



In Whose Interests?

Exploring the Impact
of Competitive Tendering
and Procurement on Social
Inclusion and Community
Development in Ireland



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Established in 1981, the Community Workers' Co-operative (CWC) is a national membership organisation that supports and promotes community work as a means of addressing poverty, social exclusion and inequality and promoting human rights. In 2015 the Community Workers' Co-op changed its name to Community Work Ireland, continuing to work co-operatively for social inclusion, equality and human rights.

The terms community development and community work are used interchangeably throughout this report.

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EXECUTIVE SUMMARY

Since the financial crisis, public sector expenditure in Ireland has become the focus of efforts to achieve savings. Procurement was identified as one of 14 public service reform initiatives announced by the Minister for Public Expenditure and Reform in late 2011. In the Public Service Reform Plan 2014–2016, the Government committed to focusing on better outcomes for the public and end-users in the delivery of services. In particular, the plan outlines the need for the State to move away from the traditional 'block grants' method of funding public services and to move instead to an approach based on releasing funds in return for the delivery of agreed outcomes. The plan also pledges that the public service will engage to a greater extent in commissioning. In view of the size and scale of services that are provided through the community and voluntary sector (estimated to be in excess of €2bn), the Department of Public Expenditure and Reform have stated that they are currently exploring ways to transition from the current funding model to one which aligns with the vision proposed in the reform plan.

This general policy trend towards competitive tendering is increasingly apparent in social inclusion and community work. In response, this study was undertaken by Community Work Ireland with support from the Saint Stephen's Green Trust. It is an attempt to build an analysis of how the trend is impacting on initiatives to address poverty, social exclusion and inequality from a community work perspective. While focussing on community development, the study acknowledges that the lessons drawn have far-wider consequences for the community sector, the voluntary sector and the public sector.

The report traces the evolving move from grants to contract arrangements awarded after competitive tendering processes, and draws on international experience to name and examine the risks associated with this move. It

contextualises this policy direction in the general context of the increasing 'marketisation' of services, the process by which market forces are imposed on public services that have traditionally been planned, delivered and financed by local and central government, and in this instance, by the non-government sector. The process of marketisation has five key elements:

- Commodification of services and infrastructure
- The commodification of labour such as the reorganisation of work and jobs to maximise productivity and assist transfer to another employer
- Restructuring the state for competition and market mechanisms
- Restructuring democratic accountability and user involvement
- Embedding business interests and promoting liberalisation internationally (Whitfield, 2006).

The dominant ideology is that efficiencies will be gained through competition and engagement of market forces and the private sector in the delivery of services. It is argued by government that this shift to competitive tendering is, in some instances, a requirement of EU and national public procurement law, and in other instances, driven by good practice. This report challenges these assumptions.

Drawing on international experience, the report identifies a number of risks associated with this policy direction. These risks include an increasing threat to the independence of organisations in the community sector and the voluntary sector; a reduction in the quality of services and supports that provides a façade of value for money; cherry-picking where 'clients' that are more likely to succeed are chosen over those that require more intensive supports; changes in the conditions of workers; the threat of privatisation and the changed relationship between community organisations and the state.

This report concludes that this 'marketisation' and competitive tendering is counter to the objectives and fundamental principles of community work, which involves analysis of social and economic situations, local identification of community needs, development of local strategies to address them and collective action for change arising from this analysis.

Increasingly, services and activities which have been initiated, developed and delivered by community organisations will be subject to competitive tendering. This means that the scope for these organisations to engage in new activities or to test new approaches is less likely – as service providers, they will be responding to pre-defined programmes and activities and contractual provisions.

It also means that they may be competing with private sector interests in the delivery of these services and initiatives. However, even where the

contract is awarded to existing contract holders after a competitive tendering process, as was the case following the Social Inclusion Community Activation Programme (SICAP) tendering process, the contracting arrangement fundamentally changes the relationship between the state and the community sector from one of active participant, enabler and agent for change, to passive service delivery agent working on behalf of the state.

The report suggests that programmes and initiatives designed to address social exclusion, poverty and inequality using community development approaches, should be viewed and treated as a Social Services of General Interest and exempted from tendering processes. It recommends increased monitoring of the impact of procurement on the outcomes of programmes and social inclusion initiatives to address the needs of marginalised communities.



INTRODUCTION

CONTEXT

Competitive tendering, procurement and outsourcing of public services (including social services) in Ireland is gaining increasing momentum with what appears to be little debate or reference to experiences in other countries.

Government intentions to use a competitive tendering model to replace what was heretofore a grant allocation model to support the work of organisations and groups in the community sector are becoming increasingly evident. Public tenders have already been used in the voluntary and local development sectors. For example:

- The Programme Implementers (PIs) for the new Social Inclusion Community Activation Programme (the successor to the Local and Community Development Programme) were selected following a tendering process;
- The Department of Social Protection established a procurement process for the delivery of the JobPath programme on a national basis;
- Tusla will use competitive tendering to fund domestic violence services in the future;
- Funding support for community organisations as part of the SEAI warmer homes scheme has

been reconfigured as a contract from a grant and the work being delivered by Community Based Organisations (CBOs) is now subject to public tender.

This policy direction is set against the backdrop of significant changes to the community sector over the past number of years. These are outlined in Section 2 of the report and have led to a move from community development organisations supporting and engaging with marginalised communities to identify needs, develop strategies to address them and seeking funding in the form of a grant to support implementation, to a model where the State now sets the priorities and targets to be reached. The subsequent role of community sector organisations has been reduced to the delivery of pre-defined and pre-designed services and interventions. This is against a further backdrop of significant budget cuts throughout.

COMMUNITY DEVELOPMENT APPROACH

Communities facilitated to identify needs and organisations develop strategies to identify needs supported by funding from the State.



COMPETITIVE APPROACH

State designs programme and sets the targets to be achieved and the organisation becomes the delivery agent for pre-defined service.

While contracting out such services and initiatives may seem to be attractive to the State, it is not without significant risk, and this has been evidenced in the UK experience where contracting has been widespread for some time.

The policy direction in favour of procurement and competitive tendering is increasingly leading to the possibility of the privatisation of work to address social exclusion, poverty and inequality. This policy direction is causing significant concern at local and national level, yet is a direction about which there is little concrete information.

It has long been the view of CWI that the experience of other countries in this area raises doubts, such that a rush to replication should be avoided. Serious consideration of risks and implications needs to take place. This project seeks to begin building an analysis of these risks and implications in the Irish context.

