Public Procurement Practice in Northern Ireland
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Forward

Treasury Guidelines tell us that government has three options when funding non-governmental organisations; grants, grant in aid and procurement. Over recent years Government has advanced an extensive body of guidance on public procurement in Northern Ireland. However, there are few recent empirical studies of the implementation of procurement exercises.

Three concerns about procurement have consistently been raised with NICVA by voluntary and community organisations: inappropriate use of procurement; disproportionate barriers for social enterprises and voluntary and community organisations in competing for contracts; and increasing weight given to cost in tender criteria to the detriment of quality and wider social and economic goals. Through an extensive examination of tenders issued by the public sector this report substantiates these concerns. Increasingly tenders have given greater weight to cost and less weight to quality. The report also confirms the reality of widespread barriers faced by social enterprises and voluntary and community organisations when tendering for contracts.

In future it is recommended that procurement is appropriately selected and that necessary measures are taken to ensure that the process offers a level playing field to social enterprises and the VCS. Furthermore, it is essential that there is a move beyond a disproportionate cost based focus, to ensure a more holistic consideration of all procurement criteria.

There is a need for widespread reflection on the nature of the relationship between government and the voluntary and community sector and this report provides important evidence for those discussions.

Seamus McAleavey

NICVA Chief Executive
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1 Executive Summary

1.1 Introduction

NICVA commissioned research into procurement for the Voluntary Community Sector (VCS) / Social Enterprise (SE) sector in Northern Ireland (NI) due to anecdotal concerns regarding barriers to tendering. This has been a perennial problem with specific guidance and legislation designed to remove barriers and enable VCS/SE organisations to tender. This research empirically tests some of the concerns that have been expressed in relation to contemporary procurement practice in NI.

1.2 Terms of Reference

The terms of reference outlined the requirement to assess the extent to which:

• Procurement is being appropriately selected (for example in preference to grant and grant-in-aid);
• Procurement offers a level playing field to social enterprises and Small and Medium Sized Enterprises (SMEs); and
• Due weight is given to cost relative to other criteria in assessing tenders.

Note: As a result of the PID meeting the research was amended to focus on VCS and Social Enterprises.

1.3 Methodology

The methodology involved:

• Desk review of the Northern Ireland Context regarding support for VCS and SE organisations in relation to public sector procurement;
• Consultation with representatives from the sector to understand their perceptions of public sector procurement in Northern Ireland;
• Reviewing available data and relevant tender documentation to assess the changes to procurement over time. Documentation for 156 tenders was received and a breakdown of these is included in appendix 1; and
• Analysis and reporting of findings from the desk review and interviews with stakeholders.

1.4 Conclusions and Recommendations

Too much Focus on Price: The evidence shows that price has been given a higher prominence in the awarding of contracts in recent years than in previous years. This is particularly the case with smaller project budgets. This is despite the EU Directive 2014/24 which states that contracts should be assessed on overall cost effectiveness, quality, environmental and social aspects, trading and delivery conditions. The concern is that the NI public sector may
not be delivering maximum impact by failing to sufficiently consider the wider benefits a procurement may deliver.

Those that do bid will find their margins being squeezed and if the downward pressure continues there is a risk it will impact negatively on their ability to reinvest or be innovative, whilst some could go out of business completely.

Research is needed to monitor the weightings being allocated to price on all public sector contracts but particularly small scale projects.

Moreover, over half of the tenders reviewed (55% of the 156) did not include budget information, which is contrary to best practice.

Commissioners should be aware of the full cost of goods and services being procured and ensure that tender documents include budgets setting lower as well as upper limits. If there are reasons why budgets cannot be included these should be stated.

**Insufficient Emphasis on Quality:** The evidence shows that quality is being weighted lower than in previous years. The percentage of bids rating quality as 50% or greater of the marks has decreased from 100% before 2012 to 78% in 2015. However at the same time the public sector is emphasising its need to see improved quality.

The public sector should ensure that the weightings in tenders reflect the importance of quality of goods and services being procured.

**Onerous Experience/Expertise Requirements:** Experience requirements can vary significantly across central and local government.

Experience criteria should only be included if critical to delivering a quality service. They should not be included as a way of reducing the number of people or organisations that can apply. Instead the focus should be on measuring the outcomes to be delivered. In new service areas, it is essential that commissioners engage with potential providers to understand what the experience requirements are that are essential to the delivery of the service, before including them in the tender requirements.

Restrictions on the timeframe of experience (e.g. 3 years) mean that while some companies may have very relevant experience just outside of this timeframe it cannot be used. In addition, in some areas work can be so specialist that contracts only get tendered on an irregular basis and by restricting experience it reduces the number of organisations who can bid. As a result organisations that may be able to deliver the work are prevented from tendering.

**Levels of Insurance Required:** There is a huge variation in the insurance requirements set in tenders of the same value for service type contracts.¹

Tender specifications should include only appropriate levels of insurance for the value and type of service being procured.

¹ Six services type contracts under £100k required Professional Indemnity of up to £5m, compared to six
**Complexity of Tender Responses Required:** Central Government Departments and Public Agencies generally require more complex responses than tenders published by Councils, regardless of the value of the tender.

The level of complexity in the response requirements needs to be proportionate to the value of the contract.

**Payment Approaches:** The public sector is moving ahead with Payment by Results (PbR) however it is clear that it is not suitable for all service areas. The level of financial risk and the amount of working capital required from PbR may prevent voluntary sector organisations from bidding for contracts regardless of their ability to deliver the desired outcomes.

Research and piloting work is required before it should be used and potential providers need to be engaged to assess their capacity to deliver PbR. The skills/expertise of those commissioning the work also needs to be assessed with regard to their ability to develop the tender.

**Social Clauses:** Based on the tenders reviewed social clauses are not being included in all procurement contracts in Northern Ireland\(^2\). This therefore does not give VCS/SEs the opportunity to demonstrate the full value they can potentially provide.

Tenders being developed for the VCS/SE should recognise the wider economic / social benefits they bring and these should be evaluated as part of the tender assessment process.

**Pre-tender Consultation:** It is important that those in the VCS/SE sector are aware of opportunities well in advance to make it easier for them to respond to tenders. However it is also important that they are fully engaged with on larger or more complicated procurements. While there is evidence that this is carried out for some contracts (for example those with DEL / PHA) it is not happening for all.

Pre tender consultation needs to be a two way process, where not only can the sector learn about the public sector’s needs, but vice versa and that the tendering process takes the learnings from these into account.

**Confidence:** A number of high profile cases have diminished the confidence of some in the VCS/SE sector in the public sector commissioning / procurement process in NI.

Learnings need to be taken from these and applied to future cases and work is needed to profile best practice cases. This is required to not only build confidence in the procurement system, but to educate others in intelligent commissioning / procurement.

