

NCVO and Serco Code of Practice

Purpose

The aim of this Code of Practice, jointly developed by The National Council for Voluntary Organisations (NCVO) and Serco is to help improve working relationships between the private sector and the Voluntary and Community Sector (VCS).

Whilst many of these relationships will operate between the two sectors, there are also prime contractors operating in the VCS who will be issuing subcontracts to organisations from all sectors and the principles in this Code of Practice should be equally applicable in these relationships. Different sectors have very different drivers but, through adhering to mutually understood standards, they can work effectively together. Capturing the needs-led motivations of many VCS providers will be of crucial importance in delivering successful services.

Background

There has been wide consultation over this Code. All NCVO members had the opportunity to comment on it; a number of organisations from across sectors and from central government were asked to input views and the opinions of many experts involved in public service delivery have been sought.

The Code has been drawn up against the backdrop of ever larger and more complex public service contracts being let. In these contracts, networks (supply chains) of organisations are often better placed than any single organisation to deliver these challenging contracts. As a result, there are increasingly arrangements where a 'prime' contractor holds and leads the contract, subcontracting aspects of work to appropriate specialist providers. To date - most notably in the Department for Work and Pensions' (DWP) Work Programme - the majority of prime contractors in these networks have been private sector organisations, typically far larger than the VCS organisations that are subcontractors in their supply chains.

It is widely recognised that VCS organisations have had a mixed experience of contracting to prime contractors. This Code of Practice: -

- Offers a guide to best practice in selecting partners and managing effective and sustainable relationships in the supply chain.
- Can help to deliver strong partnerships which are beneficial to the primes and subcontractors, the service commissioners, and the individuals and communities using the service.
- Provides useful principles for consortia relationships.
- Can help organisations build longer term partnerships, potentially spanning multiple opportunities and sectors.

The Code is deliberately ambitious, based upon best practice in relationship management and seeking to ensure that the best possible outcomes are achieved in public services. This Code is considered to be a starting point for setting out good practice, which can develop and evolve over time.

The Code

Section 1: Building firm foundations

This part of the code addresses structural and cultural barriers to collaboration, particularly where commissioners are using prime contracts to bring in private sector investment in services and to drive down procurement costs.

- 1.1. The delivery model should recognise and mitigate the risk of perverse incentives in the supply chain, such as the 'cherry-picking' of clients. Services should be designed wherever possible such that incentives to abuse market power by primes through its market position are avoided.
- 1.2. Transparency should be employed within the supply chain to facilitate, with all parties (commissioner, primes, subcontractors, other stakeholders) signing up to shared principles of transparency at the outset.
- 1.3. All parties must also be mindful of the fact that charity trustees have obligations under Charity Law to ensure that the organisation delivers public benefit and operates within their charitable objectives – particularly where this leads them to seek opportunities to support a distinct groups rather than maximising their share of the overall contract value. To facilitate fulfilment of these objectives the prime should ensure that where its delivery model demands niche provision, that it is commercially viable and operationally deliverable.

How Commissioners and Policy Makers can enable good practice in their supply chains (1/4)

If contracts encourage delivery through a supply chain, commissioners can support best practice by:

- Offering clear guidance to potential providers on what they believe constitutes a perverse incentive in their commercial arrangements with supply chain partners
- Using bid marking criteria to discourage perverse incentives
- Using contract specification to forbid specific commercial arrangements which they believe result in perverse incentives
- Defining, in the contract, the dataset to be made public and the protocols for effectively exposing that data to stakeholders
- Engaging potential primes and providers of niche services in advance of OJEU publication to understand what volume of niche provision is desirable, and what impact potential financial terms would have on niche provision
- Engaging potential primes and providers of niche services early in the process and in advance of OJEU - Setting expectations as to what capabilities and resources will be required to participate in delivery

Section 2: Good practice in establishing and managing delivery partnerships

This part of the code is as applicable to consortium building as it is to prime contracting, and focuses on effective communication with potential and actual partners before and during the contract.

