

**Inclusion  
London**

# The Commissioning Environment

A Guide for London Deaf and  
Disabled People's Organisations

[www.inclusionlondon.org.uk](http://www.inclusionlondon.org.uk)

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# Introduction

As organisations run by and for Deaf and Disabled people, DDPOs bring huge amounts of value to the services they deliver and their community. Most DDPOs are small providers and locally based. They benefit from the lived experience of their members, staff, volunteers and trustees: able to provide services well matched to local need and an authentic voice for issues important to local Deaf and Disabled people. In addition they are a valuable source of employment for Deaf and Disabled people and a community asset.

Despite their value DDPOs experience a number of barriers that get in the way of them bidding for, or winning, public sector contracts. The evidence in this guide was gathered from the experiences of Inclusion London's network of over 70 London DDPOs.

## This guide will:

- Help you understand some of the barriers faced by DDPOs in the current commissioning environment
- Help you think about what action you can take to improve your chances of winning contracts and attracting funding
- Help you think about action you can take to influence commissioning practice

## Related Inclusion London resources:

- Promoting Collaboration between Deaf and Disabled People's Organisations
- Understanding and Demonstrating the Full Value of DDPOs

# Barriers faced by DDPOs in the commissioning environment

## Lack of publicity of tendering opportunities

Inclusion London scans the usual portals for bidding opportunities several times a week and passes the information to DDPOs across London. Bidding opportunities for public sector funding are not always advertised on the usual portals such as CompeteFOR<sup>1</sup>.

### Case Example:

An opportunity to bid for 'Skills for Care'<sup>2</sup> funding for training Disabled people's personal assistants was only placed in Skills for Care's own newsletter, although the funding was specifically for user led organisations, so DDPOs would have been ideally placed to apply. Inclusion London only heard about the opportunity via a DDPO six days before bidding closed.

From our experience it is particularly difficult to find information about the services that Clinical Commissioning Groups (CCGs) fund. Occasionally a CCG will put a small funding bid out on the usual portals, but this is a rare occurrence and so CCG funding is hard to access. Most of the contracts have been too large or too a short a time frame to apply for.

## Short timeframes to bid

The timeframes between adverts for contracts and deadlines for applications are often very short.

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<sup>1</sup> <https://www.competefor.com/>

<sup>2</sup> <http://www.skillsforcare.org.uk/About/About-us.aspx>

DDPO staff teams are usually small. They rarely have dedicated fundraising teams or even a single dedicated fundraiser and many DDPO staff only work part time, making it difficult to complete applications quickly and putting these organisations at a disadvantage. This is particularly difficult for public sector “tenders” which often involve completing a lot of documents and submitting lots of information.

#### **Case Example:**

North West London CCG was commissioning a mental health peer support service in Brent - an ideal type of service for a DDPO to bid for - but gave only one week’s notice before closure of bidding.

In addition, as public sector contracts are now often offered as “bundles” of services (see page 6) many DDPOs need to form a partnership or consortia with other organisations in order to provide all the services being asked for within a tender specification. However, the timeframes between the adverts for contracts and their deadlines are often too short to enable this to happen. Many DDPOs would welcome being able to bid for larger contracts if timescales allowed for collaboration with other DDPOs.

## **Inaccessible application processes**

Application processes can be incredibly complicated, involving lots of different documents and commissioning jargon that can be hard to understand, particularly for public sector tender applications. This means that, even if an organisation has excellent services to offer, organisations new to tender applications can be at a disadvantage, as can small organisations who do not have dedicated fundraising staff.

Furthermore, increasingly, applications are made through online forms, even for trust funding. DDPOs report that these are often incompatible with access software.

Short timeframes for bidding often make it impossible to get support with understanding complex processes or to arrange access adjustments.

## Contracts in 'bundles'

In recent years, commissioning bodies have increasingly been advertising contracts for 'bundles' of different services. For example, in the past, advice, advocacy and direct payments support services might have been commissioned as separate services under different contracts; or advocacy for different client groups might have been commissioned separately. Now, they are more likely to be advertised all together under one single contract. Small, specialist providers such as local DDPOs may only provide one of these services and so cannot bid for the contract on their own.

