



## **Boards engaging with contracts: Towards a Team at the Top**

This thought piece argues that Boards of Trustees need to become more engaged with contracting with public service agencies by their organisations. The reasons for engagement lie in a much changed landscape of funding and contracting, and ensuring effective governance of risk and opportunity. This thought piece reflects only the personal views of its authors.

### **A changed landscape**

Third sector organisations have a track record of contracting for public service contracts for twenty years or more. During this time, many voluntary organisations have been weaned off grants and onto being contracted by public service agencies. This trend has accelerated as many charities have largely positioned themselves as deliverers of public services under contract.

The move from support for the organisation to contract for specific services has led effectively to the priorities of a significant number of third sector organisations being determined largely, if indirectly, by their public service clients. An interesting twist in the relationship is that tender specifications by public sector agencies have placed increasing emphasis on ensuring service user involvement and ‘voice’ within the process of decision making and delivery by the third sector organisations that they are commissioning.

The most recent shifts in contracts have been driven by the requirement to achieve dramatic reductions in public expenditure and the expectation that the contracts will deliver ‘more for less’ (although the evidence on the long term consequences of this strategy is variable). In our experience of working with clients on tender documents, the relative percentages for quality and price given by public service agencies have frequently shifted towards higher percentages for price.

Another matter shaping current practice is the reliance on open tender methods by many public sector bodies; this practice<sup>1</sup> has encouraged an increasing number of private sector businesses to tender for work largely or wholly undertaken previously by third sector bodies. Reliance on open tender method has also brought many national and regional third sector organisations into bidding to run locally based services. These organisations have become direct competitors with established but smaller charities which have strong roots in their communities and see themselves as better placed to cater for the specific needs of their local community.

The nature and scale of change in the process are being extended by the preference that many public sector commissioners seem to exhibit for fewer but larger contracts. This bundling of contracts can prevent experienced niche third sector organisations

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<sup>1</sup> Public sector agencies can use alternative tendering methods to open tenders – see Hilary Barnard – Really Intelligent Commissioning, ACEVO 2009

from competing, unless they establish consortia arrangements with like minded organisations or enter into agreements (vertical integration) with much larger players. Larger scale contracts can offer more freedom to define the shape and framework of delivery – and provide an opportunity for fresh thinking and re-configuration of service. Responding to these contracts requires a significant investment in professional skills, resources and time that may stretch and test (or be beyond) organisations’ capacity and capabilities.

The results of tenders for the Work Programme show how far parts of the sector have lost out in contracts for Government. If such very large contracts become the norm, it may be that the most many third sector organisations can hope for on a stand alone basis is to become sub-contractors to large private sector prime contractors.

### **And what has governance got to do with this?**

We have observed that responsibility for handling contracts is often extensively delegated to the chief executive and the senior management team. In the past, when formulating tenders appeared largely a technical exercise, this was an understandable way of operating, so that regular reports to the Board were sufficient for Trustees to feel that they were adequately appraised and informed. However, at a time when the resources available through contracts may be significantly or suddenly reduced and/or the terms of those contracts significantly altered, the role of the Board becomes potentially much more critical – since potential risks to reputation, impact on beneficiaries and long term sustainability may be much increased. The Trustees have a duty therefore to become far more actively engaged and involved.

Research for the Charity Commission indicates that many Trustees are not being consulted before their organisations enter consortia to bid for contracts. Dame Suzi Leather commented: “It’s hard to imagine how Trustees can properly fulfil their duties if they’re not party to these decisions.”<sup>2</sup>

At this point we want to signal our recognition that a shift in governance gear over contracting carries some dangers, notably that the Trustees can become (unhelpfully) over-involved in operational matters. Thus, it is important to make clear that we are not recommending that Boards should “mark the homework of their chief executive” as one third sector Chief Executive memorably said. On the other hand there is significant scope for Trustees to be involved in a range of ways including:

- use of their professional expertise;
- through the contribution of sub-committees and task and finish groups;

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<sup>2</sup> Civil Society Governance, 6 July 2011; Consortia for the delivery of public services: the issues for small and medium sized charities, Charity Commission research report, July 2011

- Trustees taking time out together to help the Chief Executive and Chair to reflect on the implications for the charity's Object of delivering different kinds of services;
- joint working between Trustees and the senior executives in preparing bids.

These ways of operating may be unfamiliar to some Trustees. So Boards need to be prepared to take on and 'practise' the new ways of being necessitated by contracting. And in all this, they will undoubtedly need to be more pro-active at an early stage of the process, scanning the horizon, and not assuming they can afford to wait until the tender documents are issued.