21. Where consortia leads and prime contractors are seeking new partners, they should communicate the fact widely and make clear the process for expressing interest, particularly if the service requires niche provision. The process for expressing interest should be proportionate to the capacity of potential providers and the scale of the contract on offer.
22. Consortia leads and prime contractors should communicate enough information about what services they are seeking from partners, and how those partners will be chosen, that potential partners can assess whether or not it is worth investing time in the application process, including heads of terms where possible.
23. To build trust in the process, partner selection criteria should be objective and universal and communicated at the point at which expressions of interest are invited.
24. No 'bid candy': Consortia leads and prime contractors should consider themselves under obligation to deliver a service with those who form a part of their bid unless genuinely unforeseen circumstances arise.
25. Where referral numbers are below expectations there should be regular discussion to explore why this is happening and to allow subcontractors to plan effectively for the future. If referrals remain consistently lower than expected, and are significantly different to the original contract document, then subcontractors should have the right to withdraw from contracts.
26. The expectations of non-contracted providers should be carefully managed before bid submission and during service delivery such that they fully understand the likely extent of take-up of their services and can plan accordingly.
27. Less commercially experienced partners should be supported, where necessary, to understand their contractual obligations and the cash flow impact of relevant funding mechanisms prior to signing a contract
28. Clear roles, responsibilities, risks, payment process and terms, and governance and monitoring arrangements should be agreed and communicated as early as possible, with as much clarity as possible delivered prior to bid submission. Insofar as the information available to consortia leads and primes allows, supply chain partners should be in a position to forecast what volume of demand they will be serving, where, and what level of service is expected from them.

How Commissioners and Policy Makers can enable good practice in their supply chains (2/4)

Effective market engagement by potential consortia leads and prime contractors - giving potential delivery partners all of the information they need to decide whether they wish to express interest - takes time.

Commissioners can support best practice by building sufficient time for market engagement for consortia leads and prime contractors into procurement timetables.

Commissioners can also support effective market engagement by providing a central service for potential primes and subs to exchange basic information.

Where commissioners seek to monitor the degree of VCS involvement in a contract, they can support best practice by tracking 'VCS spend as a proportion of contract value', as opposed to the total number of VCS organisations in a supply chain.

- 2.9. To ensure a shared understanding of targets and provide clarity of the progress being made against the programme's overall objectives, consortia leads and prime contractors should provide a clear set of key performance indicators (KPIs) to organisations involved in service delivery.
- 2.10. Whilst recognising that their primary duty is to service users, consortia leads and prime contractors should outline and provide a clear, universal, proportionate and supportive process to improve performance of any subcontractors failing to meet KPIs.
- 2.11. Consortia leads and prime contractors should provide a clear mechanism to other delivery partners for raising problems or conflicts in service delivery, and for implementing solutions to them, with all organisations in supply chains having the right to trigger these procedures.

Section 3: Sharing the benefits of scale with smaller partners

Policy makers have articulated a vision for partnership between VCS and commercial providers in public services in which service users benefit not only from the delivery expertise and culture of VCS providers, but also from the balance sheet, commercial skills and economies of scale of major private sector providers. This part of the code offers guidance on how to ensure that this scale and this commercial expertise are used to enhance the sustainability of VCS delivery at the frontline.

- 3.1. Risk- and the way it is identified and managed - is a critical factor determining the level of involvement that the VCS can have in supply chains. Primes should work to make sure that subcontractors are not exposed to financial risks which are disproportionate to the rewards available for good performance. This can be done through appropriate design of the service and the terms which are applied to subcontractors - subject to the terms which the prime contractors themselves accept from commissioners. In practice, this may involve primes managing some of the delivery risk on behalf of their supply chain, and/or structuring the interface of customer journey and supply chain such as to mitigate risks for individual supply chain partners.
- 3.2. Prime contractors should support the cash flow position of smaller members of their supply chain by:
 - 3.2.1. Passing on, as a minimum, the Government's 30 day maximum payment terms;
 - 3.2.2. Making clear in contracts the precise triggers for payments; and
 - 3.2.3. Providing appropriate break and compensation clauses where payments are not made on time.
- 33. Where practical and beneficial, primes should share their own scale economies by:
 - 3.3.1. Sharing their bulk purchasing power with subcontractors;
 - 3.3.2. Designing into their delivery solutions, where applicable, the use of scale and centralised middle office functions (e.g. Information Security compliance, auditing, and certification); and
 - 3.3.3. Designing into their delivery solutions, where applicable, centralised ICT so as to reduce subcontractors' ICT administration costs.

<p>How Commissioners and Policy Makers can enable good practice in their supply chains (3/4)</p> <p>If commissioning strategies involve use of prime contractors, then commissioners can catalyse good practice by:</p> <ul style="list-style-type: none">- Developing measures for assessing the sustainability of supply chain partners, and criteria for scoring this in tenders- Mandating acceptable payment terms in the head contract
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Section 4: Investing in partners' development as commercial service providers

Smaller partners in consortia and supply chains particularly those which do not regularly generate a surplus for re-investment may lack experience in certain areas including compliance, demand forecasting, reporting, and performance management.