THE PROJECT

In 2014, Community Work Ireland received funding from the St. Stephen's Green Trust to;

- Undertake an analysis of the rationale, current drivers and policy regarding contracting social services in Ireland
- Consider the risks for the community and voluntary sector, and for key target groups and marginalised communities
- Consider the legal and policy context on social clauses as well as social considerations in the procurement process, including the implications of the revised EU Directives on public procurement
- Document the experience of other countries in terms of risks, policies, and also in terms of good practices in (social) procurement

- Compile a research discussion document, including practical recommendations for mitigating risks and ensuring that the social outcomes achieved to date in the delivery of local development programmes and initiatives working with target groups are maintained
- Raise awareness and generate dialogue amongst key stakeholders on this issue

METHODOLOGY

The project consisted of secondary and primary research.


The secondary research comprised a review and analysis of the EU Directives relevant to the project. It also comprised a review of the international literature on the implications of moving to public procurement for the community sector.

The primary research included a number of interviews with stakeholders including the Department of Environment, Community & Local Government and members of Community Work Ireland. It also included a roundtable discussion with key stakeholders to discuss and add depth to the CWI study. Invitees to the roundtable came from throughout the country and were either directly engaged in or affected by the SICAP procurement process itself or had a concern in relation to developments with regard to procurement as it applies to community work and social inclusion work generally.

The report also draws on a number of consultation events throughout Ireland with CWI members and other key stakeholders in relation to a range of policy developments concerning the current context for community work, including the Maynooth University/CWI international conference on Human Rights and Community Development in 2015.

REPORT STRUCTURE

Section 2 of this report examines the current policy context including changes to the community sector, local government reform and its impacts on the community sector, the general policy trend in favour of procurement and competitive tendering, and the EU procurement directives. Section 3 looks at the movement from grants to contracts, examining a number of implications and challenging some of the assumptions. Section 4 briefly examines the concept of social services of general interest as a potential way to establish an exemption for community work from tendering processes. Section 5 draws a number of conclusions and suggests a number of recommendations.



While contracting out such services and initiatives may seem to be attractive to the State, it is not without significant risk, and this has been evidenced in the UK experience where contracting has been widespread for some time.



POLICY CONTEXT

This section of the report describes three areas of policy that form the context in which the issues of procurement and competitive tendering are impacting on social inclusion and community work:

- (i) Changes to the sector and Local Government Reform
- (ii) The general policy trend in Ireland:
- (iii) The EU procurement directives

CHANGES TO THE SECTOR AND LOCAL GOVERNMENT REFORM

The reform of local government, initiated by the policy document *Putting People First* and enacted by the Local Government Reform Act 2014, provides the context for the most significant impacts of procurement processes on the community development sector to date.

Community work is primarily a developmental activity that focuses on addressing the underlying causes of poverty, social exclusion and inequality and in organising collective action to address these issues. It requires a focus on identifying issues of the most marginalised and disadvantaged communities with the voice and participation of people directly experiencing these issues being central. Most crucially, with

regard to procurement processes, community development requires the identification by communities themselves of their own needs and of the most appropriate strategies needed to address the issues that affect them.

In Ireland, there is a long history of community work and over the past decades an impressive locally based community development infrastructure developed. Stated funded programmes such as the Community Development Programme funded the work of independent organisations working in and with marginalised communities in particular areas, and with specific communities such as Travellers, disadvantaged women and migrants.

Community Development

...is a developmental activity comprised of both a task and a process. The task is social change to achieve equality, social justice and human rights, and the process is the application of principles of participation, empowerment and collective decision making in a structured and co-ordinated way'

The key principles of community development/community work are:

- Collectivity Equality and Anti-discrimination
- Empowerment
- Participation
- Human Rights
- Social Justice



In 2000, the *White Paper on a Framework for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector* was published. It remains Government policy and acknowledges that an impressive infrastructure of community and local development had been built up in Ireland and that the great strength of voluntary activity is that it emerges organically from communities. It states, *'We have moved far beyond the attitude that statutory agencies fund voluntary organisations merely for utilitarian reasons, i.e. to provide services that the State cannot or will not deliver directly itself because of resource constraints.'* The White Paper emphasises that the State recognises and welcomes the diversity of the sector and further states that, *'It would be wrong for Government to seek to control and be involved in every aspect of voluntary activity, but there is no doubt that it can provide an enabling framework to help this activity. Where this involves direct supports, a delicate balance must be struck between having a relatively light official involvement and maintaining proper accountability.'* The White Paper acknowledges the role and potential of the sector in:

- Helping to create **vibrant civil and active society** in which individuals are encouraged and enabled to participate fully;
- **Responding to pressing social needs** quickly, directly and effectively;
- **Pioneering new approaches** to service provision and local and community development
- **Identifying needs and appropriate responses** tailored to the specific needs of local communities;
- **Offering new solutions** where conventional approaches have failed;

- **Enabling people who are excluded** to become involved in the regeneration process in their own communities and society.

At the broadest level, the White Paper provided the framework for a range of measures, initiatives, programmes and projects that facilitated independent, autonomous organisations in the community sector to analyse the needs of their communities at local level and to seek funding in the form of grants to support work to address those needs. These organisations were fully accountable to funders, and crucially were also accountable to the communities that they served.

The HSE continues to be a significant funder of work at local level, and previously acknowledged the autonomy of organisations, agreeing to respect the funded body's functions of innovation, advocacy, representation and research¹.

A short time after the publication of the White Paper², however, the State began to initiate a different approach. From 2002, the Service Level Agreement between funded organisations and the HSE stated that *'you must not use the grant to change law or government policies, or persuade people to adopt a view on law or public policy'*; this despite a core role for the community development organisations in responding to public policy and highlighting community concerns in relation to the development of such policy.

In 2004, the Government agreed a series of measures which, they stated, were designed to (a) improve arrangements under which community and local development initiatives are delivered and (b) improve cohesion and focus across various measures. This Cohesion Process saw the amalgamation of LEADER Companies and Local

¹ HSE 1994, *Shaping a Healthier Future*

² See Brian Harvey's account to the Maynooth University conference, *Local Resistance, Global Crisis*, Maynooth, 13th June 2014 for more detail - www.maynoothuniversity.ie/sites/default/files/assets/document/Brian%20Harvey.pdf

Area Partnerships and a consequent reduction in the numbers of local development companies from 94 to 52. What was of most concern to those engaged in community work was the reduction in the opportunities for representatives of disadvantaged communities to participate at decision-making levels and the concern that there would be a dilution of social inclusion and anti-poverty work.

