

The Commissioning Joint Committee (CJC) Guide to Buying from the Third Sector (2006)

PART 1 – A NEW RELATIONSHIP

- 1.01 There is nothing new about the third sector. In one form or another it has been a great force in British life for half a millennium, standing wholly outside both the public and the private sectors. It is however a new term, no doubt made necessary by the dramatic increase in interest in what it stands for, and by the consequent need for a quick way of referring to it in the third person.
- 1.02 A consensus has been reached with equal speed that the third sector deserves to have more use made of it. The CJC shares in this consensus but believes that the best reasons for using the third sector so are not always the reasons put forward by the greatest enthusiasts. Practical limitations on greater use are likewise often overlooked.
- 1.03 The main purpose of this guide is to spell out both the good reasons and the limitations.

WHAT THE THIRD SECTOR IS

- 1.04 The third sector is now a widely used collective term for
- **voluntary organisations.** These are organisations formed independently of government to pursue social, ethical and environmental objectives, and other objectives of general public benefit. Any profits which they make are used solely to further these objectives
 - **community organisations.** These are bodies, usually wholly voluntary, formed to improve the lives of all people, or of particular types of people, in given (and usually small) geographical areas
 - **social enterprises.** These are
 - organisations which trade for specified social, community and environmental purposes; and commit their surpluses to achieving these purposes
 - wholly owned subsidiaries of voluntary and community organisations (VCOs) which have been formed specifically to trade on behalf of their parent bodies.
- 1.05 Most third sector bodies are companies limited by guarantee, charitable trusts, industrial & provident societies for the benefit of the community, or friendly societies. Some larger voluntary bodies are however incorporated by statute or royal charter. Some smaller community organisations are unincorporated associations.
- 1.06 Many social enterprises on the other hand are co-operatives or wholly owned companies limited by shares. Some have already exercised the facility provided by recent legislation to become community interest companies (62; 26).

- 1.07 The third sector therefore includes many local authority companies, charitable trusts set up by local authorities, universities and other academic bodies, housing associations and societies, arm's-length management organisations (ALMOs), and tenants' management organisations.
- 1.08 This definition of the third sector is brief, and the CJC appreciates that there is lively debate about exactly how to define it. For some of its members the point is of fundamental importance and may for example dictate what types of funding they qualify for, and which regulatory regime they are subject to. This guide does not however need to address these distinctions. It needs instead to address how local authorities may avail themselves of the services of a large, heterogeneous and often untapped pool of service providers.
- 1.09 The action needed to access the third sector may well help other bodies which fall outside any definition of the third sector, notably small businesses, women-only businesses and ethnic-minority businesses. If indeed this happens, so much the better for local authorities.
- 1.10 General agreement to make greater use of small businesses is now formalised in the **Small Business Friendly Concordat**. Extracts are included as Appendix A.

ITS NEW PLACE IN PUBLIC LIFE

- 1.11 Pressure for greater involvement of the third sector in service provision goes back to well before the Blair administration, and was given a powerful impulse by the **Deakin Commission Report** in 1996. Since then the case for greater involvement has been made forcefully in guidance by both **HM Treasury (1110)** and the **Home Office (1259)**.
- 1.12 The **Labour Party manifesto** for the 2005 general election referred repeatedly to the scope for wider involvement of the third sector. It concluded, "In a range of services the voluntary and community sector has shown itself to be innovative, efficient and effective. Its potential for service delivery should be considered on equal terms...We will continue to strengthen the... role of local authorities working in partnership with public, voluntary and private bodies".
- 1.13 These and other statements in the manifesto about the third sector are now widely quoted, obviously in the expectation that they will be acted on. Extracts are attached as Appendix B.
- 1.14 The local government services identified by the manifesto are social care, children's services and school management. Service provision by third sector bodies in these fields has recently been urged vigorously by the Social Market Foundation and the Association of Chief Executives of Voluntary Organisations (ACEVO). Extracts from their report **Communities in Control** are attached as Appendix C.
- 1.15 The setting up of a new taskforce to help voluntary sector get involved in **health and social care** has recently been announced by the Care Services Minister, and

the education white paper **Higher Standards, Better Schools for All** included proposals for a significantly greater role for the third sector in **education**, greater even than proposed in the Labour Party manifesto. Extracts from both documents are attached as Appendices D and E.

