation** – *the VCS is well placed to offer innovative solutions. They may be less risk averse and have a stronger motivation, through their charitable aims and objectives, to identify better ways of doing things in their particular segment of the market.*
- **Responsiveness** – *VCOs may be highly focused on particular services or sectors of the community making them alert and responsive to changes in those markets.*
- **Economies of scale** – *because some VCOs are often specialists in a particular field, they can provide services in a way which benefit from economies of scale.*
- **Niche markets** – *many VCOs survive by supplying highly specialist services which private sector suppliers find unattractive or outside their competence.*

6 INCREASING VCS PARTICIPATION IN THE PROCUREMENT OF SERVICES

6.1 Working within the Government's procurement policy guidelines and the EC rules, there is a great deal which can be done to encourage more participation by the VCS in successful delivery of service contracts. The challenge is for officials to think about how they can harness innovation and best practice from the VCS at the following key stages:

- *When policy is first being formulated (**early supplier consultation**);*
- *When programmes/services are being shaped (**seek supplier input in developing policy outcomes/outputs**);*
- *During pre-procurement (**developing better procurement strategies**);*
- *During contracting phase (**developing better tender documents**);*
- *Post contract (**feedback and continuous improvement**).*

- 6.2** The remainder of this guidance looks at the specific steps in the procurement cycle shown in the diagram below, highlighting the barriers that VCOs can face and outlining solutions and good practice:





7 DEVELOPING THE SUPPLIER BASE

7.1 VCOs often experience difficulty in breaking into the public sector market. They may have limited marketing resources to sell themselves to public sector clients and be unsure about how to become a supplier or who to talk to about opportunities. Even when they have captured the attention of public sector buyers, they may feel that their talents and capabilities are not sufficiently recognised.

7.2 Good Practice Guidance

- **Get to know your market.** *Through regular on-going dialogue, understand the players within it, their capabilities and interests, and the barriers they perceive in bidding for and gaining contracts. Take a strategic and systematic approach to developing the supplier base rather than simply engaging with the market on a short term, project by project basis.*

This dialogue may take many forms. For example, 'Meet the Buyer' events. Focus the events on a particular market segment and open them to large and small organisations, both from the voluntary and private sector. These events can be very useful for VCOs in finding out about contract opportunities and in forming supply chain alliances with other organisations.

Other ideas include the setting up of provider groups (such as the Provider Strategic Issues Group run by the LSC and Jobcentre Plus); the use of more informal focus groups; and web-based interactive information services.

- **Inform VCOs about other organisations which can help them.** *For example, the Small Business Service⁴ run a number of initiatives to assist small businesses to understand the needs and procedures of public sector clients and help them put in place the skills and resources they need to become successful suppliers.*
- **Produce a 'How to do business with ...' guide** *providing potential suppliers with the information they need to bid effectively for your contracts (and place the guide on your website).*
- **Do not make assumptions about the capabilities of VCOs.** *It is important that applications from VCOs wishing to become a supplier should be assessed thoroughly, if possible through a supplier assessment meeting or visit.*
- **Publish a named contact point** *for VCOs wishing to make general enquiries about procurement. Encourage new VCOs to join your supplier base, by responding promptly and positively to their enquiries.*

4 www.sbs.gov.uk

8 ESTABLISHING POLICY AND DEFINING THE NEED

- 8.1** It is essential to involve potential suppliers, including VCOs, when policy is first being formulated and new programmes or services are being planned. Too often, the first VCOs learn about a new project or service is when an advert is placed or the tender documentation arrives. Consequently, VCOs may find the proposed service has unviable or unattractive elements and be deterred from bidding. Lack of advance notice of new projects is a particular barrier for some smaller VCOs, who may need longer to gear themselves up to provide a new service.
- 8.2** There is also value in consulting with the VCS even where they are not expected to play a significant role in the delivery of the service. For example, insufficient consultation at an early stage may lead to the situation where a new public service is provided without sensitivity to the range and depth of existing service provision. This may lead at best to local services which are not integrated or complementary or at worst to small charities being squeezed out of the market. This can also lead to serious gaps in provision if the public funding subsequently dries up.
- 8.3** Recognising the importance of early engagement with the VCS, the Government has produced “*Consultation and Policy Appraisal – A Code of Good Practice*” to underpin its Compact with the VCS. In this, it promises to involve the VCS at an early stage in the development of policy (subject to urgency, sensitivity or confidentiality considerations).