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2 It is a Programme for Government 2011-15 commitment that public tenders include social clauses.
2 INTRODUCTION

2.1 Introduction

NICVA commissioned research into procurement for the VCS/SE sector in Northern Ireland due to anecdotal concerns regarding barriers to tendering. This has been a perennial problem with specific guidance and legislation designed to remove barriers and enable VCS/SE organisations to tender. This research empirically tests some of the concerns that have been expressed in relation to contemporary procurement practice in NI.

2.2 Methodology

The methodology involved:

- Desk review of the Northern Ireland Context regarding supporting VCS and SE through public sector procurement;
- Consultation with representatives from the sector to understand their perceptions of public sector procurement in Northern Ireland;
- Reviewing available data and relevant tender documentation to assess the changes to procurement over time. Documentation for 156 tenders was received and a breakdown of these is included in appendix 1; and
- Analysis and reporting of findings from the desk review and interviews with stakeholders.

2.3 Northern Ireland Context

The Department of Finance and Personnel (DFP) Minister has stated that he wishes to ensure that the SME sector (which includes most VCS and SEs in Northern Ireland) can compete for the £2 billion of goods and services procured through the public sector each year.

The sector however feels that there are a number of barriers which limit their chances of success in competing for this work. These issues have been raised and are covered in the media, but there has been a lack of research to confirm whether their concerns are real or not. If confirmed, then there is a need for government action in order to support their policy of encouraging the sector to win public sector work.

To understand whether the sector’s perceptions that public procurement in Northern Ireland has become more challenging, it is essential to review what has changed in the tender process over the last 5 years and whether these changes have helped or hindered the sector to compete.

Public sector tendering is heavily influenced by legislation regarding the type of work that needs to be tendered and how it should be tendered. As a result the amount of work being tendered has increased and will continue to increase in the future as the tendering process develops over time. Specifically, new legislation has set rules for procurement which require the public sector

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3 Public Sector Regulations 2015
to tender any work that they will specify the outcomes required from. In addition, while the tendering process (advertising of tenders, gathering responses and evaluating them) is long established, the complexity surrounding this has increased. For example weightings are applied to illustrate how the tender will be scored and the criteria for scoring is included in the tender specification. The need for a robust and transparent process has led many commissioners to develop more criteria and provide more detail on the scoring processes being used.

In some cases, staged processes are being used, i.e. stage one requires the demonstration that certain criteria are met and if these are failed, the tendering organisation cannot move on to the next stage. This second stage then normally involves those successful at stage one, providing further detail against another set of criteria.

The sector therefore is dealing with a situation in which some or most of the work they were previously funded to deliver through grant, is being tendered and the way work is tendered has been changing.

2.4 VCS/SE Sector Contribution to Public Services Delivery

The VCS sector has an important role to play in public services however views on what this should be, and the possible barriers to this, have developed over time.

Research has shown that issues around commissioning and procurement are often not due to a lack of capacity within the third sector to engage in public service delivery, but rather the lack of awareness, understanding and capabilities of public sector commissioners. For example, an assessment in 2007 by the Audit Commission\(^6\) called for more 'intelligent commissioning'. This involves consideration of:

- the kind of services commissioners want to procure for a range of service users;
- the types of organisations that are likely to be able to deliver these; and
- how best to construct a process that will ensure that a variety of delivery organisations can deliver services, with funding in the most appropriate form.

The idea of 'intelligent commissioning' is also highlighted in the House of Commons Public Administration Select Committee's report (2008) into the role of the third sector in public services. This supported the idea of an incremental approach in removing barriers to, and encouraging

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5 Some of the more significant changes in the new regulations are: Tendering documents have to be available from the date of OJEU advertisement; Reduced timescales for procurement – on average they have reduced timeframes by a third and have introduced the new Accelerated Open procedure for OJEU tenders and have prohibited the use of a PQQ stage for low value contracts; Contracting Authorities are now only allowed to ask for suppliers to have a turnover that is twice the value of the contract they are applying for; New mandatory exclusions mean companies with individuals who have been found guilty of Terrorism or Serious Crime offences must be excluded from the competition – unlikely to affect the majority of companies; New discretionary exclusions means that poor performance on a previous contract (including any damages paid not just cancellation of contracts) can be grounds for exclusion for up to 5 years and Buyers are now being 'encouraged' to break contracts down into smaller lots – not as strong a measure as most hoped for as it could have been mandated for all contracting authorities

6 Audit Commission (2007) Hearts and Minds: Commissioning from the Voluntary Sector - based on interviews with commissioners and third sector organisations in 14 localities,
participation in, certain service areas where the third sector might play a distinctive role (as opposed to a wholesale transformation of public services through third sector involvement).

The value of the VCS in delivering services is highlighted in the Evaluation of the National Programme for Third Sector Commissioning, which states that public service commissioners value the sector's ability to understand hard-to-reach users; their “unique way of delivering services” and “good understanding of local needs to contribute to needs analysis, service design and setting priority outcomes”.\(^7\)

3 FINDINGS

3.1 Introduction

This section summarises the findings from the desk review of a sample of tenders in order to understand the extent to which it is becoming more challenging or not for the VCS/ SE sector to compete for work from the public sector.

3.2 Availability of Data

The key aspect of this research is to review any data on tender documentation and any changes to the weightings given to the various criteria used to evaluate tenders. However the researchers found that the public sector does not collect or review such data, therefore leaving an Information void with regard to this important area of research.

Given that data on the criteria and weightings used in the assessment of tender responses was not already being collected, the researchers encountered significant delays to progressing the project. Eventually using a range of sources\(^8\) data was compiled regarding relevant tenders over the last 5 years.

It is concerning however that despite the sector voicing its concerns over procurement practice that this data was not being analysed and used to inform policy.

3.3 Criteria used to Evaluate Bids

Issue

The criteria used to evaluate bids have developed over time. It is the view of many in the sector that price is playing a much more significant role now than previously with regard to the awarding of contracts. Such concerns are supported by research conducted by NCVO on procurement barriers effecting charities and social enterprises\(^9\), which states that public sector procurement is increasingly driven by price, rather than delivering value for money (VFM).

Barrier

If the prices being awarded for public sector contracts are being driven downwards then suppliers may find that they cannot afford to be involved in these markets. A narrow focus on short-run cost savings may also undermine investment and innovation incentives and may even force successful bidders out of the market. A short term focus on price will deliver cost savings for the public purse, but is also expected to result in a reduction in competition in the longer term and may negatively impact on the quality of the work being delivered.

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\(^8\) Researchers accessed tenders from CPD, Councils and BSO.

Evidence

3.3.1 Project Budget

Table 3.1 details the price weightings for the analysed tenders from before 2012\(^{10}\) to 2015.

