

# Tender Process for Delivery of the Infrastructure Support Service for Manchester's Voluntary and Community Sector (2009-11)

## A Case Study



## 1. Introduction

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In January 2009 Manchester City Council circulated an invitation to tender for a three year contract to deliver the main infrastructure support service for Manchester's voluntary and community sector. This was due to the previous five year contract coming to an end.

Through the development of a partnership (Manchester Third Sector Infrastructure Partnership, M3SIP) three local agencies were successful in winning the contract to deliver the infrastructure support services. These organisations were:

- Manchester Alliance for Community Care (MACC)
- Community Network for Manchester (CN4M)
- Voluntary Action Manchester (VAM)

Their bid was based not only on a partnership between the three organisations but also on developing a structural relationship with all other agencies providing support to voluntary and community sector organisations working in Manchester.

M3SIP has subsequently set up a new project called 'Manchester Community Central' which is delivering a full programme of support across the three organisations.

Based on semi-structured interviews with the Manchester Community Central Programme Board this case study aims to map the tender process from the initial consultation process to delivery of the new service, assess the effectiveness of the process and identify key learning points which will help inform similar processes in other areas.

## **2. Review and Identification of Service Need**

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Prior to the tender, an initial consultation survey was circulated in October 2008 based on how to improve the design of the service and reduce gaps in provision rather than understanding the needs of service users. It is unclear how far this influenced the tender specification, but at best the redesign of the tender specification was based on a new approach to delivery rather than a rigorous needs assessment.

No formal evaluation of the previous contract holder was carried out. Monitoring information throughout the previous contract was based on outputs, with no measurements of outcomes or quality of service. A challenge regarding poor performance late in the contract was too late to have any impact.

### **Learning points**

- Seeking feedback from service users, communities and providers to develop understanding of needs is crucial.
- Outcomes for service users must be put at the heart of the process.
- Rigorous monitoring of contracts is needed to enable poor performance to be managed.

## **3. Service Specification**

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The tender specification was circulated widely across the sector on 22<sup>nd</sup> January 2009. Briefing sessions and an opportunity to bring potential providers together would have enhanced process, however no support was offered or attempt to facilitate collaborative working. Responses to questions from procurement were very slow and often inadequate.

The information provided in the tender specification made it difficult to make a full assessment of costs as no value of the contract was provided. Onus was put onto bidders to assess their own liability in relation to TUPE however inadequate information was made available to do this satisfactorily. The proposed timetable for service delivery was unrealistic to enable a TUPE transfer of staff to take place.

### **Learning points**

- A proactive approach should be taken by commissioners to identify potential collaborative approaches to delivery.
- A pre-qualification questionnaire (PQQ) would have enhanced the process and enabled people to identify potential delivery partners.
- Detailed information relating to TUPE liability should be provided in full to providers who have completed a PQQ.
- The commissioner must accept responsibility for ensuring the TUPE information is checked and verified.

## 4. Procurement Process

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Lack of clarity and consistency between the two sections of the application form meant it was hard to pinpoint how to present information and therefore made comparisons between bidders difficult. The specification asked bidders to state the specific areas of service that would be provided, for example, information and guidance, training, capacity building. After the interviews bidders were requested to provide costs for a certain level of delivery. This should have been included in the original specification.

There was no reference to outcomes or requirement to report on an outcomes framework.

### Learning Points

- Outputs demonstrating value for money need to be included in the application process.
- Outcomes are an important measure of achievement and provide a means of evaluating a service's effectiveness and relevance. An outcomes focused specification would have enabled bidders to demonstrate their expected achievements.
- The commissioner must identify how comparisons would be drawn between bids.

## 5. Tender Evaluation and Selection

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The interview process included a presentation and generic questions which clarified information within the application form rather than seeking additional information. Evaluation criteria were not clear and the interview panel referred to criteria relevant to the previous tender specification rather than the current one. It is unclear whether all the same questions were asked to all candidates. Subsequent questions were sent out to all candidates a few days later in relation to leadership and partnership working.

M3SIP believes that this was due to the fact that they highlighted these key components at interview as one of their key strengths – and essential to the successful delivery of the service. Giving competitors an opportunity to respond to these areas after the interview could be perceived as a breach of the process.

The selection process was based on a points system assessed in relation to price (30%) and quality of service (70%) although there was no indication of the price of the contract in the tender specification. As M3SIP only gained information informally about the value of the contract based on the previous contract price, bidders were not necessarily given comparable information.

There were severe delays to decision making which slipped from 18<sup>th</sup> May 2009 to 12<sup>th</sup> August 2009. This caused significant disruption to existing services over the summer period and had a knock on effect on the timescale for transfer of staff. There was a lack of communication during this period, which made planning extremely difficult.

No formal feedback was received, although informally M3SIP believe they were successful in winning the tender due to confidence in their ability to deliver the service, a creative approach building on existing resources, local knowledge and strategic appeal. They were not the cheapest option.

### **Learning Points**

- A clear and consistent approach to evaluating tenders is essential.
- The commissioner and organisations bidding for contracts must take into account the impact of potential delays in decision making.

## **6. TUPE and Human Resources**

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The period from 4<sup>th</sup> September (when the contract was awarded) to 4<sup>th</sup> January 2010 (when staff transfer took place) was without question predominantly taken up with trying to find a way through an extremely challenging staff transfer situation. The time spent on the issue was far in excess of what could reasonably have been anticipated.

