**Strengthening DDPOs’ position in the commissioning process**

Commissioning is a process by which public bodies such as Government departments, local authorities or CCGs award contracts to other organisations to deliver services. The law on commissioning aims to ensure the process is transparent and open to all kinds of organisations without discrimination. Commissioners should ensure they award contracts to organisations that deliver best value. It is for commissioners to define what best value means.

**Pre-tender stage**

DDPOs have the best chance to influence the commissioning process and criteria at the pre-tender stage. At this stage commissioners could and should consult with Disabled people and DDPOs about the service they are to commission and how best to do it.

**What a commissioner can do:**

* Engage with DDPOs to discuss a service they are going to commission, discuss how this service could be delivered to secure the best outcomes for Disabled people;
* Tell DDPOs that they are planning to commission the service in the future,
* Anything with the aim of educating DDPOs to ensure they can take part in the commissioning process,. This is not the same as supporting DDPOs to produce a winning bid.
* Discuss potential criteria for a tender or the best way to conduct the process with the aim of ensuring they commission services that meet the needs of Disabled people.

**What DDPOs can do**

* Build relationships with commissioners, ask about tenders that are coming up, suggest ideas of how services for Disabled people could be delivered and improved.
* Collect data, feedback from service users and quantify the added value that DDPOs can bring to service delivery. Engage with commissioners and make sure they are aware of the wider economic and social value of services delivered by DDPOs.
* Push for pre-tender consultation. Participate in any engagement exercise , highlighting the need to consider social value and to comply with the Public Sector Equality Duty under the Equality Act 2010. Your involvement at pre-commissioning stage should not normally be used to prevent you from bidding.
* Ensure the commissioners are aware of the possibility of limiting participation in tender process to organisations whose main aim is the social and professional integration of disabled or disadvantaged persons and who have at least 30% of their workforce comprising disabled or disadvantaged persons[[1]](#footnote-1).

**The legal framework**

The law requires public bodies to engage and consult with different stakeholders, including service users and service providers and to take the specific needs of Disabled people into account when commissioning decisions are made. The Public Sector Equality Duty applies to commissioning decisions and strategies and requires commissioners to have due regard to the need to eliminate discrimination and promote equality of opportunity for Disabled people. The PSED extends to taking active steps to remove barriers to and encourage the participation of Disabled people in providing services.

The Public Services (Social Value) Act 2012 requires a public body to consider how the services they commission might improve social wellbeing in the area and how to run the commissioning process to secure this improvement, which must be linked to the service being procured. The Local Government Act requires local authorities to consult on how they can improve their functions. This includes high level policy decisions on commissioning.

**Deciding criteria for tender or which process to use when awarding the contract**

Most contracts DDPOs will bid for are subject to a light touch regime, meaning that commissioners have a lot of freedom to decide how to run the process, as long as it is transparent and fair to all the participants. Moreover, the existing law allows for the use of social value criteria, as long as those criteria are directly linked to the service being commissioned and the commissioners are transparent about it[[2]](#footnote-2).

**What a commissioner can do?** It usually will not be appropriate for commissioners to try and avoid the tender process altogether, but they can use mechanisms within the existing legal framework:

* Use the social value criteria, and attach more weight to it.
* Consider breaking the contract into smaller parts or allowing more time for tender.
* Consider using regulation 20 of the Public Contracts Regulations 2015.

**What a DDPO can do?**

Speak to the commissioner about what would work best for Disabled people; before the tender process is announced, there is no problem with the commissioners having discussions with you to ensure the right service is commissioned in the right way.

If you know the tender is coming up and you are worried about the lack of engagement, use FOI requests asking for Equality Impact Assessments for decisions about the tender criteria and process and any formal record of the considerations under the Social Value Act. If you feel the commissioner has not complied with their legal duties take legal advice as soon as you can. Don’t wait until the tender is awarded. Remember, failure to have due regard to disability equality is challengeable, the decision to use a particular method of commissioning is not.

 **At the tender stage**

When the tender has been announced there is very little you can do to influence the process, besides producing the best bid you can. However, it is worth remembering that the process must be transparent, proportionate and non-discriminatory. If the criteria for tender or the process unjustifiably exclude DDPOs or if the service that is commissioned as a result will disadvantage Disabled people, you may be able to challenge it. Be mindful the time limit for a legal challenge is 30 days since the tender was published or a decision was made. You also have a right to ask for information on how the bids were assessed but again you need to do this very quickly.

1. Regulation 20 of The Public Procurement Regulations 2015 [↑](#footnote-ref-1)
2. Public Procurement Regulation 2015 [↑](#footnote-ref-2)