8.4 Good Practice Guidance

- **Ensure early supplier involvement** *when planning new policies and programmes. Consider informal consultation with a number of VCOs to test viability, tap knowledge and expertise, establish the extent of any existing provision, and generally gain a supplier perspective to help shape policy and procurement strategy. This is permitted provided nothing is done which would give a particular VCO or other potential provider an unfair advantage in competing for a specific contract.*

There is a growing trend in the VCS to set up open forums to enable VCOs operating in particular regions or segments of the market to meet and share experience. These often also provide a valuable mechanism for the public sector to consult informally with a broad range of potential voluntary and community sector providers.

- **Understand the context** *of what already exists within this area of service provision – would it provide better VFM to build on this rather than roll out a new programme on top of it?*



- **Consider benefits which VCS could offer.** *Think which aspects of the programme would most benefit from VCS involvement. For example, community engagement projects are an area where the VCS can add particular value.*
- **More detailed guidance** on the value of early engagement with the market and market sounding is contained in the Market Assessment Section of the OGC's "Successful Delivery Toolkit".

9 DEVELOPING PROCUREMENT STRATEGY

9.1 One of the greatest problems faced by VCOs is the growing trend in procurement to rationalise the supplier base and award fewer and larger contracts, including large scale national or regional framework contracts. VCOs, especially small ones, often do not have the capacity to bid for such large contracts. Whilst they would like to be part of the supply chain, by acting as a sub-contractor or member of a consortia, they find it difficult to set these arrangements up.

9.2 A number of VCOs have indicated that one year contracts are still relatively prevalent, and they believe that procurers are using frequent retendering as a means of improving service delivery and driving down cost. However, this may not be an effective strategy longer term. Quite apart from the cost to both the public sector and suppliers of frequent retendering exercises, organisations may be deterred from bidding if the length of the contract period is too short to allow them to demonstrate what they can do.

9.3 Good Practice Guidance

- **Consider whether there would be advantages in dividing the contract into smaller lots.** *Whilst large scale contracts can bring benefits through reduced procurement and contract managements costs, they do not always offer the best VFM, and may have a longer term detrimental effect on the diversity of the supplier base. Refer to the OGC guide "Aggregation – is bigger always better?" for guidance on 'intelligent aggregation'.*
- *Consider whether there are any elements of the requirement which could be attractive to VCOs and the subject of a separate or linked contract, where this is consistent with VFM.*
- *In this context consider whether large national providers including large charities, are best placed to offer the specialist local understanding needed to deliver some forms of service, in areas such as community development activity. Breaking contracts down into smaller units, where consistent with VFM, allows for smaller organisations, including small local VCOs, to bid on equal terms.*

- **Permit and encourage sub-contracting.** *Although many VCOs may not be in a position to be a prime contractor, there could be opportunities for VCOs to be sub-contractors, particularly where they can provide specialist services. This can help VCOs to break into the public sector marketplace and gain confidence in dealing with the public procurement.*

Where appropriate, you can signal to tenderers at an early stage (for example at initial information meetings) that you would welcome the VCS being considered for use in the supply chain. Also, if relevant, you can ask prime suppliers during pre-qualification to demonstrate their track record of achieving value for money through effective use of the supply chain – including for example through sub-contracts or partnerships with VCOs and SMEs.

Where it is relevant to the performance of the contract, you can ask tenderers to set out their proposals for engaging with local bodies, such as VCOs.

- **Give careful attention to the optimum length of the contract** *and whether a longer term contract or partnership would best achieve the desired programme outputs. For public service delivery, a sensible length of contract to generate results would normally be a minimum of three years.*

10 PUBLICISING CONTRACT OPPORTUNITIES

10.1 VCOs frequently face difficulty in finding out about specific contract opportunities. They may not be familiar with the Official Journal of the European Union (OJEU) or other publications used to advertise tenders. It is especially difficult for small organisations, wishing to break into the market for the first time, to find out about lower value tenders.

10.2 Having found out about a particular tender, it can often be difficult to obtain further information or clarification from a named contact point.