## Large contracts

Public sector contracts put out to tender are often very large - over £1 million - and so are beyond the capacity of small providers. Even when organisations have the capacity to grow their services, they are often not able to bid because tender specifications set a minimum limit on the turnover (income) of the organisations applying.

Inclusion London holds detailed data on 66 of the DDPOs in London. This shows that DDPOs are mostly small. Out of these 66:

- the average turnover in 2014/15 was £374,000
- only 7 DDPOs have income over £1 million.

Contracts worth between £50K and £300K would be manageable for most local DDPOs but are increasingly rare. Small DDPOs therefore become overly reliant on trust funding. Unfortunately the majority of trust funding is for small values or short periods of time, which threatens the stability of services and the long term sustainability of organisations.

### Case Example:

DDPOs would be well placed to bid for contracts to support parents and Disabled young people to understand the changes under the Children and Families Act and the new Education, Health and Care Plan system,<sup>3</sup> but the contracts were too large for most DDPOs. For example, the contract in the London borough of Islington was for £1.5 million, with a short timeframe for bidding.

## Difficulties competing with large organisations

In recent years, public sector contracts in London have increasingly gone to large, national organisations rather than local, user-led DDPOs.

Many DDPOs lose contracts, even when they have been successfully providing services for years, to large, national organisations that do not have local knowledge, are not user led, and do not necessarily provide a quality service.

These large nationals are able to tender lower, sometimes unrealistic, bids, and DDPOs often do not feel able to challenge the decision.

### Case Example:

REAL<sup>4</sup>, a DDPO in the London borough of Tower Hamlets, had been delivering a direct payments support service for eight years, with good record. The Council valued the contract at £354K a year and when it was up for renewal, REAL put in a bid of £350K, scoring highest on quality out of all the bidders. There were seven other bids, with an average annual price of £327K<sup>5</sup>.

The national charity POhWER<sup>6</sup> put in a bid of £199K, £81K lower than the next bidder, and initially won the contract.

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<sup>3</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/346221/Education\\_health\\_and\\_care\\_plans.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346221/Education_health_and_care_plans.pdf)

<sup>4</sup> <http://www.real.org.uk/>

<sup>5</sup> <http://www.disabilitynewsservice.com/council-thinks-again-over-pohwer-contract/>

<sup>6</sup> <http://www.pohwer.net/>

In this case, REAL did appeal the decision and the council's Overview and Scrutiny Committee voted unanimously to ask the elected mayor to reconsider the decision. The Mayor did so and decided that the council should re-tender for the contract. In the meantime, Real's contract was extended<sup>7</sup>.

Commissioners used to sometimes use Article 19 of the EU Procurement Directive 2004/18/EC<sup>8</sup> which gives preference to organisations employing over 50% Disabled staff and therefore favours genuinely user led DDPOs. However, we are seeing concerning evidence that this directive is no longer being used as frequently to ensure provision of local and user led provision.

#### **Case Example:**

A DDPO in London had successfully fulfilled a contract to provide advocacy to Disabled people for several years. The local authority had originally awarded the contract to the DDPO under Article 19 of the EU Procurement Directive 2004/18/EC.

A new contract was put out to competitive tender in 2016 without use of the Directive and was won by a joint bid from several large organisations led by a national organisation. No points were awarded to the DDPO for being user led.

Commissioners appear to be preferring large national providers, perhaps because they are seen as a 'safer bet', but also seemingly because of a failure to understand the benefits of services provided by small, local, user led organisations which have the experience and understanding of their service users' needs, with good local knowledge and networks and the provision of responsive, needs led services.

#### **Case Example:**

The Big Lottery announced funding through its Building Better Opportunities programme, matched with European Social Fund investment, for local projects

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<sup>7</sup> <http://www.disabilitynewsservice.com/real-dpo-fends-off-pohwer-bid-after-mayors-intervention/>

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/35922/C/assic\\_Directive\\_I\\_13420040430en01140240.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35922/C/assic_Directive_I_13420040430en01140240.pdf)



‘promoting social inclusion and driving local jobs and growth’<sup>9</sup>. The funding was available to support Disabled people or people with long term health problems into employment in the open labour market. A consortium of 11 DDPOs, whose employment support services covered all London boroughs, and had a track record for success, was well placed to win the contract but instead the contract was awarded to a consortium of non-user led providers led by a large, national charity<sup>10</sup>. This was despite the funding being advertised as for ‘local projects’.