The poor cooperation by the outgoing employer in providing the necessary TUPE information caused serious delays. Issues included:

- Refusing to acknowledge all the members of the partnership.
- The named contact for the outgoing employer being one of the members of staff potentially eligible for transfer.
- Critical information was withheld including the names of the staff team eligible to be transferred.
- Incomplete HR records and generally uncooperative attitude regarding due diligence information, supporting evidence and consultation.
- The offer of an initial informal meeting to scope out the process prior to formal negotiation was not accepted.

The main area of dispute was around the organised grouping. This hinged on the requirement that adequate evidence be provided to support the assertion that all the listed staff worked predominantly on the contract. M3SIP challenged the inclusion of some posts due to a lack of supporting evidence (in particular a post with a regional brief was presented as working 100% in one local authority). Ultimately the incoming contract holder was forced to bear the risk of accepting all posts as the costs of a potential employment tribunal were prohibitive.

Despite contracts being transferred over to the new organisation on 1<sup>st</sup> January 2010 an initial consultation meeting with staff was not able to take place until 7<sup>th</sup> December 2009. This caused significant uncertainty and distress for affected staff as well as an enormous work burden on the new contract holders during this time and over the Christmas period.

The commissioner took the view that it had no role whatsoever throughout the TUPE process and accepted no liability for providing inaccurate information. Had the commissioner taken a more interventionist approach and put more pressure on the outgoing contract holder at the tender stage to provide the necessary information the handover could have been managed much better for all concerned. An offer to broker a meeting between the outgoing and incoming contract holder in November was too little, too late.

A number of other areas which should have been addressed more fully during the set up period (particularly in establishing some key relationships, quality management systems and operating processes) were given less attention than needed. This caused disruption to the regular activities of the partner organisations and impacted on the transition of staff into the new service.

### **Learning Points**

- Detailed and verified TUPE information must be provided at the initial tendering stage.
- There is a clear role for the commissioner in ensuring a positive approach to the transfer of staff between the outgoing and incoming contract holders.
- It is impossible to predict the extent to which the outgoing contract holder may be willing to cooperate. There needs to be some degree of flexibility in the contract to be able to respond to this.
- The risk of assessing TUPE liability based on inaccurate information at tender stage must not fall on the incoming contract holder.

## 7. Post Tender Action

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From day one, regular contract review meetings took place with Council Officers and a positive relationship had been developed. There has been no opportunity however to develop a relationship with the legal/finance team or to negotiate the terms and conditions of the contract. The standard agenda for the contract review meetings included progress updates and the development of a service description document entitled 'Appendix One' which was intended to be a clarification to be included in the formal contract. Ultimately this was not deemed appropriate by City Solicitors. Though the process of negotiation did enable some important points to be agreed and clarified, this was not ultimately the formal negotiation it appeared to be.

The TUPE process distorted costs as partners could not predict that the outgoing contract holder would withhold evidence regarding the 'organised grouping' (i.e. which staff were mainly delivering on the existing contract). If Manchester City Council had more rigorously evaluated the costs of TUPE then bidders would have been able to predict the full costs of the project better. No flexibility was offered to negotiate costs once the budget had been finalised. The first year budget must incorporate a minimum three month set up period which includes one off costs which will not be duplicated in subsequent years.

Despite work being initiated from the beginning of September 2009, contract payments officially began on 1<sup>st</sup> November 2009. Due to the delay by the Contracts department, the first payment was not received until March 2010. This meant that in reality six months work had to be subsidised by partner organisations. Manchester City Council did not recognise that this is not sustainable for small VCS organisations.

### Learning Points

- The burden of a challenging TUPE transfer of staff will inevitably fall on the new contract holder unless there is flexibility in the contract to allow this to be taken into account.
- A minimum three month set up phase needs to be incorporated into a payment schedule with distinct set up costs.
- Improved channels of communication and greater joint working needs to be fostered between the contract holder, the commissioner and the contracts department.

## 8. Working in Partnership

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A partnership agreement for M3SIP was developed as part of the tender submission and has been crucial in clarifying the role of the partners, the lead body and the Programme Board from the outset. This is intended to be an evolving document which will grow as time goes by. In October 2009 a Programme Board was formally established to ensure delivery is managed properly.

A solicitor has been employed to develop a subcontract agreement which has included a finalised delivery schedule across partners and programme structure chart. This has meant that organisations within the partnership must take ownership of their activities and there is accountability back to the Lead Body to produce what is requested or agreed by the Programme Board by a given date.

In practice agreeing the management function across the three organisations has been challenging and negotiation has taken place to agree reporting structures within and between the partner organisations. A two-tiered supervision process has been adopted to increase mutual understanding and reduce miscommunication as well as setting consistent standards of work.

Significant resources have been invested in coaching and mentoring the new team to aid a smooth transition and develop cross-organisational team work. It has been important to identify and address differences in culture between the outgoing and incoming contract holders as well as across the three organisations.

A lack of cooperation by the outgoing contract holder in sharing due diligence information has made a comparison of terms and conditions more complex. An operational handbook has been developed in consultation with the staff team which clarifies common procedures.

### Learning Points

- When working collaboratively it is crucial to invest significant time and resources into developing the following: a partnership agreement, subcontracts, agreeing lines of accountability, governance, change management, organisational procedures, management responsibilities of shared employees and engendering a shared understanding and vision.

## 9. Looking to the Future

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Due to the nature of the programme there is a lot of national and local interest in the development of the service.

**For information about the service visit  
[www.manchestercommunitycentral.org](http://www.manchestercommunitycentral.org)**