10.3 Good Practice Guidance

- **Provide as much notice as possible of forthcoming procurement activity.** *Include a section on your website about future tenders. Early warning will help VCOs in their business planning.*
- **Publicise opportunities widely,** *particularly lower value ones, utilising the trade press, Departmental procurement websites and other relevant websites as appropriate. Use of your own website can be particularly helpful and cost effective. Send a note or e:mail to suppliers whom you know may be interested in the tender to alert them after placing of an advert.*
- **Keep in touch with the pilot projects** *being run by the Small Business Service and the OGC to test the feasibility of a central web portal for advertising Government contracts, particularly small value ones. Details can be found at www.supplyinggovernment.gov.uk*



- **Consider how you can provide more information about sub-contracting opportunities for the VCS**, for example by publishing details of major contracts or by allowing prime contractors to advertise opportunities for sub-contracting and partnership on your website.
- **Use a supplier list where appropriate.** Normally requirements should be advertised. But if you know your market and the suppliers within it very well, then use of a supplier list to select suppliers for procurements below the EC thresholds can be a simple and cost effective strategy. Refresh the list regularly, be open about the process, and make it easy for new suppliers to join.
- **Publish a named contact point** where suppliers can get further information about both current and forthcoming tenders.

11 PRE-QUALIFICATION PROCEDURES

- 11.1** Tendering is frequently a two stage process, involving pre-qualification or shortlisting of suppliers who have expressed interest followed by an invitation to tender. Completion of lengthy pre-qualification questionnaires in different formats for different parts of Government can be a real barrier to participation by the VCS and a significant drain on their resources. They may often miss the deadline simply because they cannot find the time or resources to provide all the pre-qualification information requested.
- 11.2** Some of the criteria used in pre-qualification checks can also effectively rule out participation by VCOs. For example, asking organisations to demonstrate a track record of delivering services to Government over the past three years might rule out a new VCO seeking to supply services to Government for the first time.

11.3 Good Practice Guidance

- **Ensure that the information required at the pre-qualification stage is proportionate** to the size and complexity of the contract. Consider what use you will make of every piece of information, document or reference requested. Is it going to be effective in assessing capability and selecting candidates?
- **Accounts.** Government advice, recently updated is to request only two years of accounts or, if these are not available, other appropriate information.
- **Pre-qualification criteria** should be carefully chosen to avoid unnecessary ruling out at this stage of competent suppliers. Whilst it is important to select suppliers that are financially sound and capable of delivering the solution, this does not necessarily mean the largest suppliers with the most extensive track record.

- **Keep in touch with the progress of the “passporting” pilots** *being operated by the Small Business Service and the OGC with a view to developing a one-stop process for the pre-qualification of potential service suppliers. Further details can be found at www.supplyinggovernment.gov.uk.*

12 DRAWING UP THE SPECIFICATION

12.1 The specification or statement of requirements forms an integral part of any service contract. VCOs will base their pricing and resourcing structure largely on this document. It is vital if good, well-structured and innovative tenders are to be received that VCOs can fully understand and empathise with the specification. The most frequently mentioned problem at this stage is the issue of prescriptive specifications which prevent VCOs from using their knowledge and experience to design cost effective and viable solutions to required policy outputs.

12.2 Inappropriate risk allocation is also a serious cause for concern amongst VCOs. One quoted case involved the delivery of a service by a VCO to clients who were referred to it by a third party organisation over which the VCO had no control or influence. However, the VCO was paid a set amount for delivering the service to each client. Referrals fell dramatically from those which had been estimated in the specification, meaning that the VCO’s income from the contract was not even covering its fixed costs.

12.3 Good Practice Guidance

- **Focus on outcomes** *not on how they are to be delivered. This challenges suppliers and gives them freedom to develop expert or innovative solutions. “Getting Better Delivery” notes that the achievement of outcomes should be used as a key indicator of success in service delivery.*
- **Involve relevant stakeholders** *particularly users, in the development of a specification to ensure it properly reflects the requirements for delivering the service. Changes to requirements (which can be very costly for both the VCS and the contracting authority) often arise through failure to consult all the relevant stakeholders.*
- **Appropriate consultation with suppliers.** *“Guidance to Funders” and “Getting Better Delivery” both recommend that specifications should be underpinned by appropriate consultation with providers. However, these consultations should not lead to a specification which favours a particular supplier.*
- **Be alert to how the specification is assigning risks.** *“Guidance to Funders” notes that the key to success lies in ensuring that risk is handled properly and sensibly. Risks should be allocated to the parties best able to manage them. For new requirements, it will be important to discuss allocation of risk with the market prior to commencing procurement – decisions on where risk best lies should not be made unilaterally without appropriate research and consultation.*