<table>
<thead>
<tr>
<th>Year</th>
<th>Tenders with Price Weighted as 25% or Less</th>
<th>Tenders with Price Weighted as Greater than 25% but Less than 50%</th>
<th>Tenders with Price Weighted as 50% or Greater</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 2012</td>
<td>24 (55.8%)</td>
<td>18 (41.9%)</td>
<td>1 (2.3%)</td>
<td>43 (100.0%)</td>
</tr>
<tr>
<td>2012 / 13</td>
<td>23 (52.3%)</td>
<td>11 (25.0%)</td>
<td>10 (22.7%)</td>
<td>44 (100.0%)</td>
</tr>
<tr>
<td>2014 / 15</td>
<td>23 (33.3%)</td>
<td>23 (33.3%)</td>
<td>23 (33.3%)</td>
<td>69 (100.0%)</td>
</tr>
<tr>
<td>Total</td>
<td>70 (44.9%)</td>
<td>52 (33.3%)</td>
<td>34 (21.8%)</td>
<td>156 (100.0%)</td>
</tr>
</tbody>
</table>

*Price Weightings were not available for 7 tenders.

As shown above 2.3% of tenders published before 2012 had price weighted as 50% or greater of the total marks awarded. By 2012/13 this had risen to 22.7% and to 33.3% by 2014/15. Overall this represents a significant increase in the proportion of marks allocated to price over a 5 year period.

The National Audit Office’s guide to procurement notes that public procurement should be based on value for money and that this should be defined as the optimum combination of whole life costs and quality to meet the customer’s requirements rather than the initial purchase price.\(^{11}\) This is further supported by EU Directive 2014/24 which states that contracts should be awarded to the most economically advantageous tender taking into account such factors as the overall cost effectiveness, quality, environmental and social aspects, trading and delivery conditions.\(^{12}\)

However the evidence presented above indicates that the NI public sector has between 28% and 39% of its annual VCS/SE sector procurements heavily focused on price.

Table 3.2 shows the weightings allocated to price for the analysed tenders against the size of project budgets.

\(^{10}\) Before 2012 relates to 2009 - 2011


Table 3:2 Price Weightings by Size of Project Budget

<table>
<thead>
<tr>
<th>Project Budget</th>
<th>Tenders with Price Weighted as 25% or Less</th>
<th>Tenders with Price Weighted as Greater than 25% but less than 50%</th>
<th>Tenders with Price Weighted 50% or Greater</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Up to £100k</td>
<td>13</td>
<td>38.2%</td>
<td>14</td>
<td>41.2%</td>
</tr>
<tr>
<td>£101k – £500k</td>
<td>5</td>
<td>55.6%</td>
<td>2</td>
<td>22.2%</td>
</tr>
<tr>
<td>Over 500k</td>
<td>14</td>
<td>51.9%</td>
<td>12</td>
<td>44.4%</td>
</tr>
<tr>
<td>Not specified</td>
<td>38</td>
<td>44.2%</td>
<td>24</td>
<td>27.9%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>70</td>
<td>44.9%</td>
<td>52</td>
<td>33.3%</td>
</tr>
</tbody>
</table>

Source: RSM McClure Watters NICVA Public Procurement Tender Database (June 2015) Note: Caution should be applied to using these figures given the small numbers of responses

*Cost Weightings were not available for 7 tenders.¹³

Given that over half the tenders reviewed did not include budgets, the number of tenders fall significantly for this analysis and caution should be used in using these figures.

On the basis of the information available, approximately 20% of the lower value tenders (i.e. up to £100k) had weighted price high in their scoring of bids. Moreover, 96% of tenders with project budgets over £500k had price weighted as below 50% while 3.7% had price weighted as 50% or greater.

Therefore the focus on price is predominantly evident within smaller budget projects. This is particularly concerning as the volume of contracts will be much higher for these than for the larger value projects.

Table 3.2 shows 86 (55%) of the 156 tenders did not include budget information. Whilst the Office of Government Commerce’s best practice guide notes that there may be reasons for not disclosing budgets, it also notes that if budget information is withheld, potential suppliers may not fully understand the value of the tender and submit unrealistic bids as a result. Furthermore, the disclosure of budgets may allow suppliers to self-deselect if they think the procurement is beyond their abilities, or if they think they cannot compete.¹⁴

¹³ Cost weightings were not available for 7 tenders. Project budgets were not specified in 86 of the tenders – i.e. a tender may have price weightings but the actual budget may not be listed.

For all the above reasons, it is imperative that contracts include budget information to allow small/medium organisations such as those in the VCS/SE sector to assess their ability to deliver. If there are reasons why budgets cannot be included these should be stated.

**Conclusion**

The evidence shows that price has been given a higher prominence in the awarding of contracts in recent years, than in previous years. This is particularly the case with smaller project budgets. This is despite the EU Directive 2014/24 which states that contracts should be assessed on overall cost effectiveness, quality, environmental and social aspects, trading and delivery conditions. The concern is that the NI public sector may not be delivering maximum impact by failing to sufficiently consider the wider benefits a procurement may deliver. Those that do bid will find their margins being squeezed and if the downward pressure continues there is a risk it will impact negatively on their ability to reinvest or be innovative, whilst some could go out of business completely.

Research is needed to monitor the weightings being allocated to price on all public sector contracts but particularly small scale projects. Moreover, over half of the tenders reviewed (55% of the 156) did not include budget information, which is contrary to best practice.

Commissioners should be aware of the full cost of goods and services being procured and ensure that tender documents include budgets setting lower as well as upper limits. If there are reasons why budgets cannot be included these should be stated.

**3.3.2 Emphasis on Quality**

**Issue**

There is a perception that the quality is increasingly important to public sector clients however it is not given sufficient weighting in the scoring of bids. Moreover, specifications are not accurately reflecting the quality of work that is expected and as a result providers can be appointed to a contract and find that they need to deliver higher quality outcomes than they had intended/specified.

**Barrier**

There is significant risk involved for providers who may be awarded contracts and are unclear on how quality is being measured, despite it being built into how the contract is monitored. Failure to appropriately price a contract can result in a provider experiencing a loss of earnings as well as a detrimental impact on the reputation of their organisation, resulting in a loss of further business.

**Evidence**

VFM analysis states that projects should be assessed at a minimum on their ability to deliver quality as well as on price. Table 3.3 details the weighting allocated to quality in the scoring of tenders from before 2012 to 2015.
Table 3:3 Quality Weightings by Year

<table>
<thead>
<tr>
<th>Year</th>
<th>Tenders with Quality Weighted as 25% or Less</th>
<th>Tenders with Quality Weighted as Greater than 25% but Less than 50%</th>
<th>Tenders with Quality Weighted as 50% or Greater</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Before 2012</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>2012</td>
<td>2</td>
<td>8.0%</td>
<td>1</td>
<td>4.0%</td>
</tr>
<tr>
<td>2013</td>
<td>2</td>
<td>10.5%</td>
<td>1</td>
<td>5.3%</td>
</tr>
<tr>
<td>2014</td>
<td>6</td>
<td>18.2%</td>
<td>2</td>
<td>6.1%</td>
</tr>
<tr>
<td>2015</td>
<td>6</td>
<td>16.7%</td>
<td>2</td>
<td>5.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>16</td>
<td>10.3%</td>
<td>6</td>
<td>3.8%</td>
</tr>
</tbody>
</table>

Source: RSM McClure Watters NICVA Public Procurement Tender Database (June 2015)

*Quality Weightings were not available for 7 tenders.

