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## **Localism in action? A case study of a small community project's experience of a local authority's tendering process**

### **Summary**

This case study sets out how bidding for a contract to run a local estate's youth provision put an unnecessary strain on a small community organisation and contributed to delaying the project by 12 months. The case study is a detailed example of how the organisations that make localism a practical reality – small community projects – are made vulnerable by tendering.

The case study highlights four pitfalls of the tendering process, which have important lessons for both local authorities and organisations bidding for contracts:

1. The tender documents and in particular the contract were too complex and were inappropriate for a small community organisation.
2. The tendering process was long, complex, unpredictable and inconsistent.
3. The local authority commissioners assumed that they already knew what was needed and expected the community organisation to adopt local authority policies, priorities and approaches. The tender brief did not take any account of the organisation's local knowledge and independence.
4. The tendering process stretched the staff capacity of the community organisation.

### **From grants to commissioning: the policy context**

In its 2008 policy green paper, *Stronger Society: Voluntary Action in the 21st Century*, the Conservative Party stated that 'grants from government bodies remain a vital

ingredient in the funding mix for charities and community groups'. At the same time it noted that, as a share of voluntary organisations' income, grants under Labour had declined from 19.5% in 2001-02 to 13.4% in 2005-06, that by 2008 they accounted for only 38% of the support voluntary organisations received from government, and that there was 'increasing evidence that the relative decline of grant funding is turning into an absolute decline'. Based on evidence submitted to it by one regional forum, it also pointed to 'a chasm between political rhetoric and reality'.

Although the paper implied a critique of the swing away from grant-giving to tendering and commissioning, its suggestions for dealing with this chasm amounted to little more than oiling the wheels of the machinery. The recommendations included more respect for 'the difference between grants and contracts'; a resort to contracts rather than grants 'only where there is a clear justification' (never defined); less use of contracts to micro-manage the voluntary sector; a greater focus 'on outcomes, rather than process'; a 'one-stop funding portal for statutory grants'; a promotion of 'bottom-up funding streams'.

After the 2010 election, the new government sought to beef up this rhetoric through its very high profile advocacy of a 'big society' purportedly capable of generating increased philanthropy and more volunteering. This was then backed up, somewhat more concretely, by a decentralisation and localism bill published at the end of 2010. The bill, according to the accompanying guidance paper, would amongst other things 'lift the burden of local bureaucracy', 'empower communities to do things their way', 'increase local control of public finance' and 'strengthen accountability to local people'. Other than repeating the 'outcomes-rather-than-process' mantra, however, it had nothing to say on precisely how, without burdensome accountability, local projects were to get access to whatever (limited) money and other resources might be available for achieving this empowerment, financial control and accountability. Moreover its ambitious proposals came at a time when its own five-year 'austerity' programme was forcing further major cuts in local authority funding to local community groups and organisations.

The Conservative's green paper did recognise that the move to commissioning and the resultant increase in the size of contracts were operating mainly to the advantage of the very largest providers. What was not explicitly addressed however, in the paper or later, was the flip-side of these developments: that the very organisations needed to make the new government's 'localism' a practical reality – the small local community projects – were not only being marginalised but being left increasingly vulnerable.

An opportunity to gather grounded evidence on the possibilities for as well as the threats to such localism was provided by one such project's reluctant decision to enter into a local authority tendering process. Not only did this experience illuminate the challenges posed by the tendering procedures themselves, it also exposed, for example, the kinds of power relations to be negotiated; the attitudes and assumptions of those holding the purse strings to be faced (and faced down); the human and material resources which a project itself might need to find and invest – to say nothing of the compromises it might need to make along the way. Though only one project's experience, this case study therefore generated a range of messages which deserve to be taken very seriously by a government and its local authority agents for whom 'localism' has suddenly become the way for delivering community-based services.

### **Starting from experience: a local community project**

The Rivers Edge project<sup>1</sup> serves 800 households on a small enclave of ex-council houses, 20% of which are now privately owned. It is an isolated pocket of deprivation within a very affluent local authority. Educational achievement and life expectancy are lower than the national or local authority average while unemployment, long term illness, the number of lone parents, crime and anti-social behavioural incidents are all higher than average.