- **Make requirements clear and concise, avoiding jargon.** *Avoid both under-specifying and over-specifying the requirement. The results could be costly and unnecessary.*

13 INVITATION TO TENDER

- 13.1** Perhaps the most significant barrier for the VCS at the tender stage is the cost and complexity of Government tendering processes. Long procurement timescales and fear (or reality) of client slippages can be a real deterrent. This was highlighted in the “Compact – Code of Good Practice on Funding” which revealed that many VCOs expressed a wish to participate but reported that the financial barriers and potential risks were often seen as too great. The government signalled its intention to address this problem in the ‘Making a Difference’ report on Reducing Bureaucracy in Central Civil Government Procurement.
- 13.2** In addition, those new to the public sector market may have difficulty in understanding invitation to tender documents and in constructing good quality responses.

Good Practice Guidance

- **Explain the procurement process and timetable** *and what will be required from suppliers, at the outset.*
- **Consider offering training,** *outside of a particular procurement, to potential suppliers who may be unfamiliar with the public sector tendering process to give them a better chance of preparing a competitive tender.*
- **Ensure tender documentation is concise and jargon-free** *and proportionate to the size and complexity of the project. Don't be guilty of paper overload.*
- **Ensure that the procurement is based on a sound business case,** *approved budget and appropriate stakeholder buy-in to avoid an aborted or delayed procurement.*
- **Set a realistic timetable** *informed through appropriate consultation with suppliers. Avoid slippage as this introduces additional, unplanned costs.*

14 CONTRACT AND PAYMENT TERMS

14.1 VCOs can often be deterred from bidding as a result of unattractive payment terms, which adversely affect their cash flow and capability to carry out a service. There is a widespread, but incorrect, belief that payments cannot in any circumstances be made before actual expenditure has been incurred or outputs delivered. This can lead to a small but capable VCO dropping out of the competition, due to lack of reserves of working capital, or difficulty in obtaining loans at reasonable cost.

14.2 With regard to other contract terms, VCOs are most frequently deterred from bidding by over complex and demanding contract conditions, which may differ between Departments or business units. VCOs often do not have in house legal services, and may not be prepared to take the risk of accepting contract conditions without taking legal advice. This all adds considerably to the cost of bidding. Indemnity clauses and requirements for insurance against risks such as loss or damage to property present further obstacles. Sometimes it is impossible for VCOs to get the required level of insurance except at prohibitive cost.

14.3 Good Practice Guidance

- **Consider whether advance payments are appropriate.** *It is permitted to make a payment in advance of expenditure to a VCO. Paragraph 2(a) of Annex 16.1 of Government Accounting⁵ provides for such advance payments to be made where services are being carried out by VCOs on behalf of Government. An example quoted is where VCOs do not have sufficient reserves of working capital which they can use to meet costs of setting up a service. Loans may be particularly difficult or expensive for them to obtain. In these circumstances, advance payments to cover start up costs may be allowed. But such payments should not be made to VCOs as a matter of routine. The need for an advance payment must be established in each case.*
- **Consider the use of frequent milestone payments** *linked, for example, to stages of completion or the achievement of particular outcomes.*
- **Pay promptly** *in accordance with arrangements stipulated in the contract – prompt payment helps VCOs with their cash flow.*
- **Ensure that contract terms are proportionate** *to the scale and complexity of the contract and that they will not be likely to exclude VCOs unnecessarily. The OGC has published guidance containing standard conditions of contract for use in the procurement of Government services and they are exploring the potential for further work to simplify and standardise contract conditions. In the meantime if your Department has produced standard terms suitable for procurement of services from VCOs, use them wherever possible.*



- **Ensure that risks are allocated to those best placed to deal with them** and adequately reflected in the contract documentation. Contracting with VCOs (or indeed any organisation, but particularly smaller ones) should not be viewed as an opportunity to transfer all risk away from government.

Take particular care not to include indemnity or insurance requirements which VCOs could not meet or would find prohibitively expensive – unless they are deemed strictly necessary following detailed analysis of the risks and benefits. This is a particularly complex area and any proposed amendments to standard terms and conditions should always be checked with legal and commercial experts if you are at all unsure.