As shown above, before 2012 100% of tenders had quality weighted as 50% or greater of the overall assessment. This decreased to 75.8% in 2014 (weighting quality as 50% or above of the total marks) and 77.8% in 2015. Overall this shows a significant decline in the focus placed on quality when assessing submissions over the last 5 years.

Quality Weightings by Size of Project Budget

Table 3.4 shows the weightings allocated to quality for the analysed tenders against the size of project budgets.

Table 3:4 Quality Weightings by Project Budgets

<table>
<thead>
<tr>
<th>Project Budget</th>
<th>Tenders with Quality Weighted as 25% or Less</th>
<th>Tenders with Quality Weighted as Greater than 25% but Less than 50%</th>
<th>Tenders with Quality Weighted as 50% or Greater</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Up to £100k</td>
<td>2</td>
<td>5.9%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>£101k – £500k</td>
<td>1</td>
<td>11.1%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Over 500k</td>
<td>0</td>
<td>0.0%</td>
<td>1</td>
<td>3.7%</td>
</tr>
<tr>
<td>Not specified</td>
<td>13</td>
<td>15.1%</td>
<td>5</td>
<td>5.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>16</td>
<td>10.3%</td>
<td>6</td>
<td>3.8%</td>
</tr>
</tbody>
</table>

Source: RSM McClure Watters NICVA Public Procurement Tender Database (June 2015)

*Quality Weightings were not available for 7 tenders.
Given that over half the tenders reviewed did not include budgets, the number of tenders falls significantly for this analysis and caution should be used in using these figures.

For projects with budgets of up to £100k, 94.1% of tenders reviewed had quality weighted as 50% or greater of the overall assessment while only 5.9% had quality weighted as 25% or less.

For projects with a budget between £101k and £500k, 88.9% of tenders had quality weighted at 50% or greater while 11.1% had quality weighted at 25% or less.

Lastly, 96.3% of tenders with project budgets of over £500k had quality weighted as 50% or greater while 3.7% had quality weighted greater than 25% but less than 50%.

**Conclusion**

The evidence shows that quality is being weighted lower than in previous years. The percentage of bids rating quality as 50% or greater of the marks has decreased from 100% before 2012 to 78% in 2015. However at the same time the public sector is emphasising its need to see improved quality.

The public sector should ensure that the weightings in tenders reflect the importance of quality of goods and services being procured.

**3.4 Experience / Expertise Required to Compete**

**Issue**

Experience requirements can vary significantly across local and central government. Restrictions on the timeframe of experience (e.g. 3 years) means that while some companies may have very relevant experience just outside of this timeframe it cannot be used. In addition, in some areas work can be so specialist that contracts only get tendered on an irregular basis and by restricting experience it reduces the number of organisations who can bid.

**Barrier**

As a result of experience restrictions organisations that may be able to deliver the work are prevented from tendering.

**Evidence**

Of the 156 tenders that were reviewed it was found that the experience / expertise required varied significantly depending on the type of client organisation and services / project.

For example, the Public Health Agency (PHA) uses very similar selection criteria for each of its tenders. Under experience the PHA generally sets criteria at both an organisational and staff level, for example:
Organisational level

Potential suppliers were required to provide details of the principal services their company had provided in the past 3 years including:

- The name of organisation to whom services were provided;
- Dates on which services were provided; and
- Annual values of services.

In order to pass this section of the procurement process, potential suppliers’ principal services must be relevant to the services tendered and the scale of the projects (individual projects or groups of projects delivered in parallel) must be comparable to the scale of services tendered in terms of financial value and resources deployed.

Staff level

Applicants were also required to provide evidence that one member of management staff had 2 years of experience in the last 3 years relevant to the services tendered. Lastly, potential suppliers are required to provide evidence that 80% of the staff that would be assigned to the contract had 2 years of experience in the last 3 years relevant to the services tendered.

Similarly, for several of its contracts, DEL also required potential suppliers to provide both organisation and staff experience, for example:

- Details of 3 years relevant organisational experience, including dates, the client group the service has been provided to and explanations as to why the experience is considered to be of relevance; and
- Details of 3 years relevant experience of the key personnel in successfully delivering services of a similar nature, including dates and explanations as to why the experience is considered to be of relevance.

In contrast to this approach, local councils’ tender evaluation criteria did not detail how many years of experience were required and the experience criteria varied significantly between projects and Councils. For example, one tender published by a council for provision of support for community growing activities simply listed experience of similar work as part of the evaluation criteria.

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15 Public Health Agency: Tender for the Provision of Support, Care, Facilitation and Harm Reduction Services for People who are misusing Substances (Low Threshold Services) (December 2014).
16 Public Health Agency: Tender for the Provision of Support, Care, Facilitation and Harm Reduction Services for People who are misusing Substances (Low Threshold Services) (December 2014).
17 Public Health Agency: Tender for the Provision of Support, Care, Facilitation and Harm Reduction Services for People who are misusing Substances (Low Threshold Services) (December 2014).
18 DEL: Provision of Disability Support for Training for Success and ApprenticeshipsNI (May 2011)
19 Belfast City Council: Tender for provision of support for Council-based community growing activities (2013).
Newtownabbey Borough Council, required potential suppliers to provide evidence of previous experience of similar contracts including: 20

- Previous work with ethnic minority communities and / or organisations;
- Previous work developing and supporting networks or collaborative working; and
- Evidence of experience in facilitation, programme development and understanding the parameters of Peace III.

Focus group attendees also highlighted that experience / skills/ track record requirements could be a significant barrier to tendering. Examples were provided of the inclusion of accreditations/ qualifications as essential criteria that needed to be met before the tender responses could be evaluated. These were explained as requirements that weren’t felt to be essential in order to deliver a quality service.

**Conclusion**

Experience requirements can vary significantly across central and local government. Experience criteria should only be included if critical to delivering a quality service. They should not be included as a way of reducing the number of people or organisations that can apply. Instead the focus should be on measuring the outcomes to be delivered. In new service areas, it is essential that commissioners engage with potential providers to understand what the experience requirements are that are essential to the delivery of the service, before including them in the tender requirements.

Restrictions on the timeframe of experience (e.g. 3 years) means that while some companies may have very relevant experience just outside of this timeframe it cannot be used. In addition, in some areas work can be so specialist that contracts only get tendered on an irregular basis and by restricting experience it reduces the number of organisations who can bid. As a result organisations that may be able to deliver the work are prevented from tendering.

**3.5 Levels of Insurance Required to Compete**

**Issue**

Insurance levels sought are not proportionate to the size / value of the contract.

**Barrier**

Potential suppliers are often asked to have Professional Indemnity Insurance in place prior to being awarded the contract, this can be a significant cost to the company (see table 3.6) and acts as a barrier for those VCS/SE organisations that do not have these levels already in place.