Rivers Edge has a voluntary trustee board with a very active and committed chair. Though other staff (three full time equivalents, including sessional workers) run specific programmes and activities, for its development and management it employs a four-

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<sup>1</sup> To preserve anonymity the name of the project and some personal details have been changed.

days-a-week project manager. Based in a community centre building, it offers a wide range of services for all age groups, from pre-school to pensioners. Facilities include a recently refurbished community café run entirely by volunteers from both within and beyond the estate and an open-access community internet room. It offers outreach, for example through a CAB outpost, and is involved in wider community activities such as the annual local festival. It also provides courses, classes and clubs, including a three-night-a-week youth club based in the project's building but funded and staffed as part of the local authority's Children and Young People's Service.

The project workers had for some time expressed an interest in running the club as they believed this would improve provision for young people on the estate and would also integrate work with this age group more fully into the project's cross-generational programmes – a very high priority in all Rivers Edge's work. When the local authority put youth provision on the estate out to tender, these considerations overrode reservations about contracting out policies.

### **Principles – which principles; and how to implement them?**

This will not be an unfamiliar dilemma for many small locally based voluntary organisations which, like Rivers Edge, have an intimate day-to-day feel for their communities. They can never be sure when they might be crossing a line between, on the one hand, a legitimate 'civic society' response to identifiable citizen needs and on the other offering a hostage to fortune to policies ultimately intended to sell off (including privatise) public services which can only be provided adequately by the state. The choice is often further complicated by the risk of giving way to seductive if masked state appeals to the voluntary sector to empire-build – temptations which may not take sufficient account of what is best for the project's users and local community.

Nonetheless, for those committed to 'voluntary' and 'community' action, an alternative principled argument exists: that often a local community-based project can take on important local, if circumscribed, pieces of work which meets local needs more flexibly and more relevantly than a state body could, especially in the present highly 'managerialised' environment. After some agonising over the size of the budget on offer

and over whether, given its own limited capacity, it could put together a good enough submission and then, if successful, achieve its own standards, Rivers Edge decided to tender for the work.

The question about the eventual quality of the delivery remains to be answered. However Rivers Edge's experience confirmed, in grounded detail, the strains that the tendering process puts on such a project and the practical, resource and legal pitfalls for this kind of organisation. Ultimately these were only negotiated because it had the skills of a very able manager, supplemented at key moments by the expertise of the Chair and the availability throughout of substantial *pro bono* external consultancy and a small amount of paid legal advice.

The whole process was hindered by confusion over the length of the contract on offer: the original press advert and the contract document stated it was two years but the tender specification stated three years. More generally, for an organisation like Rivers Edge four pitfalls emerged, each carrying important lessons for both commissioners and bidders. These were:

- The tender documents and in particular the contract on offer were too complex and were irrelevant to the kind of organisation responding to it.
- The tendering process was long, complex and often unpredictable and inconsistent.
- The local authority commissioners assumed that they already knew what was needed and that the best way to meet these needs was to adopt current local authority policies, priorities and approaches
- The tendering process stretched the staff capacity of tendering organisation.

### **Grappling with the paper work**

The information sent by the local authority to potential bidders had three main documents: tender details (11 pages), a tender specification (8 pages) and a draft contract (60 pages). In addition, as a key part of an 'expression of interest', organisations were required to complete a 15-page questionnaire in order to satisfy the

local authority that they would be a suitable and capable 'provider'.

### *Expressing an interest to bid*

Rivers Edge was asked to provide detailed information on insurance, health and safety, diversity and equal opportunities, quality assurance and environmental issues. They were also expected to provide a balance sheet, profit and loss account with full notes, cash flow statements and director's, auditor's and company reports plus an 'applicant turnover' and 'turnover specific to this activity'. Details were also required of all paid staff and their skills and qualifications, including whether staff were classified as 'managerial/supervisory', 'professional/ technical', 'administration/clerical' or 'sub-contractors'. Finally, to enable the local authority to seek references, a table had to be filled in detailing all current or recent 'contracts' involving work comparable with that for which Rivers Edge was bidding.

The demands of this stage of the process could easily have stopped many smaller organisations even considering putting in a bid – especially those with few or no paid staff.

### *Tender details*

Having successfully negotiated this stage, Rivers Edge then faced even more challenging paperwork. The document setting out the tender details was run through with local authority jargon – the expectations, for example, that the tendering organisation would be able to meet the aims of 'Best Value for service improvement' and that it could provide a description of 'the tenderer's corporate and management structure'. It required the bidder to be fully familiar with the authority's standing orders and financial regulations. It asked for proof that Rivers Edge had professional indemnity insurance of at least £1m and a 'surety' in the form of a bond to be confirmed by the project's 'bondsman' before the tender was submitted.