More significant concern was expressed at subsequent decisions. In 2009, the Local and Community Development Programme was introduced to replace both the Community Development Programme and the Local Development Social Inclusion Programme. Implementation of the new programme required the merger of 180 independent organisations funded under the Community Development Programme (Community Development Projects) with their Local Development Company (Partnership Company), with a few notable exceptions³. Significant concern was expressed by Community Work Ireland and others at the time at the loss of autonomy and independence of organisations in the community sector as a direct result of the merger.

In 2012, the production of the policy document, *Putting People First*, prescribed a policy direction that compounded the move to fewer independent community work organisations. It describes the sector in language that suggests it is one that requires increased control by the state. This perspective underlying *Putting People First* was vigorously challenged by Community Work Ireland (then the Community Workers' Co-operative) and others at the time, with CWI arguing that an independent civil society and an autonomous community sector had much to offer the State and there could be full accountability to the State without State control. At the time, CWI members

expressed considerable concern that the drive for local authority control would curtail the work of organisations in the community sector in critiquing state policy, impacting on the communities with which they worked.

With regard to the local development sector, the document states that a proliferation of local bodies and agencies has evolved in the local development sector over the years ... usually with little local authority involvement or oversight. It suggests that a level of coherence has been brought to the sector over the years through the introduction of City/County Development Boards, the cohesion process, and through the joint working of local authorities and local development companies, and suggests that there is still significant scope for a more joined-up approach... resulting in a more cost effective and efficient delivery. It made a number of recommendations that have resulted in increased control by Local Community Development Committees on local development and community development.

Section 36 of the Local Government Reform Act 2014 provides for the establishment of Local Community Development Committees (LCDCs) in all local authority administrative areas, '*for the purposes of developing, coordinating and implementing a coherent and integrated approach to local and community development*'. The LCDCs have primary responsibility for co-ordination, planning and oversight of local development spend, whether that spend is delivered by local authorities or on behalf of the State or by other local development agencies and structures.

The LCDCs were appointed as contract holders for the two programmes under the auspices of the Department of Environment, Community and Local Government at the time, (a) the new Social Inclusion Community Activation Programme,

³ There were a few exceptions to this. For example, the Traveller projects, the women's projects and a number of other project successfully negotiated alternative arrangements with the Department.

which replaced the Local and Community Development Programme, and b) the LEADER Programme 2014-2020.

The establishment of the LCDCs and their status as contract holders for the new SICAP programme prompted the Department of Environment, Community and Local Government to seek legal advice in relation to how SICAP Programme Implementers were to be selected. The advice from the Attorney General stated:

'There can be little doubt that the LCDC is a 'public authority' for the purposes of a contracting authority under the Procurement Directive and is therefore subject to the EU Procurement Directive for the successor programme...As it would appear that some/all of the projects to be placed by LCDCs are covered by obligations to tender under the Procurement Directive the LDCs would not be able to automatically have a preferential status i.e. cannot automatically be the 'preferred partner' of the LCDC.'

In a subsequent circular letter to local authorities in January 2014, the Department of Environment, Community & Local Government stated:

'Based on legal advice, the current arrangement whereby the implementing of the local community development programme has been awarded to partnership companies without any competitive tendering cannot be continued and the LCDCs will be required to undertake a tender process for the delivery of the new programme.'

Consequently, SICAP Programme Implementers (PIs) were selected by the LCDCs following a competitive tendering process. The nature of SICAP definitively shifts funding from grant-giving, the model that has been used for decades to support community development and social inclusion initiatives, to a model based on payment for contracted services determined centrally. This is one of the most significant changes to local development and community development interventions in recent history.

Grants

Grants are funds that are allocated by governments or other benefactors to support an activity of the grantee or to progress towards achieving goals that are mutually desirable between the grantor and the grantee. Conditions of funding and restrictions generally apply, though the grantee has control over programmes, outputs and targets. If these are sufficiently acceptable to the grantor they are awarded a grant to achieve these. Grants have to be fully vouched, payments must be based on real and identifiable costs, and any balance remaining unspent at the end of the grant period must be surrendered. No profit or surplus can be held by a grant recipient.

Tenders/Contracts

Tenders are competitive processes. They invite responses to a call for delivery of a pre-determined service for a pre-determined price. Tenderers are required to demonstrate their capacity to meet the targets within the budget. Tender competitions result in a contract for service between the contract holders. Service contracts generally allow for profit and management fees to be included in the costs. Service contracts are specifically tied to the delivery of services or goods on behalf of the contracting body.

SICAP is arguably the biggest social inclusion programme in the country. The aim of SICAP is to tackle poverty, social exclusion and long-term unemployment through local engagement and partnership between disadvantaged individuals, community organisations and public sector agencies. There are three programme goals:

- 1. To support and resource disadvantaged communities and marginalised target groups to engage with relevant local and national stakeholders in identifying and addressing social exclusion and equality issues;**
- 2. To support individuals and marginalised target groups experiencing educational disadvantage so they can participate fully, engage with and progress through life-long learning opportunities through the use of community development approaches;**
- 3. To engage with marginalised target groups/ individuals and residents of disadvantaged communities who are unemployed but who do not fall within mainstream employment service provision, or who are referred to SICAP, to move them closer to the labour market and improve work readiness, and support them in accessing employment and self-employment and creating social enterprise opportunities.**

Information on SICAP states that its work is underpinned by:

- Community Development approaches and principles.
- Collaboration with stakeholders on unemployment and social exclusion.
- The promotion of equality and the prioritisation of disadvantaged communities.

While the narrative assigns importance to community development, there is a widening gap between what is being stated and what the programme facilitates. For example, targets under the three goals were centrally determined at pre-tender stage and prospective PIs had to respond to these targets. Programme Implementers therefore were not required to identify targets as a result of a needs analysis of issues at local level, which would be the norm and considered general practice for community development. Budgets were also centrally determined and assigned to each lot⁴, rather than costs associated with actions designed to respond to the needs identified. The implications of this are discussed in the next section.

While the basis for moving to competitive tendering for services has been primarily presented as a legal imperative, it has also been presented on the basis that it represents best practice, good governance and a more efficient way to spend public money. The former Minister for the Environment, Phil Hogan, (in response to a Parliamentary Question from Éamon Ó Cuív, TD on the tendering process), stated in the Dáil on 1 May 2014 that is was:

'In accordance with the public spending code, best practice internationally, legal advice and to ensure the optimum delivery of the services to clients.'

Minister Hogan referred to wider considerations of efficiency in the Dáil on 1 May 2014:

⁴ A 'lot' refers to the geographic area that the tenderer was required to cover. A budget was centrally assigned to each lot and bidders had to state their ability to reach the targets set within the defined budget.