## Payment by Results funding models

A 2015 GLA study<sup>11</sup> into how the role of voluntary and community sector organisations can be enhanced in employment support programmes recognises the barriers that “payment by results” approaches can pose to small organisations. In particular:

- Payment by results models are usually set up as deferred payments once an outcome is achieved
- They often only recognise an end outcome (e.g. entry into employment) and fail to reward for “distance travelled” i.e. the interim steps people may have taken in the journey to the end outcome (eg. training attended, skills and confidence attained)

The study points out that for small organisations, these models can present too high a financial risk. Small organisations just do not have the capital to guard against the cash flow risks of deferred payments. For DDPOs the additional challenge is that they are often supporting people facing multiple barriers to achieving long term outcomes such as employment, and are particularly affected by models that do not reward for interim outcomes.

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<sup>9</sup> <https://www.biglotteryfund.org.uk/global-content/programmes/england/building-better-opportunities>

<sup>10</sup> <https://www.groundwork.org.uk/Sites/london/pages/bbo-ace>

<sup>11</sup> A Helping Hand. Enhancing the role of voluntary, community and social enterprise organisations in employment and support programmes in London. October 2015. GLA Economy Committee

Despite recognition of these problems, payment by results models are increasingly common.

## Over-prescriptive contracts

Public sector contracts often stipulate particular models for how services should be delivered that are not viable for all DDPOs, precluding other models that provide the same service. Sometimes this is outside of local commissioners' control, because they are reflecting central government policy and funding requirements.

### **Case Example:**

A contract to provide employment support to people with mental health support needs across five west London boroughs was put out to tender. The contract prescribed the Individual Placement and Support (IPS) model of employment support, which not all DDPOs can provide. Therefore, organisations that employed other models of employment support were unable to bid.

# Influencing commissioning practice

In April 2016, Inclusion London presented evidence to the Public Accounts Committee's inquiry into commissioning and contracting small providers<sup>12</sup>. The report detailed many of the barriers faced by Deaf and Disabled People's Organisations (DDPOs) in the current commissioning environment which prevent them from bidding for or winning public sector contracts, and provided recommendations for addressing these barriers:

## Improve awareness of legislation relevant to commissioning

It is important to understand legislation relevant to commissioning, to be confident of when commissioning processes and decisions can be challenged, and to improve local commissioners' awareness. Specifically concerning the commissioning of DDPOs, which are small service providers, this legislation is:

## The Public Services (Social Value) Act 2012<sup>13</sup>

This act places a requirement on public authorities to:

*'have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes'*.<sup>14</sup>

Furthermore, a Government 'information note' on this act stated that commissioners and procurers (of public services) should:

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<sup>12</sup> <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/employment/inquiry-commissioning-contracting-small-providers-inclusion-londons-evidence/>

<sup>13</sup> <http://www.legislation.gov.uk/ukpga/2012/3/contents/enacted/data.htm>

<sup>14</sup> <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

*'be taking a value for money approach - not lowest cost - to assessing contracts'.*<sup>15</sup>

In a 2017 speech to Localis, Penny Mordaunt, Minister for Disabled People, Health and Work committed the government to:

*"Using the social value act, encouraging bids from providers, who have a real focus on boosting employment, training and skills for disabled people as part of their bids. Public money can and must deliver the widest possible range of benefits wherever it is spent."*

Yet the case example of REAL (page 7) shows that this act is not necessarily implemented at local level. The 'social value' provided by REAL's role as a local employer of Disabled people did not seem to be considered when the contract was awarded. If the Public Services (Social Value) Act 2012 was truly implemented at local level, this would help the commissioning of small providers, especially DDPOs, which are a valuable source of employment for Disabled people.