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20 Newtownabbey Borough Council: Tender for the Provision of the Engagement Integration and Diversity Programme (November 2009).
**Evidence**

Table 3.7 shows the level of Professional Indemnity Insurance as included in the tender packs reviewed against the size of the project budgets.

**Table 3:5 Cost of Insurance**

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Cost 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Indemnity Insurance Less than £2m</td>
<td>£1,024,56 / p.a.</td>
</tr>
<tr>
<td>Professional Indemnity Insurance £2m - £5m</td>
<td>£1,813,26 / p.a.</td>
</tr>
<tr>
<td>Professional Indemnity Insurance £5.1m - £10m</td>
<td>Provided only upon consultancy (need specific details)</td>
</tr>
</tbody>
</table>

*Professional Indemnity Insurance information was only available for 48 tenders.*

**Table 3:6 Professional Indemnity Insurance by Project Budget**

<table>
<thead>
<tr>
<th>Budget</th>
<th>Professional Indemnity Insurance Less than £2m</th>
<th>Professional Indemnity Insurance £2m - £5m</th>
<th>Professional Indemnity Insurance £5.1m - £10m</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Up to £100k</td>
<td>6</td>
<td>50.0%</td>
<td>6</td>
<td>50.0%</td>
</tr>
<tr>
<td>£101k – £500k</td>
<td>0</td>
<td>0.0%</td>
<td>1</td>
<td>100.0%</td>
</tr>
<tr>
<td>Over £500k</td>
<td>1</td>
<td>5.3%</td>
<td>18</td>
<td>94.7%</td>
</tr>
<tr>
<td>Not specified22</td>
<td>8</td>
<td>50.0%</td>
<td>6</td>
<td>37.5%</td>
</tr>
<tr>
<td>Total</td>
<td>15</td>
<td>31.3%</td>
<td>31</td>
<td>64.6%</td>
</tr>
</tbody>
</table>

*Professional Indemnity Insurance information was only available for 48 tenders.*

Source: RSM McClure Watters NICVA Public Procurement Tender Database (June 2015)

As set out above, for projects with a budget of up to £100,000, 50% of the reviewed tenders required professional indemnity insurance of less than £2m while the remaining 50% required professional indemnity insurance with a value of between £2m and £5m. This highlights a significant disparity as while the value of the job remains the same the cost of public liability insurance can increase by c.77% between the two levels of insurance.

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21 Insurance costs based on a Services Business that has been established for c.4-5 years and with an expected annual turnover of £750,000

22 Professional Indemnity Insurance information was only available for 48 tenders; the 'not specified' row refers to tenders where insurance information was requested but no project budget given
Only one project had a budget of between £101,000 and £500,000 and this project required professional indemnity insurance of between £2m and £5m.

For projects with budgets over £500,000, 94.7% required professional indemnity insurance of between £2m and £5m with just 5.3% requiring cover of less than £2m.

Overall, the professional indemnity insurance requirements vary but do not appear to link to the value of the project.

**Conclusion**

There is a huge variation in the insurance requirements set in tenders of the same value for service type contracts. However tender specifications should include only appropriate levels of insurance for the value and type of service being procured.

3.6 Complexity of Tender Responses Required

**Issue**

The more complicated the tender requirements/tender response documents the more time/resource is required to respond. This increases the cost of responding for tendering organisations. For VCS/SEs particularly small organisations the cost involved in preparing a response will be a factor which is considered in deciding whether to respond or not. The higher the cost the more risk there is for the organisation tendering. If a tender specification is unclear about the requirements or how to respond this risk increases. Time invested in trying to clarify the issues is essential to trying to decrease the risk, but pushes up the cost.

**Barrier**

Excessive criteria/documentation requirements places an additional resource burden on SMEs. Unclear or poorly developed specifications cause uncertainty as to what is required and requires the tendering organisations to try and invest time in understanding what is required.

**Evidence**

The review of tenders shows a significant range in the complexity of tender responses required. For example, some tenders include a pass/fail on the experience and then two further criteria – such as methodology and costs.

However others can be much more complicated, for example: a tender published by a public agency in 2014 for the design and delivery of an Addictions Educational and Awareness Raising Programme required applicants to respond to the following criteria:

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23 Six services type contracts under £100k required Professional Indemnity of up to £5m, compared to six other services contracts also valued at £100k, which required Professional Indemnity Insurance of less than £2m. The higher insurance costs nearly twice the lower level.
• Understanding of the Brief (20%);
• Proposed Methodology (60%); and
• Budget (20%).

With regard to understanding the brief, applicants were required to demonstrate how the aims and objectives of the programme would be met.

In the methodology section, potential suppliers had to respond to the following sub-criteria:

• Evidence of a good understanding of the issues facing high risk young people in Strabane District Council and detail the types of support the applicant proposed to offer;
• Details of how participants would be identified and recruited to the programme;
• Demonstration of a clear and realistic timetable for delivery;
• Details of how the applicant would provide innovation in the delivery of the Programme;
• Demonstration of the appropriate methods of monitoring and evaluating;
• Details of the person who will have overall responsibility for the design and delivery of the programme and details of the team members who will be assigned to the programme including qualifications, experience and what their responsibility will include.

For the budget section, applicants had to include a clear breakdown of the proposed structure for the delivery of the Programme and ensure the proposed budget was inclusive of all costs associated with the delivery of the Programme.

Similarly, a tender published by the Department of Health, Social Services and Public Safety in 2013 for the provision of an Investment Management Service required potential suppliers to respond to the following criteria:

• Service Delivery (12%);
• Analysis (10%);
• Knowledge (18%); and
• Price (60%).

Each criterion had corresponding sub-criteria with assigned weightings to reflect the importance of each section.

For example, the Knowledge section had the following sub-criteria:

• Provide evidence of track record and examples of similar portfolio of Funds (5%);
• Provide recommendations on the current investment portfolio (5%); and

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24 Policing & Community Safety Partnership: Tender for the Design and Delivery of an Addictions Educational and Awareness Raising Programme on Gambling, Alcohol and Drugs for Schools & Community Groups (June 2014).
• Demonstrate knowledge of the terms of the Northern Ireland Charities Act (NI) 2008, the Trustee Act (NI) 2001 and the role of the Charities Commission for Northern Ireland (8%).

The main difference between the approaches is the allocation of weightings to sub-criteria as well as to the main criteria in the tender response. However, simplifying the requirements is not necessarily the answer if the criteria do not make it clear exactly how the responses will be assessed. For example, in a tender published by a local council in 2011 for the provision of a recycling service, applicants were required to respond to the following criteria:

• Service delivery/proposed methodology;
• Health and safety;
• Environmental management / impact; and
• Scope of license, including hours of operation and materials accepted.

While this tender had quality weighted as 60%, it did not provide any detail on the weightings for the sub criteria making it more difficult for applicants to discern the importance of each section.