'We do not yet know what the tendering will look like but it has already caused an unhealthy sense of competition at local level'
(Domestic Violence Organisation)

*'The whole purpose of delivering these programmes is to reduce the level of administration as well as delivering the programmes [sic]. In 2013, the average administrative cost of delivering programmes through the LCDP has been 29%. Of €47 million allocated, some €14 million went in administration which is far too high⁵. The structures of delivery will be assessed by the LCDC arising from the tender. It will depend on who wins the tender but I would expect that the experience of the local development companies already there will be favourites in order to win those particular programmes because of that experience. Experience will be an important criterion laid down by Pobal in the necessary criteria associated with the tender arrangements.'*⁶

Here it is evident that the future intentions of the State are clearly in the direction of competitive tendering for a range of services and social inclusion initiatives. The then Minister of State at the Department of Finance Brian Hayes, cited good governance in relation to the decision to apply competitive tendering procedures for work undertaken by the Rape Crisis Network of Ireland (RCNI), He said in the Dáil:

'From a good governance perspective, it is important that where the State is grant aiding organisations, it does so in a clear, transparent way. It would seem that the new director⁷ believes the appropriate way to channel the very significant resource, which is not diminishing in any way, is in a way

*which effectively invites tenders again for longer-term funding rather than the kind of annual funding which most organisations feel to be unfair to them.'*⁸

The then Minister for Children, Frances Fitzgerald, TD, cited the legal imperative, suggesting that the driver of these changes are legal and public procurement rules. She said in the Dáil in a debate on funding for the RCNI:

*'... due to the level of the support services involved and the value of the contract, a tendering process for reappointment of a service is required under EU regulations.'*⁹

Recently, Tusla has announced its intention to move to competitive tendering for the delivery of services to women and children experiencing domestic violence. Though the framework for the tendering has yet to be published, one of the organisations currently delivering services to women and children experiencing domestic violence has stated its concern about the unhealthy competition that tendering has created between services and the additional stress that this has put on organisations that are already under-resourced. Others have expressed concern that though they are expert in the services and supports they deliver, they would not necessarily have the skills to compile a tender, and feels this may put them at a disadvantage in any competitive tendering process.

⁵ This was challenged by Partnership companies at the time.

⁶ www.kildarestreet.com/debates/?id=2014-05-01a.47

⁷ The individual with responsibility for domestic, sexual and gender-based violence services in Tusla who was working with the head of procurement in the new Child and Family Agency.

⁸ www.oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014031300048 [Thursday, 13 March 2014]

⁹ Dáil debates: Rape Crisis Network Funding - Frances Fitzgerald (Minister, Department of Children; Dublin Mid-West, Fine Gael) www.kildarestreet.com/debates/?id=2014-01-29a.318&m=1009 [Wednesday, 29 January 2014]

GENERAL POLICY TREND – PROCUREMENT, COMPETITIVE TENDERING AND COMMISSIONING

As already outlined, it is clear that procurement, competitive tendering and commissioning are increasingly becoming the norm for the delivery of a wide range of services. Often presented as the approach that provides the best value for money, this approach is also presented as being more efficient and transparent.

Public procurement can be defined as the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from small contracts such as the purchase of routine supplies or services to large contracts and the formal tendering for infrastructural projects by a wide and diverse range of contracting authorities¹⁰. Procurement contracts that are issued by the State or a public authority ('contracting authority') are subject to EU Directives on public procurement.

Since the financial crisis, public sector expenditure in Ireland has become the focus of efforts to achieve savings. A number of government reports at the time, the Report of the Task Force on the Public Service and the Government Statement on Transforming Public Services, endorsed public sector collaboration in procurement of services (shared services) as a means of improving both value-for-money and standards of service to the public. In 2009, The Special Group on Public Sector Numbers and Expenditure Programmes reported that it was '*convinced that there is considerable scope for increased resort to both shared services and outsourcing in the Irish public service.*' The contraction of the numbers employed by the state, coupled with a drive to reduce

expenditure, has led to an increased emphasis on public procurement in policy terms.

Reform of public procurement is one of the major projects of key strategic importance in the Government's Public Service Reform Plan. The Programme for Government (2011) included the commitment to '*instigate a Government-wide review to identify and eliminate non-priority programmes and outsource, where appropriate, non-critical functions.*' (2011, p.11). Procurement was identified as one of 14 public service reform initiatives announced by the Minister for Public Expenditure and Reform in the Public Service Reform Plan in late 2011.

In 2014, the Government published its second Public Service Reform Plan covering the period 2014-2016. The 2014 Plan placed a particular emphasis on improving outcomes for service users, as well as maintaining the necessary focus on increased efficiency. The Plan states that the Public Service must '*begin to transition away from the traditional system of block grants to organisations providing public services and move instead to a new approach based on releasing funds in return for delivering specified outcomes*'¹¹.

It is in the context of this general move towards commissioning and procurement that the Department of Public Expenditure issued a note, *Commissioning for Better Outcomes*, to the Community & Voluntary Pillar in 2015. It restates the intention to move from providing grants and states that, '*in view of the size and scale of services that are provided through the community and*

¹⁰ Department of Environment, Community and Local Government. Public Procurement Guidelines - Competitive Process

¹¹ www.reformplan.per.gov.ie/2014/strategic_overview_nav/2.2_users/2.2.html

voluntary sector (estimated to be in excess of €2bn), engagement [with the Community and Voluntary Pillar] was initiated to explore the capacity to transition from the current funding model to one that aligns with the vision proposed in the [Public Service Reform] Plan'. The note stated that officials from sponsoring Departments (the Departments of Public Expenditure & Reform, Health and Children & Youth Affairs) are working to produce a discussion document that will issue to the community and voluntary sector, service users and the general public on commissioning.

If it is to be the case that the State continues to increasingly define the work of the community sector to address poverty, social exclusion and inequality as service delivery on behalf of the State, a role that has been strongly rejected by the community sector, delivery organisations will be subject to procurement legislation.

THE EU PROCUREMENT DIRECTIVE(S)

Where procurement is deemed to apply, the legal basis in the EU is provided in the Procurement Directives. The one most relevant is Directive 2004/18/EC, soon to be replaced by Directive 2014/24/EU, which must be transposed into Irish law by April 2016. The new directive means that there are more opportunities in public procurement for greater emphasis on innovation, environmental and social aspects of a bid.