We understand that this 'new governance world' may be a daunting proposition to some Boards and Trustees are entitled to expect support for the development of their own skills. We believe that enhancing Trustees' skills and experience should, and will, assume a higher priority as part of a whole organisation response to contracting.

It is to be expected that not all Boards will find Trustee volunteers with this expertise, so you may need to look beyond the current Boards recruiting new Board members or finding specialists who are prepared to be 'honorary advisers' to the organisation. This can be a very productive way of driving up the quality of contribution by Trustees, as such expertise can enable existing enthusiastic and competent Board members to speedily learn 'on-the-job'.

### **Case Study – Barnet CAB**

Barnet CAB follows the standard pattern for CABs in providing a range of advice and information services and seeking to influence the policy of decision makers, particularly the local authority. Its core funded services are run from four bureaux and there are two project offices. Barnet CAB also offers separately funded services to particular client groups as well as phone and email services, and a joint project with Macmillan Cancer Support.

Barnet CAB has 30 paid staff, 110 volunteers, and a Board of Trustees of 9. SMT members attend Board meetings and are encouraged to talk with Board members so that they understand the Board's priorities. The core funded service is predominantly provided by well trained and supported volunteers supervised by paid staff.

Barnet CAB has approached tendering and contracting as a strategic exercise. This underpins the early and consistent involvement of Trustees and the Board as a whole.

The Board and Chief Executive recognised that the extent and complexity of the contracting process meant that consideration of it – and decisions on tenders went beyond 'business as usual' and therefore required a further level of engagement, in

order to add real value and depth to the final submission. Significantly, there was a shared determination to avoid possible 'mission drift', as a result of contracting commitments.

In 2010 the CAB was invited by the local authority to participate in a market evaluation exercise. This provided the opportunity to involve Trustees in the preparation of a dummy tender. In 2011, the CAB has undertaken a real tendering exercise, framed by the challenge of a declining amount of money to be made available in each of the three years for the delivery of the service. The Barnet CAB tender involved a small sub-contracting of services to Barnet Law Services, a specialist provider.

### **Board Engagement**

Barnet CAB has an open recruitment process for its new Trustees. This has resulted in a good mix of skills and knowledge on the Board; the Chair and Chief Executive have worked to ensure a regular (but not frequent) programme of Trustee events over and above the 7 Board meetings a year.

The Chief Executive and Chair therefore agreed to establish a small strategy group made up of one Trustee, the Chief Executive and three out of five of the senior managers. The commitment of its members was to attend fortnightly meetings. The strategy group was tasked with developing the model on which the CAB's tender would be based. A particular challenge in the model was agreeing the unit cost of delivering their service.

At the first meeting, the group established the ground rules for its work, its timetable and the precise focus of the work it would undertake. The next three meetings of the strategy group developed a shared understanding and model for unit costs; the final two meetings were expanded to involve additional Trustees, including the Chair, in order to consider drafts of the tender and secure understanding of the methodology and the thinking prior to the Board meeting. The first four strategy group meetings took place during the working day, the final meeting took place in the evening to ensure more Trustees could attend.

The process of preparing this tender resulted in three distinct drafts of the document, each of which members of the group commented on; the Chief Executive was then responsible for integrating the changes into the text.

The strategy group has become an essential vehicle for addressing the further issues - beyond the production of the tender itself - of interim and transition planning. This includes such matters as which premises services will be delivered from; the implications for retention or termination of existing leases and the implications for staff and volunteers of the premises changes.

### **Boards adding value**

Given the demanding times for charities and their Boards, it is imperative that every Trustee position on a third sector Board counts; we recognise that some existing Trustees may feel that this is the opportune moment to step down – because they

cannot or are not inclined to commit to this level of work and attention. They should not be discouraged from so doing.

At the same time, feedback from clients suggests that it is also a good time to advertise for and seek out specialist skills and expertise; there are people with professional expertise out there who have time, and are keen to contribute but who do not want to be a Trustee, and would not otherwise be attracted to the governance of charities.

It is also a good time for Boards to experiment with different ways of carrying out their governance duties, both in relation to preparing for contracts and in their regular meetings. In this regard, the Chair of the Board has a specific responsibility for exploring and encouraging such a development and seeking the assistance of peers not currently on the Board or governance specialists. A key underlying message is that the Board and its Chair have a duty to support the Chief Executive in working out how to resource these different ways of working, ensuring also that the process effectively engages senior staff.

Finally the evidence shows (as in our case study above) that the best outcomes for organisations and their users will result from executive and non-executives working closely together to address contracting. Tendering for a contract requires both operational and governance functions to be effective. The ambition of Boards and senior teams should be to form a productive and effective 'team at the top'.

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