Conclusion

Of the tenders reviewed the responses required for tenders published by Government Departments and Public Agencies were generally more complex than those published by Councils. The criteria in tenders published by Government Departments and Public Agencies were generally more specific and included weightings at a sub criteria level. Councils on the other hand tend to weight criteria at a high level but not include any detail at a sub criteria level. The level of complexity in the tender requirements needs to be proportionate to the value of the contract whilst simplifying the response requirements.

3.7 Payment Approaches

Issue

The focus on quality and VFM in the public sector rhetoric has led to increased discussion about outcome based contracting. Payment by Results (PbR) models seek to transfer risk away from the taxpayer. Such a model requires the supplier to have sufficient finance to cover not only the period until the payment arrives, but also the risk that it may never arrive if the services fail to deliver the expected results.

Barrier

While this approach may help deliver more efficient and effective services, the level of financial risk and the amount of working capital required from PbR may prevent voluntary sector organisations from bidding for contracts regardless of their ability to deliver the desired outcomes. PbR often demands that providers fund part, or all, of the initial implementation of services and on-going delivery before receiving payment. Moreover, the concern is that commissioners do not have the knowledge/experience/time to procure using outcome based
contracts. The process normally requires engagement both with the communities and the providers prior to the issue of the tender, in the absence of this providers could get awarded a contract where the outcomes required were inadequately specified.

Evidence

Research by NCVO states that having a sufficient market of providers able to fund this interim stage is essential if markets are to be competitive, yet this requirement can be a significant challenge for voluntary sector providers and often excludes them from the bidding process.27

For example, a tender for the provision of DEL’s Steps 2 Success Programme, published in March 2014, utilises a PbR approach that consists of three elements:28

- Attachment fee – paid when a client is attached onto the programme by the Provider;
- Job entry fee – paid to the Provider when a Steps 2 Success participant starts full time employment of 16 hours or more per week;
- Sustained employment fees – paid to the Provider at defined intervals of up to 12 months after the client has sustained employment.

The job entry and sustained employment fees are output related and are only paid when clients are assisted to attain job entry and to sustain that job. There are different levels of funding paid for each of the three elements for clients in the different eligibility categories. This takes account of the greater difficulty in assisting people in the harder to help groups to find and sustain employment. Furthermore, there is also an element of funding paid to Providers for those clients who attain a defined qualification and then go on to enter employment.

However a recent report by the NAO29 noted that: ‘while supporters argue that by its nature PbR offers value for money, PbR contracts are hard to get right, which makes them risky and costly for commissioners. If PbR can deliver the benefits its supporters claim – such as innovative solutions to intractable problems – then the increased cost and risk may be justified, but this requires credible evidence. Without such evidence, commissioners may be using PbR in circumstances to which it is ill-suited, with a consequent negative impact on value for money’.

PbR is a technically challenging form of contracting, and has attendant costs and risks that government has often underestimated. It is difficult to design an effective payment mechanism and forecast the level of performance that would occur without intervention. Furthermore, although PbR transfers some risk to the provider, commissioners need to be aware of the risks they retain, for example that providers fail to meet scheme objectives. In the rush to implement, government has launched some PbR schemes without making best use of pilots to test the planned approach. Commissioners need to consider the time and skills required to design and

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28 DEL: Tender for the Provision of Steps 2 Success Programme (NI) (March 2014).
manage a PbR contract effectively, as underinvestment on these can have negative consequences for the scheme.

**Conclusion**

The public sector is moving ahead with PbR however it is clear that it is not suitable for all service areas. The level of financial risk and the amount of working capital required from PbR may prevent voluntary sector organisations from bidding for contracts regardless of their ability to deliver the desired outcomes.

Research and piloting work is required before it should be used and potential providers need to be engaged to assess their capacity to deliver PbR. The skills/expertise of those commissioning the work also needs to be assessed with regard to their ability to develop the tender.

**3.8 Social Clauses**

**Issue**

Focus group findings highlighted that the procurement process does not always take into account the wider benefits / outcomes that can be delivered by the VCS. This is supported by NCVO research\(^{30}\) which states that many charities and social enterprises create added value such as employment opportunities for disadvantaged groups or additional resources to compliment public spending (e.g. through the use of volunteers). The issue therefore is the lack of consideration of the wider economic, social and environmental benefits that can be delivered through public procurement.

**Barrier**

VCS/SE groups feel that given their background and ethos they are more likely to be able to help communities especially those who are harder to reach than others. This alongside their focus on delivering wider benefits such as social, economic or environmental in an area means that they have more to offer/provide than those outcomes specified in the tender. However the difficulty is that in the past these wider outcomes/impacts have not been evaluated as part of the tendering process and therefore they and their communities lose out.

**Evidence**

It is a government objective that social clauses are included in all tenders. However, only 15 of the contracts that were analysed contained social clauses in their tender packs.\(^{31}\) Of those contracts that did contain social clauses, they were generally related to providing work experience to young job seekers and / or providing work placements for the long-term unemployed. For example, DEL published a tender in 2011 for the delivery of the Workable (NI)

30NCVO Ten Procurement Barriers Affecting Charities and Social Enterprises
31 This may be partly due to the research team not having access to full tender packs for some tenders.
Programme for the Disability Employment Service Northern Region which included the following social clause:\textsuperscript{32}

The Contractor, will for every £0.5 million of contract claims provide 1 X 26 week placement opportunity or 2 X 13 week placement opportunities, either directly within their own organisation or through their supply chain, for the unemployed through the Department for Employment and Learning’s (DEL) Steps to Work (StW) programme to help trainees gain relevant work experience and awareness of up to date working practices within the industry … The Contractor must \textbf{[also]} have processes in place to provide opportunities for all employees without Level 2 qualifications to develop and achieve essential skills qualifications in literacy, numeracy and ICT.

More recent contracts also included social clauses. For example, a tender for the delivery of the ‘SATCHEL’ Early Intervention Programme (DVC), which was published in 2014 by OFMdFM, the Strategic Investment Board and Derg Valley Care, includes the following social clause:\textsuperscript{33}

The Contractor \ldots shall provide opportunities for at least 8 suitable young jobseekers under a DEL approved scheme for 6 weeks duration during the period of contract \ldots The Contractor shall [also] provide \ldots a Jobseekers Plan detailing the Contractor’s plans, procedures and programme for providing work experience for young jobseekers.

Other contracts were ‘reserved’ meaning only potential suppliers operating supported employment programmes\textsuperscript{34} were eligible. Examples include two tenders published by Belfast City Council, one in 2014 and the other in 2015 for the provision of a licensed facility to receive and process quantities of ‘All types of mattresses’ and the management, development and delivery of the Parklife Education Programme respectively.