Procurement is viewed by the EU as being key to the development of an internal market¹² and all procurement by the state should be consistent with Treaty principles including:

- Non-discrimination on grounds of nationality or locality
- Transparency of award procedures and related decisions
- Equal treatment of those wishing to be awarded a contract
- Proportionality¹³
- Free movement of goods, services and workers

Where the following pre-conditions are met, a contracting authority¹⁴ must normally advertise the contract in the EU Official Journal and follow the procedural rules set down in the Regulations:

- *The body doing the buying is a 'contracting authority'. The definition is wide and includes central government, local authorities, associations formed by one or more contracting authorities and other 'bodies governed by public law'.*
- *The contract is for public works, public services or public supplies*
- *The estimated value of the contract (net of VAT) equals or exceeds the relevant financial threshold established in the EU Directives. The rules expressly prohibit deliberately splitting contracts for the purposes of bringing them below the thresholds.¹⁵*

¹² The internal market of the European Union is a single market in which the free movement of goods, services, capital and persons is ensured and in which European citizens are free to live, work, study and do business.

¹³ That is, not to include contract terms, or technical specifications that are far beyond that needed to deliver the contract.

¹⁴ Central government, local authorities, associations formed by one or more contracting authorities, agencies of the State and other 'bodies governed by public law' such as third level institutions.

¹⁵ If the value of a contract exceeds a set threshold, full public procurement procedures apply. These are discussed below.

Not all contracts issued by contracting authorities are subject to EU procurement rules, and those that are not (for example, if they fall below a certain threshold) will be subject to national procurement rules.

A lighter procurement regime applies to what are referred to as Part B services¹⁶, which include health, education, social, recreation, cultural and other services, and the threshold for Part B services is higher (currently €250,000, compared with €134,000 for Part A services).

Articles 74-77 of the new directive provides for specific conditions for social and other services (similar to Part B services) that are regarded as being of particular national interest including 'administrative social, educational, healthcare and cultural services', and 'other community, social and personal services including services furnished by trade unions, political organisations, youth organisations and other membership services'.¹⁷ These are subject to a lighter procurement regime and greater flexibility in the procurement process.

In the current directive, Article 19 refers to Reserved Contracts that provide the possibility to restrict tendering procedures to sheltered workshops that pursue the aim of the social and professional integration of persons with disabilities.

Article 20 of the new directive extends this provision to disadvantaged groups, and provides that 'Member states may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes,

provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.'

Article 77 of the new directive provides for the right of contracting authorities to award public contracts exclusively for certain health, social, education and cultural services. The lighter procurement regime provides for more attention to quality in public procurement procedures, and also allows for reserved contracts for these services. These reserved contracts are applicable to organisations meeting the following criteria:

- its objective is the pursuit of a public service mission linked to the delivery of the services;
- profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;
- the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and
- the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.

This reserved contract provision would particularly apply to social economy enterprises or other similar structures. The use of reserved contracts is limited, however, and contracting authorities cannot reserve contracts for

¹⁶ 'Part A' services are regular services for procurement.

¹⁷ These are specified in Annex XIV of the directive.

organisations that have been awarded contracts within the last 3 years, and contracts cannot be for longer than 3 years.

Social clauses may be included in the contract terms for successful tenderers under the current and new directives. These provide opportunities for EU member states to make provisions for social considerations in procurement as a means of ensuring that social benefits and impacts are provided within the procurement process. The European Commission has published a guide to social procurement¹⁸ and a number of EU member states have incorporated social considerations into their procurement policies over the years. The new directive clarifies the role of social considerations and is regarded as giving more scope than before. Article 26 of the current directive (conditions for performance of contract) states that:

'Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.'

There has, however, been uncertainty around the extent to which social considerations can be included. Organisations such as the European Platform of Social NGOs and a number of MEPs have called on the European Commission to devise guidelines for member states on the implementation of these provisions.¹⁹

In Ireland, the Programme for Government (2011) included a commitment to explore the issue of social clauses to ensure that a portion of jobs would be allocated to persons on the Live Register. In December 2013, the Oireachtas published the Social Clauses in Public Procurement Bill 2013 *'to provide opportunities for unemployed persons and apprentices, to ensure equality in the workplace in the carrying out of public contracts and to provide for sustainable development.'* The Bill applies to contracts over a value of €1,000,000 for employment and €2,000,000 for apprentices.



¹⁸ European Commission (2010). Buying social: a guide to taking account of social considerations in procurement. Brussels: DG Employment, Social Affairs and Equal Opportunities and DG Internal Market

¹⁹ GPP News Alert: Interview: Revision of the Public Procurement Directives: The potential for GPP, Issue 38, January 2014. Available online: http://ec.europa.eu/environment/gpp/pdf/news_alert/Issue38_NewsAlert_Interview.pdf

The state is following a neo-liberal agenda which is the polar opposite of the social justice agenda of community work. The effect of this is to undermine the community sector and community development itself
(CWI Roundtable Discussion)

THE ASSUMPTIONS & THE RISKS

The effects of the change from a grant-based approach that supports social inclusion and community work to one that pays for services decided at central level and delivered following a competitive tendering process are yet to be fully realised in Ireland. However, there is some international evidence of the impacts of procurement and outsourcing on the state, on services and on the community and voluntary sector that suggests this is not the best policy direction for the State.

These impacts have been written about extensively in the UK, where outsourcing of social services has been pursued as part of successive government policies. In this section, an outline of the implications of competitive tendering is provided.

MARKETISATION AND ITS IMPLICATIONS

The dominant ideology in the move towards competitive tendering is that markets are seen as the means to achieve cost savings and greater value for money, through competition, efficiencies and increased productivity. According to Whitfield (2006), such a 'marketisation' of services is the process by which market forces are imposed on public services, which have traditionally been planned, delivered and financed by local and central government and in this instance, by the non-government sector. The process of marketisation has five key elements:

- Commodification²⁰ of services and infrastructure
- The commodification of labour such as the reorganisation of work and jobs to maximise productivity and assist transfer to another employer
- Restructuring the state for competition and market mechanisms
- Restructuring democratic accountability and user involvement
- Embedding business interests and promoting liberalisation internationally (Whitfield, 2006).

The community and voluntary sectors have not traditionally been regarded as providing services that are 'marketised', as there is not a particular 'market' for community work or social inclusion interventions. Davies (2011) argues that *'if these markets do not exist, then they must be created'*. In that context, organisations in the UK that had been grant funded in a range of areas were offered contracts for services instead of grants, thereby 'marketising' the work that they did.

Of significant concern is the fact that once a service, programme or initiative has been 'marketised' and opened up to competitive tendering, it will fall within the scope of the public procurement directives, with all the consequent difficulties. Of similar concern is the fact that **once a market has been created and competition introduced, it is very difficult to revert to a grant-based relationship.**

²⁰ The commodification of goods and services refers to the transformation of goods and services to a commodity that can be traded, often for a profit.