Perhaps most worrying for any small organisation were the commissioners' assumptions about where the balance of power would lie in the agreement between the contracted organisation and the local authority. In the tender details, this was made most explicit in a section on 'future liabilities' which laid down that if the contract failed

and had to be terminated, any costs that resulted would fall on Rivers Edge and not the local authority or any other organisation taking over the contract.

Finally, the tender details also assumed that the bidding organisation was sufficiently developed and indeed sophisticated to have a range of written policies and procedures in place. These, not unreasonably, included a health and safety statement and health and safety codes of practice. Also required however were procedures for staff recruitment, supervision, appraisal and training; the monitoring of staff turnover and the monitoring of 'quality'. The clear presumption was that only organisations which had gone some distance along the managerial and professionalisation routes need apply.

#### *Tender specification*

Much of the tender specification provided essential information, often in straightforward language, about the local authority's expectations and requirements for what would be delivered. It also included a list of suggestions made by local young people gained through a consultation with the users of the youth club.

For a locally rooted and independent community project, the core problem with this document – which had never been put out for consultation – was that it seemed never to have occurred to its drafters that a bidder such as Rivers Edge might have its own understanding of the community it had been serving for many years or views on the youth provision needed. Rather, deeply embedded within it were two alternative assumptions. One was that the local authority already knew what was required. The other was that this would be best achieved by the project adopting current local authority policies, priorities and approaches, themselves largely shaped by uncritical adherence to government agendas and government targets. Underpinning this pressure to conform was the local authority's suggestion that the lead youth worker employed by the contracted organisation would 'co-operate in monthly supervision sessions' with one of the local authority's area youth workers – another example of the commissioners' apparent failure to take into account that they would be dealing with an autonomous organisation which had its own arrangements for managing staff.

Some of the commissioners' expectations – providing weekend activities for young people; giving them volunteering opportunities – were ones which Rivers Edge was anyway likely to want to meet. Others however, if endorsed, would have risked turning the provision of this voluntary organisation into just another version of what the local authority was doing. It would for example be required to develop explicitly 'targeted interventions', in the process using the Common Assessment Framework in work with 'young people with additional needs'; take on 'lead professional' roles; and embrace the youth service's management information systems and information sharing procedures.

These elements of the tender specification also seemed to assume that any organisation taking on the contract would already have in place a substantial management and administrative infrastructure, with other items in the specification likely to make significant extra demands. These covered engagement in a number of partnership arrangements and working with 'prevent and protect' services; participation of its staff in training offered by the youth service; and – particularly onerous – taking on a range of monitoring procedures. These included tracking the profile of the young people being served (by age, gender, ethnicity and other criteria) and measuring how far the project was meeting what was at the time a key central government target: young people's participation in 'positive activities'. In addition, the project would be expected to show that it was meeting other targets which by that stage had been dropped by central government but which the local authority had chosen to retain: 'contacts' with young people, their 'participation' in its programmes and accredited and recorded outcomes achieved through these.

The Rivers Edge project eventually calculated that the contract would pay at most for a 0.8 youth work manager post and a 0.6 youth worker post with 10% of the budget for management costs.

#### *The draft contract*

The challenges posed to a small community group by the two tendering documents were added to by the even more demanding terms of the draft contract. The first problem was its sheer length – 60 pages of clause piled on clause, underpinned by sub, sub-sub and indeed sub-sub-sub-clauses. Then there was the jargon to contend with,



including this gem: 'reference to time shall be construed, during the period of summer time, to be British Summer Time and otherwise Greenwich Mean time'.