15 EVALUATION AND CLARIFICATION OF TENDERS

- 15.1** Barriers to effective tendering include uncertainty about how proposals will be evaluated, the criteria which will be used and their relative importance to the contracting authority. Failure to give tenderers reasonable opportunity to correct or clarify any shortcomings or misunderstandings in their bids means that otherwise cost effective proposals from VCOs can be lost.
- 15.2** A further obstacle, highlighted particularly by the CCR, relates to the reluctance of some public procurers to allow VCOs to recover the full costs of operating a service in their tender pricing schedules, and particularly any elements of pricing which relate to a management or overhead charge.
- 15.3** There may also be a lack of understanding by public procurers of the factors which can affect service delivery and cost in certain areas of the market, for example in the provision of services in rural areas or the provision of services requiring special security or safety measures.

15.4 Good Practice Guidance

- **Inform tenderers about the evaluation process at the outset.** Explain how tenders will be evaluated, the criteria which will be used and, where appropriate, the weighting or relative importance of those criteria to the contracting authority.
- **Do not discard bids too readily unless they are seriously weak or non-compliant.** Regard the clarification process as an opportunity to work with all bidders to address any misunderstandings or omissions in their bids, and thereby improve chances of securing a quality, VFM contract. Of course it is vital to give all suppliers an equal opportunity to participate in this process.

- **Allow VCOs the freedom to determine their own price in competition** in the same way as private sector companies. It is legitimate best practice to clarify prices, to ask what various elements relate to and how they have been calculated, and to query whether sufficient allowance has been made in tender prices to fulfil all aspects of the requirements. But ultimately VCOs must be permitted to submit their final prices in accordance with their own judgement, in the same way as the private sector. The prices may reflect full cost recovery or they may include an element of surplus, to finance other activities, if the organisation is prepared to take the risk of being uncompetitive. Conversely, judgements may be made to submit prices which are below the full cost of providing the service. Do not exclude bids solely on this basis, although the risks presented by bids which are obviously “loss leaders” will need to be taken into account along with all other factors in evaluating bids.

The process of clarifying tender prices will be simplified by the inclusion in the invitation to tender of detailed pricing schedules. For a new project or service, it is often valuable to check the format of these schedules with the market beforehand to ensure that they will make sense to suppliers and pick up all likely elements of expenditure.

- **Be aware of any special factors which may affect pricing or contract terms** – for example, recognise the logistical difficulties of delivering services in rural locations and ask contractors to demonstrate how their prices have taken account of these.

16 AWARD OF CONTRACT

16.1 For those VCOs that have not been successful it is important to offer feedback. Poor quality or non-existent feedback can reinforce a belief already common amongst suppliers that the public sector selects suppliers on the basis of lowest cost not VFM. Giving feedback on why a bid was unsuccessful is vital if the VCS is to improve its tendering capability and gain a larger share of public sector contracts.

16.2 The Compact “Code of Good Practice on Funding” notes that the provision of feedback can be valuable both to applicant and funder. “Just as applicants can benefit from knowing the reasons why their application was unsuccessful, funders need feedback if they are to improve the design of their programmes”.

16.3 Good practice guidance

- **Feedback.** *Whilst feedback, where requested, is a requirement under EC procurement directives, there is no legal right for feedback to be given for lower value contracts. However, OGC’s Government Code of Good Practice states that Departments should provide “feedback that is as helpful as possible and designed to promote future improvement”.*



- *Some VCOs may not know they are entitled to feedback. Let them know it is available.*
- *A supplier may also benefit from feedback even when it is successful – it can be helpful to know which aspects of its bid were seen as strongest, and whether there were any weaknesses.*

17 MANAGING THE CONTRACT

17.1 Foundations for effective contract management should be established early in the procurement process. Contract management processes, reporting and review requirements, escalation and change control procedures should all be set out in the tender documentation. There is a cost involved in these procedures which suppliers need to be in a position to accurately estimate. In addition the contract management regime should be proportionate to the scale and complexity of the contract. The arrangements are likely to be more effective if they are informed by knowledge of the market and consultation with the supplier base.