This marketisation has resulted in a number of consequences for the community and voluntary sectors in the UK. The experience of 'contracting' to the community and voluntary sector there suggests that community and voluntary organisations shift from their original goals, as they accommodate such market-based demands – thereby threatening their independence (Kelly, 2007 cited in James 2011), and in some cases, acting as a proxy for the state, particularly in applying sanctions and conditionality of service to clients (e.g., in labour market related activities). This understandably undermines the organisations' original purpose (Joseph Rowntree Foundation, 2008).

It has also been reported that, for organisations, the introduction of competitive tendering can, *'result in an increased focus on bidding, and market-based demands takes preference over other aspects of their work, such as policy development, campaigning and advocacy'* (Davies, 2010 cited in Davies, 2011). More significantly perhaps is that the reshaping of relationships between the voluntary sector and the state, and the consequent loss of independence, poses the risk that many may be reluctant to criticise public policies for fear of losing funding (Charity Commission (UK) 2007).

At the CWI roundtable, concern was expressed by many present that procurement, the move from grant allocation to outsourcing and the undermining of the community development and local development sectors, are symptomatic of a move towards greater control and removal of autonomy from local communities and their organisations, with the state assuming decision-making power in relation to how communities organise themselves and are represented. According to the contracts for SICAP, Programme Implementers must get permission from LCDCs under the auspices of Local Authorities, prior to issuing press releases.

VALUE FOR MONEY – QUANTITY OVER QUALITY?

Whilst competitive tendering is expected to provide improved value for money for the state, this is not always the case, and there are associated dangers of an erosion of supports, services and interventions.

In relation to monetary savings, there are a number of items that can be included in tendering that would not be permissible under a grant agreement. For example, profit and fees can be included in costs with service contracts, unlike funding rules for grants that only enable cost recovery. Social Enterprise UK cite research undertaken in the UK by The National Council for Voluntary Organisations²¹ which estimates the management fee charged by prime contractors at 15-20%²².

Additional costs also arise with the sub-contracting of delivery of services (usually to smaller, community organisations) that are seen to have the expertise to deliver to 'hard-to-reach' clients. For example, with regard to the UK Work Programme, community and voluntary organisations were contracted to deliver the programme as subcontractors as *'none of those primes [prime contractors] specialises in people with addictions, or English as a second language, or mental health problems; niche requirements always intended to be served by subs.'* (SEUK, 2012). The management costs of outsourcing social services have been considered in research undertaken by the Joseph Rowntree Foundation on welfare to work programmes in Australia and the Netherlands. While short-term gains were made in these countries, little was known about how far the gains were offset by reduced services and high transaction costs which include contract design, bid preparation and assessment, contract management, supervision and revision for commissioners (JRF, 2008).

²¹ NCVO is the largest umbrella body for the voluntary and community sector in England

²² Moreover, in the UK there has been considerable controversy surrounding the large dividend payments given to CEOs and shareholders of the private sector companies delivering welfare to work programmes there. In the UK, the second largest private sector provider of the Work Programme (A4E) paid its CEO a dividend of £8.6m in 2011. The founder of the largest Work Programme provider in the UK (Ingeus) was paid £3.8m in dividends in 2011.

A robust state can handle dissent and acknowledges the legitimacy of funding and supporting a strong civil society without having to control it.

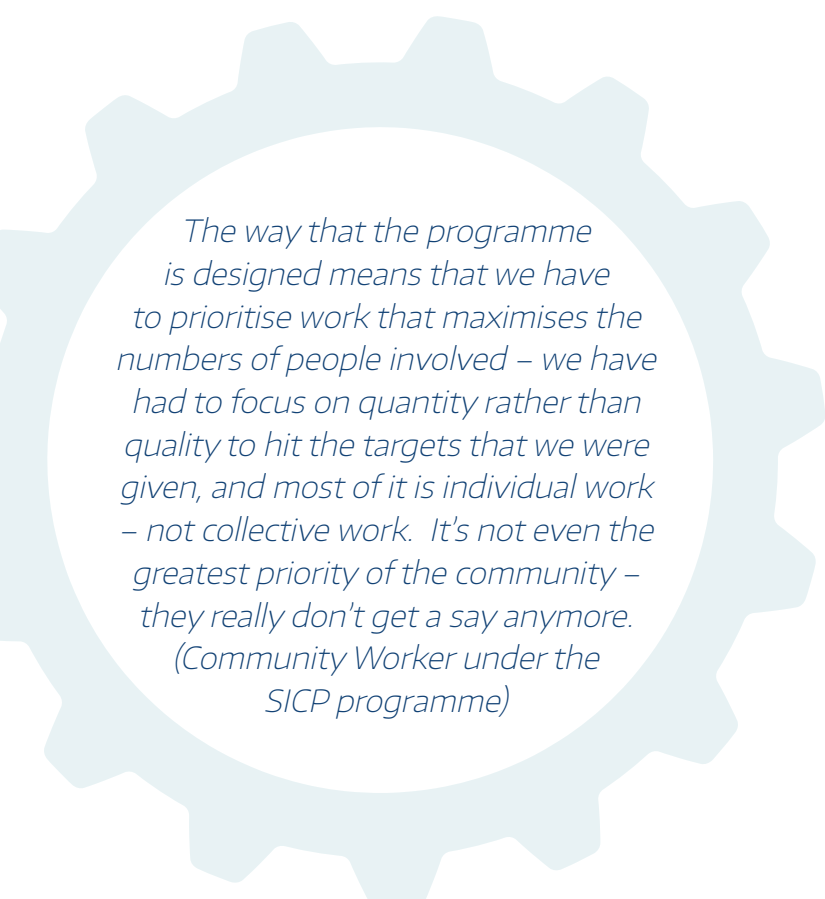
(CWI Roundtable Discussion)

A significant concern expressed by CWI members and others, particularly in relation to the SICAP programme is the potential for the value for money argument to be based purely on savings in monetary terms while obfuscating other considerations such as reduced services, programmes and supports to marginalised communities. A number of those working in organisations now implementing the programme view the imperative of having to reach centrally defined targets rather than responding to the existing and evolving locally identified needs of the communities that they serve as extremely inappropriate. They report having to focus on the quantity of those benefitting rather than the quality of services and supports, and a consequent focus on work that maximises numbers of people rather than the work that the community might need.