DIFFERENT WAYS OF HELPING

- 1.16 Authorities may help VCOs by
- **supporting**, with grants and asset leases at concessionary rates, VCO activities which also contribute towards authorities' own objectives
 - **buying** services, supplies and works from VCOs instead of from private contractors. Social enterprises may be helped in the same way
 - **seconding** staff to them or acting as their **agents** under delegation agreements (46; 2) (55; 20). Part 4 addresses the scope for local authorities to help in this way.
- 1.17 This guide is directed towards **buying**. But it also addresses a number of points which have to be dealt with differently, depending on whether the authority is supporting or buying, and which therefore often cause confusion.
- 1.18 In Part 3 the guide addresses the vexed question of the **differences** between supporting and buying. The main difference is however clear, and is that local authorities **support** selected third sector bodies because that is what they are. Authorities cannot however **buy** from them for this reason. The law, value for money and propriety require authorities to buy from whoever they believe offers the best overall value for money.
- 1.19 Although this distinction is fundamental, there is nothing to stop authorities
- buying services from VCOs
 - supporting the same VCOs in carrying out **other** services on their own account
- provided of course that the desire to support them is not a factor in deciding also to buy from them.
- 1.20 While there are no occasions for buying from third sector service providers merely because that is what they are, they are likely often to be the best, and possibly the only, service providers willing and able to do the work. Established methods of advertising, packaging, payment mechanisms and selection and evaluation criteria can nevertheless have the unintended effect of making it harder for them to compete and, if they do so, to win. Many authorities are therefore introducing more innovative procurement methods, designed to enable and encourage more of them to compete.
- 1.21 Action on these lines is in any case, in England, part of the **National Procurement Strategy** and was also urged by the **Gershon Review of Public Sector Efficiency** in 2004. Extracts from both documents are included as Appendices F and G. The National Procurement Strategy provides for "all corporate procurement strategies to address how the council will encourage a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers" (1158; 6).

1.22 The Strategy does not seek to identify the innovative methods available. This guide does so however in Parts 4 and 5.

WATCHING THE BIG PICTURE

1.23 Different packaging, different specifications, different criteria and different payment mechanisms all tend to attract different tenderers, different types of tenderers, and tenderers in different sectors. Action taken to attract tenderers from one sector may have the unintended and unwelcome effect of making contracts less attractive to tenderers from other sectors. No procurement methods can attract them all. Before making final decisions about which procurement methods to adopt for any contract, authorities therefore have to make up their own minds **which sector**, and **which types of tenderer**, they most need to attract.

1.24 Many of the changes available for increasing the diversity of tenderers may also impose other penalties, notably to make procurement more laborious for authorities, or less amenable to economies of scale. These penalties may of course often be worth paying, but they need to be explained and understood before any action is taken which would commit authorities to paying them.

1.25 This guide therefore distinguishes (in Parts 4 and 5 respectively) between

- how to **enlarge** existing markets to make them attractive to new service providers, without making them less attractive to existing service providers
- when and how to **create** different and more abundant markets. Existing service providers would still be very welcome to compete, although they may find the new procurement methods less attractive.

1.26 The CJC expects a steady but not a spectacular increase in the use of the third sector. It would in any case be unrealistic to proceed on the assumption that the capacity of the third sector as a whole can be sharply and significantly increased, or not without damaging or diluting the very qualities which justify an increase. The effect, on the innovative style of many third sector bodies, of increasing their exposure to public sector regulation and monitoring will also need to be kept under review.

1.27 Third sector bodies which take on contracts for local authority services to the public will normally find that these are subject to TUPE. This will undoubtedly increase third sector cost levels, and in the long term possibly also turn third sector bodies into different types of organisations.