17.2 Barriers faced by the VCS in this area include over-complex reporting requirements, inadequate notice of changes to services required by the client, and undue expense or difficulty in implementing such changes. VCOs are particularly sensitive to reductions in service requirements that reduce the payments they achieve from contracts and may even pose a threat to organisational viability. They may also consider that public sector clients are not sufficiently open to new ideas for delivering services, which often only become apparent after contract award. (See OGC guide on “Capturing Innovation” for further advice)

17.3 Good Practice Guidance

- **Seek early supplier involvement in the design of contract management procedures** to ensure viability and effectiveness for both sides. Suppliers may have valuable input on how service delivery can best be measured, or experience of contract management arrangements which they have used successfully with other clients.
- **Make arrangements for contract management clear in the tender documentation**, so that tenderers can allow for the resources and costs involved in their tender price. Include arrangements for reporting, regular meetings, change control and dispute resolution procedures, and any mechanisms/incentives for the supplier to propose better ways of working
- **Focus management reporting on measuring key outputs/outcomes.** Do not burden VCOs with onerous reporting requirements relating to processes or frequent contract review meetings – these can be both expensive and ineffective. Make reporting proportionate to the size and complexity of the service and encourage the use of exception reporting. If contracts are too closely controlled then the flexibility that is one of the benefits of working with the sector can be lost.

- **Be sensitive to the impact which changes in the requirement can have on VCOs.** *Ensure that you have a simple and pre-agreed change control process. Take account of supplier comments on the changes required. Allow realistic timescales for the implementation of changes in the contract requirement.*
- **Encourage and incentivise VCOs** *to come forward with ideas for better ways of working which can lead to benefits for both parties. Evaluate their proposals thoroughly and harness good ideas. It is often only after a contract has been awarded and the supplier has been delivering the service for a while that they are able to identify improvements or cost savings.*
- **Encourage prime contractors to make sub-contracting opportunities available to the VCS.** *Where appropriate, review existing contracts and work with prime contractors to examine the scope and likely VFM of sub-contracting to the VCS.*
- **Develop a good working partnership with the supplier and try not to escalate problems unnecessarily.** *This can be expensive for both sides. Where disputes cannot be resolved between the parties, ensure that the contract allows for a user friendly and cost effective mediation or alternative dispute resolution, thus avoiding the need for expensive litigation.*

Where disputes arise as a result of the national Compact on Relations between Government and the VCS, a Compact Mediation Scheme has been established to provide an opportunity to resolve a dispute, where one party feels that the Compact has been infringed. Further details of this scheme can be found at www.cedr-solve.com/compact/.

APPENDIX A

Supporting Guidance

“The Compact on Relations between Government and the Voluntary and Community Sector in England” launched by the Prime Minister in 1998. It provides a framework of shared principles and undertakings by the Government and the VCS designed to strengthen partnership working. Within Government, the ACU of the Home Office is responsible for leading implementation of the Compact. Codes of Good Practice have been developed to support the principles of the Compact including **“Funding”** and **“Consultation and Policy Appraisal”** shown below.

“Funding: A Code of Good Practice” by the Compact Working Group (2000). Aims to make a positive impact on the funding relationship that exists between Government and the VCS. At present it applies only to grant funding but is being updated to cover procurement contracts in accordance with recommendation 14 of the Treasury Cross Cutting Review.

“Consultation and Policy Appraisal: A Code of Good Practice” by the Compact Working Group sets out best practice for consultation with the VCS and is relevant to both procurement and grant relationships.

The Compact and associated Codes of Practice can be found at www.thecompact.org.uk

“Guidance to Funders: Improving funding relationships for voluntary and community organisations” by HM Treasury (2003). Clarifies what Government Accounting says about the timing of payments to VCOs and explains the opportunities for moving to more stable funding relationships. See www.hm-treasury.gov.uk/spending_review/spend_ccr

“Government Accounting” HM Treasury (Updated 2003). Provides guidance on a wide variety of issues relating mainly – but not exclusively – the proper handling and reporting of public money. See www.government-accounting.gov.uk

“Smaller Supplier...Better Value” produced jointly by the Small Business Service and OGC and **“Government – Supporter and Customer”** published jointly by the Better Regulation Task Force and Small Business Service. These documents explore what can be done to help SMEs gain larger share of public sector contracts, but are equally relevant to VCOs. They can be found at www.sbs.gov.uk

“Making a Difference: Reducing Bureaucracy in Central Civil Government Procurement” by the OGC and the Cabinet Office (2003). Identifies practical measures to be taken by Government departments to reduce bureaucracy and thereby reduce costs and achieve better delivery.

“Increasing competition and improving long-term capacity planning in the government market place” by the OGC (2003). Considers what further steps could be taken to increase competition and encourage better long-term capacity planning in markets where the Government has significant purchasing power.