The costings element of the SICAP tender documents obliged tenderers to state their ability to reach a series of targets, set centrally, within the budgets allocated. Demands of the budgeting process for SICAP led to approximately 65 redundancies, a considerable reduction in the number of skilled professionals implementing the programme. In a number of areas, tendering has resulted in fewer staff providing services and supports to communities in bigger catchment areas. Therefore, while there may be statements of increased value for money, the prospect is of a reduced and increasingly squeezed level of support to communities, supports that are pre and centrally-determined rather than responsive to the ever evolving needs of communities.

PERFORMANCE-BASED CONTRACTS AND THE THREAT OF 'CHERRY-PICKING'

In the UK, performance-based or outcomes-based contracts apply what is known as conditionality to contract payments. Part or full payment is dependent on the achievement of pre-defined social outcomes for a defined population. This means that the risk of achieving outcomes is shared between the state and the contractor or transferred in full to the contractor. The argument in favour is that contractors act as a guarantee that outcomes are delivered and therefore value for money is maximised. Performance-based contracting is a key part of the design of JobPath, the new employment services programme which will be delivered by the private sector. However, there are risks for the state associated with the practice, one of the key risks being the potential for 'cherry-picking'.




*The way that the programme is designed means that we have to prioritise work that maximises the numbers of people involved – we have had to focus on quantity rather than quality to hit the targets that we were given, and most of it is individual work – not collective work. It's not even the greatest priority of the community – they really don't get a say anymore.
(Community Worker under the SICP programme)*

FROM GRANTS TO CONTRACTS

'Cherry-picking' or 'parking' of clients occurs when groups or individuals most likely to achieve positive outcomes are prioritised or receive the greatest focus. In the UK, under the Work Programme, clients who are most disadvantaged are often subcontracted to community or voluntary providers, and therefore the risk is passed on in this way. Survey research undertaken by the National Council for Voluntary Organisations (NCVO) reports that half of the subcontractors are getting a poor deal and subsidising delivery of the Work Programme from their own reserves. 47% believe their contracts are at risk of failure within six months (NCVO, 2012). According to a report commissioned by the Department of Work and Pensions (DWP) in the UK on outsourcing of welfare to work programmes:

'There are risks attached to the significant involvement of for profit organisations. They are likely to follow profit maximisation strategies shaped by contract incentives and this may not necessarily deliver what is best for clients, especially those with greater barriers.' (Finn, 2007)

In Ireland, SICAP and the JobPath programme are now delivered through performance-based contracts²³. The Department of Social Protection (DSP) contends that the JobPath programme has been structured in a way that prevents parking or cherry-picking²⁴. For example, the contractors will have no role in the selection of clients and will be obliged to accept all jobseekers referred by the DSP. However, there remains a risk that the principle of outcomes-based contracting will mean that certain clients (i.e. those most disadvantaged and more distanced from the labour market) will be less attractive to providers seeking to maximise income. In addition,



Clients are not being given the time they need and are being forced into any type of work to get them off the live register.

(Local Development Company CEO)

though JobPath was originally described as complementary to the community-based Local Employment Service Network (LESN), there are growing concerns that there is inherent competition between the two services, with JobPath being considerably better resourced. There are also emerging concerns that there is little appreciation of the depth of engagement that those most distant from the labour market require on the part of JobPath implementers. Those expressing these concerns are worried that the nature of the JobPath contract means that people will be pushed into any type of employment, even if it is low-paid, precarious work, in order to ensure they are no longer on the live register. While it is still very early days in the implementation of JobPath, this is something that will require on-going monitoring.

BIGGER IS BETTER?

As mentioned previously, the implementation of the precursor to SICAP, the Local and Community Development Programme, required that independent organisations funded under the Community Development Programme merge with their Local Development Company, with a number of notable exceptions²⁵. In this case there appears to be an underlying assumption that larger organisations provide better governance and ability to facilitate social inclusion work.

²³ It has been reported in the Irish Times that 10% of fees will be paid on referral, with the remainder paid on a staged basis once milestones (job placements, and job sustainment) has been reached.

²⁴ www.welfare.ie/en/Pages/JobPath.aspx

²⁵ A number of alternative arrangements saw the merger of the CDP projects in Limerick into one organisation, the Traveller projects combine under the umbrella of the National Traveller Partnership and the women's CDP projects merge with the National Collective of Community Based Women's Networks.

We are getting fewer and fewer referrals to our [Local Employment] service. All the clients are being sent to JobPath as there is a vested interest in them succeeding. We are being weakened further and further and really set up to fail.

(Local Development Company CEO)

The tendering guidelines for SICAP required that the tendering organisation have a turnover of 75% the total SICAP budget. This had the effect of precluding smaller organisations from tendering.

Davies (2011) makes the point that in the UK, those commissioning services seek to achieve economies of scale by opting for larger contracts,²⁶ thereby excluding smaller (often locally based) providers on 'capacity grounds' while also increasing the attractiveness of larger for profit ones. Hence, costs are reduced through 'economies of scale'. The suggestion that consortia bids can be undertaken in this environment does not acknowledge that resources, staffing and expertise in tendering processes may not be available within community groups. In the context of large-scale tenders, community organisations are regularly subjugated to the role of subcontractor.

In the UK, the UK Department of Work and Pensions review of the US experience found that competition could be undermined by a small number of large contractors delivering contracts and working with so-called 'prime contractors' which could also limit the ability to replace contractors who perform poorly. This arises because the costs of holding open competitions for services and contracts can lead to existing contracts being continued, sometimes irrespective of whether the contract has been performed correctly (Finn, 2007, Fiedziuk, 2013).

High 'sunk'²⁷ costs for contractors also increases pressure to award long-term contracts to make it possible for the contractor to recoup costs

(Fiedziuk, 2013, Cox, 2003). In these instances, a contracting authority can potentially become locked-in to an inefficient service provider for long periods (Fiedziuk, 2013). Large-scale private sector providers in social services create a dependency on behalf of the state, potentially leading to a scenario where the large scale providers are simply too big to fail (SEUK, 2012). The risks involved in these dependencies is echoed by the report completed for the Dept of Work and Pensions in the UK (2007).

'...if the entry of for-profits into local delivery systems displaces existing private and public infrastructure, future capacity may be at risk when market conditions change and larger for-profits remove their capital to seek greater profits elsewhere' (Finn, 2007).

CHANGES IN CONDITIONS OF WORK

The UK experience indicates a strong association between outsourcing and changes in the terms and conditions of work. The implication is that savings to the State are achieved by reduced labour costs. A study of local government during the 1990s found that the tendering process itself resulted in the worsening of terms and conditions of employees and that post-outsourcing 'work becomes more demanding, less well paid and increasingly casualised...labour costs have been cut through a number of mechanisms, with direct cuts in basic pay or overtime rates being common, with others...forced to accept increased hours, or reduced holiday entitlements' (Patterson and Pinch, 2000).