However, for a small charity inexperienced in tendering, the greatest threat was a range of hidden traps. Fortunately for Rivers Edge, its chair of trustees had had enough wider involvement in closely related fields to recognise the dangers to the project of one of them: agreeing to take on the existing TUPE transfer arrangements for the staff running the youth club. Nonetheless, much close textual reading was required to protect Rivers Edge from some very open ended commitments, sometimes with significant financial implications. For example:

- Where the local authority decided that provision might for some reason have to be temporarily or permanently varied or even closed, the contract stated that, 'without prejudice to any of the provisions of the Contract the Authorised Officer (of the local authority) shall be entitled to issue to the Contractor and the Contractor shall be obliged to comply with any instructions in writing'.
- A later clause then made clear that where such variations were seen by the local authority as needed, 'they shall be carried out ... at no additional cost to the Council, irrespective of whether they require the use of additional staff or other resources by the Contractor to achieve the requisite standards.'
- The contract also protected the Council from any liability of financial or other loss which resulted from its 'failure ... to commission the volume of work anticipated by the Contractor'.

For none of these decision-making processes was any appeal procedure provided.

The contract also laid down that, again at no additional cost to the local authority, a 'sufficient reserve of staff' was always to be available to cover staff holidays and sickness 'or other unforeseen circumstances'. What made this demand seem particularly excessive to the Rivers Edge staff was that in the past – and on numerous occasions – the youth service itself had only 'managed' such situations by closing the youth club at very short notice, thereby leaving on the streets pre-teen and teenage members whose parents would be assuming that they were in a safe place and being supervised.

Though sometimes embodied in seemingly minor ‘rules’, what could also have been missed without close expert reading were requirements that intruded directly on the independence of a voluntary organisation and how it ran its affairs. The contracting organisation for example was expected to ensure that its staff wear photographic identification while at work. It was also told that it must keep staff records that differentiated ‘operatives’ from ‘those exercising supervision’ – and which would be open to inspection by a local authority official.

In allocating a contract, it is of course vital that a local authority sets clear boundaries and assures itself that the providing organisation can fulfil its obligations effectively and safely. If the Rivers Edge experience is any guide, however, the extreme aversion to risk-taking which now underpins so much public policy will be acting as a serious block to many smaller community-based groups and organisations – some which will in the past have received grants – ever getting into the tendering and commissioning processes.

### **Negotiating the tendering process**

#### *Timescales*

‘Slippage’ in timetables for developments of this kind is not unusual. Moreover, in this case delays were increased by the turbulent political and economic conditions following the May 2010 general election. Nonetheless, the way this contracting process proceeded was, to say the least, often very unhelpful to bidding organisations and particularly to a relatively small one like Rivers Edge for whom the whole exercise represented a nervous step into unknown territory.

Especially unnerving were some long periods of silence. It took the local authority three months to respond to Rivers Edge’s formal expression of interest. Throughout, though some good professional and personal relationships existed between Rivers Edge and youth service staff, only minimal off-the-record indications of what was happening were offered. By the time Rivers Edge was accepted as a bidder, the starting date for the

contract proposed in the initial tender documents was less than three months away, which was clearly no longer viable.

A further long delay occurred after the actual tender had been accepted. It was caused by the local authority – understandably – needing to reconsider all its options in the light of the new government’s ‘austerity’ programme. This apparently included considering whether it was still financially feasible to contract out the work. Other options, presumably, were to close its youth provision on the estate altogether or cut it back substantially.

These new uncertainties and the continuing non-communication made it hard for Rivers Edge to plan for a new and challenging undertaking. After submitting their bid it took three months for the local authority’s legal department to agree the changes to the contract on which the project was insisting. They were then awarded the contract but by that stage the proposed starting date was delayed by five months.

The changed financial situation had one other significant impact. As part of its resolve to design a bid based not just on its own values and principles but also on its own realistic reading of what was needed in its community, Rivers Edge had submitted a budget 20% higher than the *maximum* offered in the tender specification. By the time it came to accept its bid, the local authority was insistent that it would provide no more than the *minimum* amount originally suggested – some 23% below what Rivers Edge had bid. Moreover, this took no account of ‘front end’ costs for actually implementing the work – for example for recruiting staff and getting additional legal advice – which the project estimated at around £3500.

Not surprisingly, Rivers Edge then had to do some root-and-branch re-thinking of its own to decide whether *it* now wished to proceed. Even after it decided to do so and its bid was accepted – by now a full nine months after the advert inviting expressions of interest had appeared in the local press – it held off signing the contract until it was clear that the local authority would be able to implement its side of the bargain for the

full three years of the contract. Cumulatively the delays eventually meant that the work did not get under way until a year later than the original advertised start date.