This section of the code offers guidance on how more experienced consortia leads and prime contractors can use their expertise as commercial service providers to enhance the sustainability of VCS delivery at the frontline.

- 4.1. In order to bring innovation into delivery, primes and consortia leads should consider bringing in small organisations with high potential even where they lack experience. In such circumstances they may need to work with such organisations to develop skills and capacity.
- 4.2. Commissioning models should be designed to protect the intellectual property rights of all providers, including subcontractors.

How Commissioners and Policy Makers can enable good practice in their supply chains (4/4)

To enable good practice in supply chain capacity building within their supply chains commissioners can:

- State clearly which commercial maturity-related risks within the supply chain are intolerable, and which can be acceptably mitigated through monitoring and provider capacity building.
- Engage with potential primes and smaller potential delivery partners in advance of OJEU to discuss attitudes to specific risks and the treatment of them so that bidders can confidently include less mature partners in their supply chains - so long as they have appropriate measures in place to mitigate risk from those providers.
- Actively encourage investment in the supply chain through commercial terms (e.g. long term, black box, payment by results contracts to incentivise investment in supply chain partners).

Section 5: Moving towards Strategic Partnership

Serco and NCVO believe that many of the most effective partnerships, whether within or between sectors, are those which look beyond securing and delivering a given contract, to consider overall how the partners can together offer the most to Government and to service users. These partnerships are typically characterised by their longevity, by mutual trust (relationships), by a clear understanding of the roles of each partner, and by the move beyond zero-sum logic.

This final section of the code provides guidance for commercial and VCS organisations looking to move beyond tactical, contract specific delivery partnerships into strategic partnerships.

- 5.1. All parties should first internally establish and clarify their own goals in public service delivery (e.g. desired role, scale, impact and the outcomes), how they intend to achieve these (e.g. advocacy, fundraising, frontline service delivery, enabling service delivery), and whether and how partners might factor into the delivery of those goals.
- 5.2. All parties should articulate the intent to establish a strategic partnership early in their relationship, and share details of their own goals and strategy so as to enable consideration of strategic fit.
- 5.3. The aims of the partnership, its scope, and the respective roles of each party should be agreed early, with active participation of relevant stakeholders (e.g. trustees, key customers, corporate hierarchies).
- 5.4. Parties may wish to develop a joint 'pipeline' of opportunities by sharing information on potential future contract opportunities and agreeing early which opportunities they wish to pursue together and how. This might be framed by standing agreements to bid all qualified opportunities of a certain nature together with pre-defined roles in investment, bidding, and delivery.
- 5.5. Parties may wish to run joint events outside of work on their bidding and service delivery, with the purpose of establishing personal relationships across organisational boundaries.
- 5.6. Parties may wish to deepen mutual understanding and commitment through the exchange of secondees, in particular non-executive directors and/or trustees.
- 5.7. Given the importance of access to capital for smaller organisations, including those in the VCS, supporting the supply chain to secure access to third party capital should be seen as an important way in which primes can support supply chains.

Appendix: Further guidance

The Compact

The Compact is an agreement between the Government and the third sector which outlines a way of working that improves their relationship for mutual advantage. The Compact can be accessed from: www.cabinetoffice.gov.uk/sites/default/files/resources/The%20Compact.pdf

Potential providers should pay particular attention to section 3 of the Compact which addresses issues around subcontracting and partnership working. Clause 3.11 of the Compact makes clear that its principles apply at all points of the supply chain.

The Merlin Standard

The Merlin Standard is the DWP's standard of behaviour to which prime providers are expected to adhere in their relationship with subcontractors in their supply chain. It is designed to ensure excellence in supply chain management by prime providers, fair treatment of sub-contractors, and the development of high performing supply chains. More information available at: www.dwp.gov.uk/supplying-dwp/what-we-buy/welfare-to-work-services/merlin-standard/

DWP Code of Conduct

DWP also have a Code of Conduct which outlines key values and principles of behaviour which DWP expects of providers. The Code of Conduct forms part of DWP's Commissioning Strategy and can be viewed here: www.dwp.gov.uk/docs/cs-rep-08.pdf

NCVO's guidance on subcontracting and contract management

NCVO provides guidance for voluntary sector organisations on subcontracting and supply chain contract relationships. More information available here: www.ncvo-vol.org.uk/advice/support/public-service-delivery/consortia-subcontract/subcontracts