

## Make procurement work for you — by using your Compact

**Compact Voice Briefing: For Voluntary Groups**  
**April 2010**

### What is “procurement”?

Procurement is, put simply, the act of buying or acquiring. When a local authority (for example a council department) says it intends to procure a service, what they mean is that they’ll be buying something that another organisation offers. For example they may decide that they need to source beds and temporary accommodation for homeless people, so they ‘procure’ the services of a local charity who run a shelter – which means they enter into a contract with the organisation for them to provide this service.

Confusion can arise because the word procurement is often used interchangeably, and incorrectly, with commissioning. “Commissioning” is the process of designing and securing an appropriate service to meet the specific needs of people in an area. Procurement (deciding to buy the service) can be one outcome of this commissioning process, but equally so could running a grants programme.

**“Procurement is ...the act of buying or acquiring (a product or service.)”**

### What do I need to know?

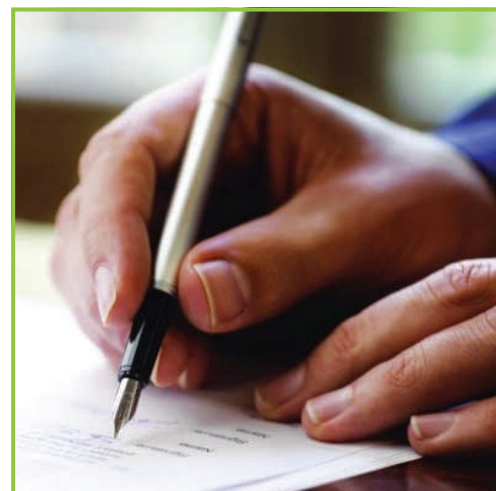
If a local authority decides that they will procure a service, then they sometimes have to seek tenders to enter into a new contract. This can arise because of European Procurement Directives, UK law, or possibly because of their own internal guidance. Even if there isn’t not a legal obligation to tender, it may be that a tender process is followed in order to secure ‘Best Value’.

*Key to Compact working is open dialogue and effective communication. If you see a tender, or are told that a service you are providing is now going through a procurement process, then all information about the contract should be up front and available to all.*

### What are EU procurement regulations?

These regulations mean that local authorities have to follow certain requirements concerning advertising the opportunity, how the tender is awarded, and to impose a “standstill” period between the award of the contract and its conclusion. These rules can mean some voluntary groups find the process a local authority is following, is burdensome and complicated.

However, they do not apply in every procurement process. Services are classified as either ‘Part A’ or ‘Part B’. Part B services include health, education, training, and social services. It’s likely that the services most voluntary sector organisations will be providing will be Part B. This is important, as full EU procurement regulations only apply to Part A services. Also, the regulations only apply if the value of the service is over £156,442 (from January 2010).



Whether there is an actual legal obligation to follow these rules or not, local authorities can decide to use a tender process that follows them.

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*Applying Compact principles is crucial to ensure flexibility and proportionality in an application and tender process, a focus on outcomes, and to make sure enough information is presented. Use the Compact to show that, when the full regulations don't apply, the procurement process can still be improved.*

### **Fairness, transparency and non-discrimination**

The most important obligation under procurement regulations is the need to treat all those tendering for contracts equally and to act in a transparent way. This is where voluntary groups often experience problems. For example, a local authority may say that they cannot talk to the voluntary sector organisation as this would give them an unfair advantage. However, as long as the opportunity and information is made available to all providers, this is not the case.

Similarly, in assessing bids, a voluntary organisation may submit one which is not the cheapest. This doesn't mean they can't be awarded the contract; EU regulations say that assessments can be at 'the lowest price' or are 'most economically advantageous'. There may be wider social benefits demonstrated in an organisation's bid and therefore it could be said to be "best value".

*Problems often arise when local authorities apply these rules of fairness and non-discrimination too cautiously. Voluntary organisations can be involved in policy development and planning in line with the Compact without EU regulations being breached.*

### **What can you do if things go wrong**

#### **Use the Compact**

If you are concerned about the tender process, unsure about the rules being applied, and the lack of involvement with the sector talk to your local authority about it. The Compact gives you a mechanism for raising concerns, facilitating open dialogue, and demonstrating the need for involvement of voluntary organisations in policy development.

***"If you are concerned about the tender process... talk to your local authority"***

#### **Challenge using EU Regulations**

If you think you've been treated unfairly in the procurement process, for example not being given the same information as other providers, or different criteria being used to assess your bid, then you may be able to challenge the decision under the duties of non-discrimination and transparency. You must first tell the local authority of the breach, and your intention to bring a claim, before starting legal proceedings. Definitely seek legal advice, and remember if you want to make a claim it must be done promptly and within three months from the date the grounds for the claim arose.

#### **Challenging under Public Law**

While procurement decisions from local authorities can sometimes be reviewed by a judge, this is a high standard to meet. Most procurement decisions are not subject to judicial review, unless there has been bad faith or something manifestly unreasonable occurs in the decision-making process. Therefore it's unlikely a court will judicially review a procurement process.

#### **For more help**

If you want to talk to someone about the Compact and procurement processes, or have an issue with a public body then contact the Compact Advocacy programme on 020 7520 3161 or at [evsAdvice@ncvo-vol.org.uk](mailto:evsAdvice@ncvo-vol.org.uk)

This guide is part of a series, found on the Compact Voice website at [www.compactvoice.org.uk/resources](http://www.compactvoice.org.uk/resources). Other titles include:

- CAA and Local Compacts
- Compact partners approach public sector cuts together
- New financial year - use your Compact
- Raise the profile of your Local Compact
- Think Big by Thinking Small - boosting small group participation
- Righting Public Law Wrongs: Unfairness and Maladministration

For more support from Compact Voice, contact us on 0207 520 2451 or email [compact@compactvoice.org.uk](mailto:compact@compactvoice.org.uk).