Several contracts also had more general social clauses. For example, Libraries NI published a tender for the provision of a Talking Books Lender Service for the blind and visually impaired which included the following social clause:\textsuperscript{35}

\textit{Suppliers must demonstrate their commitment to economic development, maximising social returns and targeting socio-economic inequalities.}

\textbf{Conclusion}

Based on the tenders reviewed social clauses are not being included in all procurement contracts in Northern Ireland\textsuperscript{36}. This therefore does not give VCS/SEs the opportunity to demonstrate the full value they can potentially provide.

\textsuperscript{32} DEL: Delivery of the Workable (NI) Programme for the Disability Employment Service Northern Region (November, 2011)
\textsuperscript{33} OFMdFM, the Strategic Investment Board and Derg Valley Care: Tender for the Delivery of the “SATCHEL” Early Intervention Programme (DVC) (December 2014).
\textsuperscript{34} A supported employment programme refers to a business where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.
Tenders being developed for the VCS/SE should recognise the wider economic / social benefits they bring and these should be evaluated as part of the tender assessment process.

3.9 Pre-tender Consultation

Issue

A lack of pre-procurement market engagement between buyer and supplier. This can relate to two areas:

- Communication between commissioners and buyers within the public sector in advance of a procurement process; and
- Communication between the commissioner/buyer and suppliers in advance of a procurement process to gain an understanding of what the market has to offer.

Barrier

Lack of opportunity for VCS/SE organisations to ask questions and gather information on the buyer requirements which inhibits their ability to fully understand what is required and has a detrimental impact on success rates. Moreover, buyers report that one of the barriers to procuring innovation is the insufficient use of premarket engagement processes.

Evidence

Pre-tender consultations represent a way for Public Sector organisations to increase potential suppliers’ awareness of procurement processes and where to find information on tender opportunities. They can also help inform the development of public procurement contracts.

For example, the Department for Employment and Learning consulted on a proposed new employment programme, Steps 2 Success (NI), which replaced the Department’s main adult return to work programme Steps to Work. As part of the process of developing the new programme, the Department welcomed comments from stakeholders on the proposals and questions set out in the consultation document. Responses to this consultation informed the development of a New Employment Programme for Northern Ireland. The response to the consultation was published on 5 May 2013. The Minister made an oral statement to the Assembly on 18 June 2013 about the procurement and introduction of the new programme.

PHA has also held pre-tender consultations to help build awareness and capacity among businesses and other organisations that are interested in procurement opportunities. For example, in autumn 2013 PHA held a number of pre-tender consultations which were open to all prospective providers/tenderers interested in applying for future PHA tender awards.

36 It is a Programme for Government 2011-15 commitment that public tenders include social clauses.
37 NICVA (2015) Fostering Innovation through Public Procurement - a research study
38 NICVA (2015) Fostering Innovation through Public Procurement - a research study. The majority (75%) of supplier respondents reported that they had no experience of pre-procurement market engagement.
These sessions included information on the following:

- Relevant legislation and policy under which PHA procurement will be conducted;
- How procurement will operate including how tenders will be advertised and the documentation that will be used;
- Set out the nature of information sought from tenderers including that relating to costing and activity; and
- Timescales for various tender exercises.

Pre-tender consultations are particularly important for SMEs and SEs which may face the following barriers to successfully competing for public procurement contracts:

- Searching contract notices in the Official Journal of the European Union (OJEU) is difficult for suppliers who are not familiar with the specialised terminology used;
- They may not have the resources to search the OJEU regularly and may find some commercial OJEU-searching services expensive;
- Lower value procurement (i.e. below £30,000) may not be advertised widely, and there is no single place to look for them. This can also apply to sub-contracting opportunities;
- Marketing resources are often limited within SMEs/SEs, making it difficult for them to raise their profile with the large number of potential public sector customers; and
- They often do not know who to talk to about opportunities.

They are also particularly important if they are completed as part of a process that will help define the specification. VCS and SE organisations can help provide information on the target group’s needs and the best way to meet these needs which can be used by the commissioner in the design of the specification. The sessions can also help the VCS/SE representatives meet others, who can agree to collaborate on a bid, therefore helping to build capacity in the sector.

**Conclusion**

It is important that those in the VCS/SE sector are aware of opportunities well in advance to make it easier for them to respond to tenders. However it is also important that they are fully engaged with on larger or more complicated procurements. While there is evidence that this is carried out for some contracts (for example those with DEL / PHA) it is not happening for all.

Pre tender consultation needs to be a two way process, where not only can the sector learn about the public sector’s needs, but vice versa and that the tendering process takes the learnings from these into account.

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39 PHA (2013) *Procurement Awareness Sessions*  

40 DFP (2015) *Helping Small and Medium Sized Enterprises (SMEs) and Social Economy Enterprises (SEEs) Access Public Sector Contracting Opportunities* -  
3.10 Confidence in Procurement Process/Expertise

**Issue**

Confidence in procurement bodies in NI has been impacted by several local high profile procurements that were disputed and the cases won. There is a perception that more procurement cases in NI are disputed than elsewhere across the UK and that a higher percentage of these are won.

**Barrier**

The time that it can take to get procurement decisions based on the likelihood that larger contracts in particular may be disputed is a significant barrier. A case that is disputed can take a year to go through the various stages, meanwhile the contract is undecided.

**Evidence**

There have been a number of high profile procurements\(^1\) that have gone through various stages of the legal process that have weakened confidence in procurement services.

These support concerns from the sector that procurement is not being implemented effectively or appropriately in every case. The cases, however, also lead commissioners/procurement officials to become more focused on objective measures such as price to ensure that their decisions cannot be easily disputed.

Findings from the focus group included the perception that NI has a much higher rate of disputed procurements than any other part of the UK which is also pushing up costs for Public Sector and VCS/SE. Specifically, a number of cases were highlighted were the government procurement practices were challenged and after legal proceedings the contract had to be retendered.

**Conclusion**

A number of high profile cases have diminished the confidence of some in the VCS/SE sector in the public sector commissioning / procurement process in NI. Learnings need to be taken from these and applied to future cases and work is needed to profile best practice cases. This is required to not only build confidence in the procurement system, but to educate others in intelligent commissioning / procurement.

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\(^1\) Focus group participants highlighted two contracts in particular as DRD Rural Transport Contract and Invest NI business Start Programme.
4 CONCLUSIONS AND RECOMMENDATIONS

This section presents the conclusions and recommendations based on the findings presented in the previous sections of this report and to assess the extent to which:

- Procurement is being appropriately selected (for example in preference to grant and grant-in-aid);
- Procurement offers a level playing field to social enterprises and the VCS; and
- Due weight is given to cost relative to other criteria in assessing tenders.