“Aggregation. Is bigger always better?” produced by the OGC (2004). Aims to clarify “aggregation”, the benefits and disadvantages associated with it and the key issues that will inform the decision making process when drawing up procurement strategies.

“Capturing innovation” – nurturing suppliers’ ideas in the public sector” produced by the OGC (2004). Supplier innovation can contribute to better value procurement but research suggests Government does not always get the best innovation from its suppliers. This guide provides advice on stimulating and responding to innovative propositions from suppliers. OGC reports can be downloaded at www.ogc.gov.uk

“Successful Delivery Toolkit” developed by OGC. Describes proven good practice for procurement, programmes, projects, risk and service management. The Toolkit brings together policy and best practice in a single point of reference. See www.ogc.gov.uk/sdtoolkit

“Government: supporter and customer?” by the Better Regulation Task Force and the Small Business Council (2003). Considers the difficulties that SMEs face in doing business with the public sector – from procurement to payment. See www.brtf.gov.uk/taskforce/pastreports.htm

“Getting Better Delivery: Guidance for Effective Working with Frontline Providers” by DfES (2003). Aims to make a positive impact on the relationship that exists between the Government (especially DfES) and Frontline Providers of services to the public (whether through grants or procurements). It can be found at www.dfes.gov.uk/publications/key.shtml

“Access to Government Funding for the Voluntary and Community Sector” by the Better Regulation Task Force (1998). Seeks to promote a 'virtuous circle of funding' by highlighting good practice and making recommendations for improvements. See www.brtf.gov.uk/taskforce/reports

“National Procurement Strategy for Local Government” by the ODPM (2003). Illustrates how to use innovative ways to procure, work in partnership with others, and manage services that will better achieve community plan objectives and deliver consistently high quality that meet users’ needs. See www.odpm.gov.uk

APPENDIX B

Summary of the EC Procurement Regime

- 1.1** This consists of the EC Treaty principles; EC Procurement Directives; and relevant case law from the European Court of Justice (ECJ). The **EC Treaty principles** of non-discrimination on grounds of nationality; equal treatment; transparency; proportionality and free movement of goods and services apply to all public sector contracts.
- 1.2** The **EC Procurement Directives** have been transposed into UK procurement Regulations. With a few exceptions (e.g. secrecy), they apply to all contracts for goods, services and construction works awarded by public sector contracting authorities over a certain value (called “threshold”).
- 1.3** The UK Regulations relating to contracts for services (where the VCS is most likely to be engaged) are entitled the Public Services Contracts Regulations 1993 (SI 1993 No. 3228). These Regulations have two levels of application – a full regime for priority services designated as Part A services, and a lighter regime for other services designated as Part B services. Thresholds are currently £99,695 for Part A services and £153,376 for Part B services. The values are updated every two years. The main requirements of the Regulations are:
- *Non discriminatory specifications (applies to both Part A & B services)*
 - *Competition through a tender advertised in the Official Journal of the European Union (OJEU) although in limited circumstances a negotiated procedure may be used with a group of suppliers or a single supplier (Part A service only)*
 - *Compliance with minimum timescales for providers to respond to adverts, pre-qualification checks and tenders (Part A only)*
 - *Prescribed criteria for selection of tenderers & contract award (Part A only)*
 - *Provision of feedback to unsuccessful suppliers and Issue of a contract award notice within 30 days of award (both Part A & B services)*
- 1.4** Many of the services likely to be the subject of contracts with the VCS, such as those relating to health and social services, education, recreational and cultural activities are Part B services, subject to the lighter regime. But this does not mean they should not be subject to competition and an appropriate degree of advertising, to meet both the EC Treaty principles of equality and transparency and the Government procurement policy requirement to achieve VFM.

- 1.5** The **ECJ** interprets the Treaty and the Directives when legal problems arise in particular procurement cases, as do the UK courts. Legal challenges alleging breach of procurement rules may be brought to the UK courts by aggrieved bidders. Complaints may also be made to the European Commission which can result in infraction proceedings against the UK in the ECJ.
- 1.6** Detailed guidance on the EC rules can be found at www.ogc.gov.uk including information about the Directives and UK Regulations, thresholds (which are reviewed by the EC every 2 years), and advice about Part A & B services. A new, consolidated public sector Directive has been agreed by EU Member States, largely to simplify and clarify the existing Directives. It will be implemented into UK law by early 2006 and more information about it can be found on the OGC website.