## Article 19 of the Procurement Directive 2004/18/EC <sup>16</sup>

A Social Care Institute for Excellence (SCIE) information paper on Article 19<sup>17</sup> states:

*"Article 19 of the Procurement Directive 2004/18/EC, allows public service commissioners to reserve contracts for user led organisations. The Article 19 regulations form a part of European legislation that allows organisations to reserve public contracts for supported businesses. The procurement of any goods and/or services can be reserved. A supported business is one that employs Disabled people as over 50 per cent of its*

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<sup>15</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79273/Public\\_Services\\_Social\\_Value\\_Act\\_2012\\_PPN.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79273/Public_Services_Social_Value_Act_2012_PPN.pdf)

<sup>16</sup><http://www.scie.org.uk/publications/guides/guide36/assets/files/CommissionerStrategies.pdf?res=true>

<sup>17</sup><http://www.scie.org.uk/publications/guides/guide36/assets/files/CommissionerStrategies.pdf?res=true>

workforce. This allows invitations to bid to go only to supported businesses.”<sup>18</sup>

If Article 19 was implemented this would support the commissioning of user led DDPOs.

## The Compact agreement

The Compact is a voluntary agreement that aims to foster strong, effective partnerships between public bodies and voluntary organisations.<sup>19</sup> Every Government department is signed up to the principles of the Compact.

These include principles that support commissioning of services provided by voluntary and community organisations, addressing many of the concerns raised above, for instance:

- To ensure third sector organisations are given adequate time to respond to tenders
- To ensure that local contracting procedures do not discriminate unfairly against small and/or new user led organisations.
- To offer contracts which give potential user led providers flexibility over service delivery
- To offer three- or five-year funding arrangements, rather than year-on-year, to support service improvement and provider stability.<sup>20</sup>

In 2010 the coalition government renewed the Compact agreement, with a section on ‘Undertakings for the Government’, including:

- Work to remove barriers that may prevent civil society organisations accessing government funding, thereby enabling smaller organisations

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<sup>18</sup><http://www.scie.org.uk/publications/guides/guide36/assets/files/CommissionerStrategies.pdf?res=true>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:HTML>  
[http://www.legislation.gov.uk/uksi/2006/5/pdfs/uksiem\\_20060005\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/5/pdfs/uksiem_20060005_en.pdf)

<sup>19</sup> <http://www.compactvoice.org.uk/about-compact>

<sup>20</sup> <http://www.scie.org.uk/publications/guides/guide36/assets/files/CommissionerStrategies.pdf?res=true>

to become involved in delivering services where they are best placed to achieve the desired outcomes

- Commit to multi-year funding where appropriate and where it adds value for money
- Ensure that the widest possible range of organisations can be involved in the provision of services through appropriate funding and financing models, for example outcome based payments and payment in advance of expenditure. Payment in advance of expenditure should be considered on a case-by-case basis where this represents value for money.<sup>21</sup>

The Compact is still alive<sup>22</sup>, but according to the experience of DDPOs in London the undertakings above currently seem to be largely ignored. If Government renewed the commitment to the commissioning principles and ensured that they are followed at local level this would support the commissioning of small, locally based providers such as DDPOs.

## Lobby local commissioners

Local commissioners need to be reminded and made aware of the legislation and their responsibility to ensure it is implemented.

It can be helpful to draw commissioners' attention to published guidance on commissioning of DDPOs such as:

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<sup>21</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61169/The\\_20Compact.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61169/The_20Compact.pdf)

<https://www.gov.uk/government/news/government-and-voluntary-sector-agree-new-compact>

<sup>22</sup> <http://www.compactvoice.org.uk/compactweek2014>

<http://www.compactvoice.org.uk/resources/briefings-and-guidance/briefing-compact-and-clinical-commissioning-groups>

<http://www.compactvoice.org.uk/resources/briefings-and-guidance/briefing-compact-and-police-and-crime-commissioners>

- Confident Commissioning. Building Relationships Between Local Authorities and Disabled People’s User Led Organisations. Williams. SENDPO. 2014<sup>23</sup>
- A Commissioner’s Guide to Developing and Sustaining User-led Organisations. SCIE Guide 36. June 2010, updated July 2013<sup>24</sup>