4.1 Procurement is being appropriately selected (for example in preference to grant and grant-in-aid)

The European Union (EU) Procurement Directives\(^{42}\) set out the legal framework and procedures for public procurement and these apply in Northern Ireland when contracting authorities are seeking to acquire goods, services and works above a set threshold by means of a public contract. The Directives have been implemented into national law in Northern Ireland, England and Wales by The Public Contracts Regulations 2015 which came into force on 26th February 2015.\(^{43}\) As a result, it is an EU requirement to procure many of the goods and services previously funded through grant-in-aid. There is however a lack of awareness of this change in some parts of the VCS/SE sector. The focus group highlighted high levels of awareness in the Health and Social Care sector. This was due to extensive briefings by the Public Health Agency with the sector. Whilst the focus group cannot be taken to be representative of all sectors, those outside of the HSC were less aware.

4.2 Barriers to the VCS/SE accessing Public Sector Work

**Too much Focus on Price:** The evidence shows that price has been given a higher prominence in the awarding of contracts in recent years than in previous years. This is particularly the case with smaller project budgets. This is despite the EU Directive 2014/24 which states that contracts should be assessed on overall cost effectiveness, quality, environmental and social aspects, trading and delivery conditions. The concern is that the NI public sector may not be delivering maximum impact by failing to sufficiently consider the wider benefits a procurement may deliver.

Those that do bid will find their margins being squeezed and if the downward pressure continues there is a risk it will impact negatively on their ability to reinvest or be innovative, whilst some could go out of business completely.


Research is needed to monitor the weightings being allocated to price on all public sector contracts but particularly small scale projects.

Moreover, over half of the tenders reviewed (55% of the 156) did not include budget information, which is contrary to best practice.

Commissioners should be aware of the full cost of goods and services being procured and ensure that tender documents include budgets setting lower as well as upper limits. If there are reasons why budgets cannot be included these should be stated.

**Insufficient Emphasis on Quality:** The evidence shows that quality is being weighted lower than in previous years. The percentage of bids rating quality as 50% or greater of the marks has decreased from 100% before 2012 to 78% in 2015. However at the same time the public sector is emphasising its need to see improved quality.

The public sector should ensure that the weightings in tenders reflect the importance of quality of goods and services being procured.

**Onerous Experience / Expertise Requirements:** Experience requirements can vary significantly across central and local government.

Experience criteria should only be included if critical to delivering a quality service. They should not be included as a way of reducing the number of people or organisations that can apply. Instead the focus should be on measuring the outcomes to be delivered. In new service areas, it is essential that commissioners engage with potential providers to understand what the experience requirements are that are essential to the delivery of the service, before including them in the tender requirements.

Restrictions on the timeframe of experience (e.g. 3 years) means that while some companies may have very relevant experience just outside of this timeframe it cannot be used. In addition, in some areas work can be so specialist that contracts only get tendered on an irregular basis and by restricting experience it reduces the number of organisations who can bid. As a result organisations that may be able to deliver the work are prevented from tendering.

**Levels of Insurance Required:** There is a huge variation in the insurance requirements set in tenders of the same value for service type contracts\(^4^4\).

Tender specifications should include only appropriate levels of insurance for the value and type of service being procured.

**Complexity of Tender Responses Required:** Central Government Departments and Public Agencies generally require more complex responses than tenders published by Councils, regardless of the value of the tender.

\(^{44}\) Six services type contracts under £100k required Professional Indemnity of up to £5m, compared to six other services contracts also valued at £100k, which required Professional Indemnity Insurance of less than £2m. The higher insurance costs nearly twice the lower level.
The level of complexity in the response requirements needs to be proportionate to the value of the contract.

**Payment Approaches:** The public sector is moving ahead with Payment by Results (PbR) however it is clear that it is not suitable for all service areas. The level of financial risk and the amount of working capital required from PbR may prevent voluntary sector organisations from bidding for contracts regardless of their ability to deliver the desired outcomes.

Research and piloting work is required before it should be used and potential providers need to be engaged to assess their capacity to deliver PbR. The skills/expertise of those commissioning the work also needs to be assessed with regard to their ability to develop the tender.

**Social Clauses:** Based on the tenders reviewed social clauses are not being included in all procurement contracts in Northern Ireland\(^{45}\). This therefore does not give VCS/SEs the opportunity to demonstrate the full value they can potentially provide.

Tenders being developed for the VCS/SE should recognise the wider economic / social benefits they bring and these should be evaluated as part of the tender assessment process.

**Pre-tender Consultation:** It is important that those in the VCS/SE sector are aware of opportunities well in advance to make it easier for them to respond to tenders. However it is also important that they are fully engaged with on larger or more complicated procurements. While there is evidence that this is carried out for some contracts (for example those with DEL / PHA) it is not happening for all.

Pre tender consultation needs to be a two way process, where not only can the sector learn about the public sector’s needs, but vice versa and that the tendering process takes the learnings from these into account.

**Confidence:** A number of high profile cases have diminished the confidence of some in the VCS/SE sector in the public sector commissioning / procurement process in NI.

Learnings need to be taken from these and applied to future cases and work is needed to profile best practice cases. This is required to not only build confidence in the procurement system, but to educate others in intelligent commissioning / procurement.

\(^{45}\) It is a Programme for Government 2011-15 commitment that public tenders include social clauses.
APPENDIX 1: BACKGROUND INFORMATION ON THE METHODOLOGY
This section details the key findings from an in-depth analysis of 163 tenders relevant to the VCS and SE sector. The tenders analysed spanned 2010 to 2015, as shown in the table below.

**Number of Tenders Reviewed by Year (prior to 2012\textsuperscript{46} - 2015)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Tenders</th>
<th>% of Tenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 2012</td>
<td>44</td>
<td>27.0%</td>
</tr>
<tr>
<td>2012</td>
<td>25</td>
<td>15.3%</td>
</tr>
<tr>
<td>2013</td>
<td>21</td>
<td>12.9%</td>
</tr>
<tr>
<td>2014</td>
<td>36</td>
<td>22.1%</td>
</tr>
<tr>
<td>2015</td>
<td>37</td>
<td>22.7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>163</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

*Source: RSM McClure Watters NICVA Public Procurement Tender Database (June 2015)*

The majority of tenders analysed were published in 2014/15 (44.8%); 28.2% of tenders were published in 2012/13 while the remaining 27% were published before 2012.

**Number of Tenders Reviewed by Organisation Type**

<table>
<thead>
<tr>
<th>Organisation Type</th>
<th>Number of Tenders</th>
<th>% of Tenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Departments / Public Agencies</td>
<td>85</td>
<td>52.1%</td>
</tr>
<tr>
<td>Council</td>
<td>67</td>
<td>41.1%</td>
</tr>
<tr>
<td>Collaboration*</td>
<td>10</td>
<td>6.1%</td>
</tr>
<tr>
<td>Other**</td>
<td>1</td>
<td>0.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>163</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

*Source: RSM McClure Watters NICVA Public Procurement Tender Database (June 2015)*

*Collaboration refers to collaborative procurement, which involves public bodies working together to jointly purchase goods and services.*

**One tender was issued by a charity.**

As shown in the table above, the majority of tenders analysed were published by Government Departments / Public Agencies (52.1%) followed closely by Councils (41.1%)

\textsuperscript{46} 2009 - 2012