### *Constructing the bid*

For actually putting a bid together, Rivers Edge undertook two substantial inter-related pieces of work, each requiring many hours of staff, trustee and consultant time. One was a consultation exercise with users of the junior and senior youth clubs, parents and other local residents, current users of the project and staff. Planned to run over a full day and two evenings, this demanded considerable preparation – particularly to ensure the discussions with each group were well focused; to get as much participation as possible by estate residents, youth and adult; and then to analyse and write up the findings. Moreover, the project was clear that if the young people were to have some ownership of what the contract might make possible, the consultative process with them could not be a one-off piece of work. Using separate funding to pay for some part-time youth work hours over a limited period, the foundations were therefore laid for a young people's action group which – assuming Rivers Edge was awarded the contract – could contribute to and lead on the implementation of key elements of the operational plan it had submitted.

Drafting and redrafting this plan was the second major extra piece of work generated by the bid process. In some detail this 16-page document needed to set out Rivers Edge's vision and aims for youth provision in the area, the more specific needs to be addressed, approaches and methods to be used and monitoring procedures to be implemented. The submission also included nine appendices of project accounts, staff structure and policies.

Rivers Edge saw it as essential that its proposals broke out of the parameters and assumptions imposed by the tender documents, driven as these were by remote national and local authority policies and priorities. Instead it drew on its wider knowledge and understanding of the community and of its young people as well as on the feedback from the consultation. The plan was shaped, too, by the project's own values and styles of work rooted in an independent analysis of what was needed and how the practice

would be carried out, all underpinned by a budget calculation based on these facts and aspirations.

After the bid had finally been accepted, one further significant document was requested: a development plan which, within the greatly reduced budget, laid out in more detail, within timeframes and available resources, how the operational plan would be implemented.

### **Finding the capacity to bid**

For finding its way through these often complex, frustrating and long-drawn out processes, a project like Rivers Edge would normally have to rely entirely on its paid staff with, in the better organisations, some active and moral support from its volunteer trustees. And indeed the one staff member employed by Rivers Edge in an appropriate role for taking on this work – its four-day-a-week manager – did make substantial and vital contributions, strongly backed up by the chair.

However, these people could not on their own provide all the time or specialised knowledge needed for putting together a fully credible bid. For one thing, the manager's available hours were already more than fully occupied in managing and developing the project within its existing parameters. Secondly, as the person in the post openly acknowledged, the demands of the bid preparation took the manager beyond their experience and skill set. Thirdly, the complexity and language of some of the documents, particularly the contract, required professional legal advice which eventually cost the project over £1000.

For gathering the evidence, particularly from the project's own consultation exercise, as well as for analysing the tender documents and then actually drafting the operational plan, what proved critical for the project was the availability of some free external consultancy. This provided the extra time needed for actually planning and drafting the response – the equivalent of eight days. Probably as important for the project in the long run, it also injected a more detached perspective on how to interpret the tender documents and then respond to them within Rivers Edge's own definition of its purpose

and style as a local community project. Had it not been for an existing personal relationship between the manager and the consultant, even at a fee rate heavily discounted for a voluntary organisation this would probably have cost the project a further £1500- £2000 – a resource on which few projects of this size would normally be able to call.

Though only one example, this clearly exposed the weak position of a project such as Rivers Edge within the kinds of tendering or commissioning processes with which voluntary sector organisations now overwhelmingly have to engage if they are to have a chance of getting local or national state funding.

### **Localism in action – learning from experience and practice**

At the end of what had been a demanding and often frustrating experience, the Rivers Edge chair of trustees reflected on its lessons. The local authority, she assumed, ‘must have known all along that there wouldn’t be any other bidders but us’ – a situation which, she thought, was ‘probably always going to be the case where small community organisations are commissioned to deliver a very local service’. Why therefore was it necessary to impose on the project such an elaborate and time-consuming set of procedures? Indeed, given how small and local the project was, would not an old-fashioned three-year grant have worked, perhaps framed within a service level agreement? Or, if for the local authority some form of tendering was unavoidable, why could there not have been a process, the chair suggested, which was ‘simply one of negotiation to produce an acceptable contract, couched in terms specific and relevant to the service being provided’? This idea sounds very like the ‘bottom-up funding stream’ proposed by the Conservative party policy green paper.

Meanwhile, amidst all the chatter about big societies and localism, is anyone out there listening?

This case study was researched and written by Bernard Davies for National Coalition for Independent Action.

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