In addition, wider commissioning guidance sometimes recognises the benefits of commissioning voluntary sector organisations. For example the National Audit Office Successful Commissioning Toolkit <sup>25</sup>

Lobbying is most effective when specific recommendations are made. With regards to the barriers outlined above, these recommendations are:

1. That opportunities to bid for contracts are well publicised
2. That a minimum of six weeks is given to bid for public sector contracts
3. That application processes take into account people’s access needs
4. That public sector contracts do not contain several different types of services
5. That the size of contracts commissioned by the public sector includes smaller contracts e.g. from £50,000 - £300,000
6. That commissioners consider alternative approaches other than competitive tenders for smaller value contracts
7. That payment by results models are either avoided, or operate with some payments in advance, and with rewards for interim outcomes
8. That contract specifications recognise the added value of user led, locally based organisations
9. That commissioners consider using Article 19 where appropriate to limit applications to only support businesses
10. That, where possible, contracts are not over prescriptive regarding the model of service.

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<sup>23</sup> <https://www.disabilityrightsuk.org/news/2014/august/sendpo-confident-commissioning-report>

<sup>24</sup> <https://www.scie.org.uk/publications/guides/guide36/>

<sup>25</sup> <https://www.nao.org.uk/successful-commissioning/introduction/what-are-civil-society-organisations-and-their-benefits-for-commissioners/>

Lobbying is often more effective when done as a collective, so consider joining together with DDPOs and other local small organisations to present a united voice.

## Share evidence of good and bad commissioning practice

To be able to lobby effectively for change it is really important to build up evidence of good and bad practice in commissioning.

If you come across evidence of bad practice in commissioning, or as a DDPO experience non-implementation of the legislation outlined above, please let us know at Inclusion London. The more case examples we have, the more effectively we can help bring about change. We may also be able to help advise and guide you in ways to approach the commissioning bodies.

Similarly, we are interested to know about good practice in commissioning so that we can showcase this to influence practice.

### Case Example:

#### **Lambeth Living Well Collaborative - Co-producing health services in the community**

London borough of Lambeth rates of psychosis are twice as high as the average rate for England, with poor outcomes for people with serious mental health support needs.<sup>26</sup>

In 2010 a 'collaborative' of service users, GPs, providers and commissioners was formed: people with lived experience of mental health support needs work on an equal footing with professionals to commission and co-produce new services and practice, built from a foundation of people's experience. The initiative was born out of financial necessity as well as recognition that services

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<sup>26</sup> <http://www.innovationunit.org/projects/living-well-collaborative/>



were not meeting the needs of people with serious mental health support needs. There has been no new or additional budget for the Collaborative. All of the work that has taken place is funded through existing commissioning budgets.

The creation of a resource map highlighted that it was a crisis led system with very little of the resources going to support people to live well in the community. Different types of services have been commissioned that have been co-designed with people with mental health support needs. As a result there has been:

- 32% reduction in referrals to secondary care since the introduction of the Living Well Hub
- 75% reduction in waiting times for support in secondary care – down from 1 month to 1 week
- 400 people supported each month, many of whom would not previously had any support at all
- A significant reduction of expenditure in acute settings.<sup>27</sup>

Provision of support at early stage in the community is given more focus, preventing the need for crisis led treatment. This is a much better way forward for people with mental health support needs who receive support much quicker and are not left until a crisis stage needing a hospital admission. There are recovery stories on the ‘Lambeth Collaborative’ website.<sup>28</sup>

## Communicate the full value of DDPOs

It can feel obvious that DDPOs have many unique characteristics that enhance their value. However, it is important not to assume that commissioners understand this. DDPOs need to ensure that they are building and communicating evidence of their full value.

Inclusion London offers training and support in how to do this more effectively, and members can access a resource on this on our website.

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<sup>27</sup> <http://www.innovationunit.org/projects/living-well-collaborative/>

<sup>28</sup> <http://lambethcollaborative.org.uk/lwn-journey>

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