

# **Voluntary Organisations Disability Group**

## **Representation to the *Green Paper: Transforming public procurement* consultation**

**March 2021**

### **About VODG**

VODG is the national infrastructure body representing organisations within the voluntary sector who work alongside disabled people. Our members' work is focused on enabling disabled people of all ages to live the lives they choose. VODG believes that an ambitious, trusted and vibrant voluntary sector that works together plays a unique role in achieving this aim. VODG members work with around a million disabled people, employ more than 85,000 staff and have a combined annual turnover in excess of £2.8 billion.

There are 14.1 million disabled people in the UK, representing 21% of the population and 19% of working age adults.<sup>2</sup> In England, 21% of the population reports having a disability. The provision of essential services to disabled people in ways that promote independence, choice and control, as well as supporting their carers is a statutory obligation. The hallmark of a fair and equitable society includes fully meeting people's needs and enabling disabled people to have full choice and control over their lives, and to be included in society.

### **Introduction**

VODG welcomes the opportunity to submit this representation to the *Green Paper: Transforming public procurement* consultation. This submission is informed by engagement with our member organisations via a dedicated meeting, as well as our long-standing interest in this issue.<sup>1</sup> We use this paper to draw out those issues most relevant to disability care and support providers and the people they support. This includes the fact that VODG members support disabled people through contracts delivered via local authorities and health commissioners.

VODG has also co-signed a representation submitted by the National Council for Voluntary Organisations (NCVO), which outlines some of the commissioning and procurement challenges faced by charities and includes recommendations to help ensure charities can better deliver public services in the future.

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<sup>1</sup> Voluntary Organisations Disability Group (2020) *Commissioning for a vibrant voluntary sector: the case for change*. <https://www.vodg.org.uk/publications/commissioning-for-a-vibrant-voluntary-sector-the-case-for-change/>

This submission does not aim to cover the entire scope the Green Paper and instead puts forward the following key points as relevant to VODG members, including:

## General

- The proposals included in the Green Paper apply to any procurement process and there is no acknowledgment that procurement for public services, or of services for people, is different to that of commercial purchasing and the procurement of goods. Procurement of services for people should be person-centred, responsive to need and therefore organised differently with people involved in the process and in decision making. The Care Act, for example, brought hope to people who use services for the commissioning of genuine person-centred services. There needs to be stronger recognition, and incorporation, of the Care Act's aspirations in the procurement of care and support services. VODG members expressed concern that with the suggested proposals, we will continue to see procurement processes that do not take sufficient notice of individual needs or the views of families and carers. The Local Government and Social Care Ombudsman regularly reports on commissioning that has failed to take the needs of people using services into consideration.
- Proportionality is not included as an underpinning principle of procurement law when it must be a 'golden thread' throughout and should be included as a vital principle to guide practice. We hear reports of poor procurement practice among local authorities where despite having the ability to engage with providers before procurement, in order to frame specifications and understand preferred approaches, they instead put out tender documents that are disproportionate and do not enable providers to respond fully, nor in solution focused and innovative ways.
- The proposals need to do more around prohibiting lower priced tendering and poor procurement practices that see disproportionate weighting for price in decision making, above that given to quality and social value, which are fundamental in organising services for people. There is a risk that in some areas, procurement is nothing more than a race to the bottom in terms of price and quality of services to disabled people.

## Transparency

- While VODG welcomes the move towards embedding greater transparency throughout the procurement process, it must be recognised that the compilation and presentation of more information will be onerous, burdensome and difficult. The risk is that the scope and extent of the transparency agenda will lead to contracting authorities uploading information that is rushed and not thought through, the impact of which will be felt by bidders, particularly smaller organisations that do not have the resources to filter, unpick, and understand poorly presented information. This is also of concern that without requirement to

provide debrief letters, contractors such as local authorities, will instead refer bidders to unsorted data and information that does not clearly outline where points may have been lost or crucially whether scoring is fair. Furthermore, there is a risk that requiring bidders to upload information to a new, transparent platform will discourage them from putting their innovation in writing, or in doing so it being shared and them losing their competitive advantage.

## **Public good**

- The Green Paper proposes that public good is enshrined in law as one of the principles of procurement – yet social value is not. If social value is to be included within public good, it will then tie into the national procurement policy statement and is, consequently, at risk of being reviewed every five years. This is despite social value being inherent to the work of voluntary sector providers and therefore should be included in the new legislation.

## **Upskilling and training**

- Many of the Green Paper proposals are underpinned by assumptions made about the quality and competency of procurement personnel in contracting authorities, which may be inaccurate. The proposal to provide training and guidance to procurement practitioners in order to increase skills and knowledge is welcomed in principle. However, this training and guidance will not necessarily equal competence and VODG is concerned that there is procurement practice taking place within care and support services that cannot be fixed by training and guidance, but which instead requires structural reform. Furthermore, the training and guidance should not simply focus on learning a new set of rules but more important the ‘how’ and ‘when’ to use flexible approaches.
- In the organising of public services, greater attention, as well investment, should be given to ensuring procurement practitioners (and commissioners) have the knowledge and understanding of the services they are procuring, of the people who will use those services, and of the voluntary sector providers that can deliver.

## **Using the right procurement procedures**

- The proposed competitive flexible procedure offers flexibility for the contracting authority to design its procedure to fit its procurement needs but for the bidder, it introduces a risk that considerable cost and time will have to be factored into the process as bidders seek to understand what is obliged of them. As such, in the short term, the presumed flexibility may not be an advantage. Furthermore, VODG members report that local authorities do not always encourage or utilise flexible procurement practice and that the burden of costs involved in getting up to speed with the new processes will be borne on bidders, particularly small organisations.

## Proposed removal of Light Touch Regime

- VODG is concerned about the proposal to remove the Light Touch Regime through which many care and support services are procured. Services procured through this route quite often require a high threshold and / or a bespoke approach to their procurement in a way that is not served through the presumed flexibility of the competitive flexible procedure. The proposed amendments will create a lot of uncertainty around prescribed routes to market, which will be incredibly unhelpful to a sector that is already facing significant challenges. Furthermore, the Light Touch Regime recognises the difference in the procurement of services for people and general commercial procurement and its removal is of significant concern to VODG members.

For more information or to arrange a further a discussion with VODG or our members, please contact [research.policy@vodg.org.uk](mailto:research.policy@vodg.org.uk)