²⁶ There is a drive towards larger, aggregate contracts in Ireland as part of procurement policy, in a bid to reduce the costs of commissioning in public service bodies.

²⁷ Sunk costs refer to those costs that have been incurred but cannot be recovered.

A combination of funding pressures and profit maximisation strategies have adversely impacted on employee turnover, commitment and morale, as well as having caused disenchantment and burnout (Cunningham, 2008 cited in James 2011). The implications are that staff will be employed in *'increasingly unsatisfactory work environments. That is ones in which they are increasingly unlikely to have the capacity, in resource and emotional terms, to maintain, let alone improve, standards of service'* (James, 2011). Research undertaken by BBC Radio 4 illustrated how this can play out even prior to outsourcing. The example given is the probation services in England and Wales (where the private sector is invited to tender to deliver services). Approximately one third of senior management had resigned from their positions in anticipation of change, and one probation officer described the impacts on staff:

'People will stay late every night to make sure reports are done. People work way over their hours. There's a lot of goodwill involved, and this is because they believe in trying to turn people's lives around. That is already eroding...people are looking for other jobs. People can't cope with the fact that what they wanted to do is being torn up in front of their eyes.' (BBC, 2014)²⁸

The report from Social Enterprise UK, *The Shadow State*, identifies that bidding on price usually creates a race to the bottom on wages, fuelling low pay and inequalities. It states that low pay has a huge social impact, necessitating in-work benefits which taxpayers must fund, and making it impossible for workers to prepare financially for their retirement, storing up costs to future generations. In Ireland, there is emerging evidence to suggest that new positions within organisations are being advertised at significantly lower levels of pay than was the case before competitive tendering.

PRIVATISATION AND THE INTRODUCTION OF A PROFIT MOTIVE

The potential for privatisation and deriving a profit from social inclusion programs is an issue for real concern and is one that has been raised repeatedly to the CWI. As indicated in a presentation to the Joint Committee on Public Service and Oversight and Petitions:

'The decision to pursue the tendering of the programme implementation raises the real prospect of the privatisation of delivery of social inclusion targets, potentially introducing a profit motivation into this work. To date social inclusion has been delivered by community led non-profit companies, it may now be led by profit seeking, market led companies²⁹.'

A significant element of the concern is that the introduction of a profit motive will compound all the above mentioned implications, with a consequent loss in supports and services to marginalised communities.

The inappropriateness of applying competitive tendering and market-based strategies affects not just community work and the community and voluntary sectors. Competitive tendering and opening up a broad range of services to the market has a real potential to introduce a profit motive into these activities. This presents significant risks to the State. These risks include higher costs, performance and quality problems, costs of contract management and monitoring and poorer conditions of employment. They also include legal challenge if the state attempts to reverse the policy of competitive tendering to grant allocation.

²⁸ BBC Radio 4: 'Repeat Offenders', File on 4, BBC Radio 4, broadcast on Tuesday 18 February 2014.

²⁹ Presentation to The Joint Committee On Public Service and Oversight and Petitions - Petition: Concerns Re the Tendering of the Social Inclusion and Community Activation Programme, Deirdre McCarthy and Siân Muldowney of the Dublin Inner City Community Co-operative Society Limited. (formerly Dublin Inner City Community Alliance). 28th January 2015

The assumption that the introduction of a profit motive through competitive tendering of social services ultimately enhances value for money without impacting on quality and cost is not supported by research undertaken in the UK. For example, *The Shadow State* research reported that private sector provision of care homes, prisons, and other services underperforms compared with community sector provision in terms of quality of service, and employment conditions (SEUK, 2012). According to James (2011) the experience of the UK has been that while quality standards have been included in the tendering process, *'in practice price tends to exert the more important influence over contract letting decisions'* (p.686). This is likely to lead to downward pressure on wages and conditions in the sector.

CHANGED RELATIONSHIPS BETWEEN THE STATE AND THE COMMUNITY SECTOR

While the potential for privatisation and the introduction of a profit motive is of serious concern, even if this never happens there are serious implications. For example, the awarding of contracts under SICAP appear to have maintained the status quo, with the contracts all awarded to Local Development Companies. The top-down design of the programme however, regards local organisations as service implementers, and there is a fundamental difference between actively identifying the needs of communities and ways to address those needs with support from the state on the one hand, and delivering a pre-designed programme to a set of prescribed targets on the other. This has and will continue to change the relationship between organisations and the state, and between organisations and the communities they are there to serve, and is certainly at odds with the principles and practice of community development.





SOCIAL SERVICES
OF GENERAL
INTEREST – AN
ALTERNATIVE?

The concept of Services of General Interest (SGI) or Social Services of General Economic Interest (SSGEI) refers to services (whether economic³⁰ or not) that member states regard as being of general interest, and therefore subject to specific public service obligations.

Social Services of General Interest (SSGI) refer to services which are not economic in nature. SSGI can be funded by way of a grant. They must however, comply with state aid rules³¹ or could be open to a challenge of distorting competition. The following is an example provided by the Commission:

Home cleaning services are normally provided by the market to the general public. At the same time, they can be part of the delivery of social policies, such as long-term care programmes, aiming to ensure that the elderly or people with disabilities continue living within their communities and not in institutions.

In these circumstances, home cleaning services for the elderly or for people with disabilities could acquire a 'general interest' character that they do not have when they are provided to the rest of the population. A public authority could therefore define such home cleaning services as SGEI and could organise and finance their provision so as to ensure that these users have access to these services (for example, by providing them free of charge or at a price lower than the market price).³²

In a speech given by Joaquín Almunia, Vice President of the European Commission responsible for Competition Policy on the Reform of State aid rules for services of general economic interest in December 2011:

'The Commission certainly does not dispute the principle of compensating a company for a service that is entrusted to it by a government, be it at central or local level. Where the public service mandate is well defined and there is no over-compensation, the Commission takes the view there is no [state] aid. My key concern is to ensure services of quality at the lowest cost which safeguards the interests of fair competition and of taxpayers.'

The European Commission has published an updated version of its guide on how the European Union rules on state aid, public procurement and the internal market apply to services of general economic interest, and in particular to social services of general interest. Governments are exempted from the obligation to notify compensation for the running of social services, more specifically health and long-term care, childcare, access to and reintegration in the labour market, social housing and the care and social inclusion of vulnerable groups.

The Platform for European Social NGOs has advocated for a wide definition of Social Services of General Interest, based on their universal character and linked with access to fundamental rights for all, including access to services for the most vulnerable groups.

³⁰ An economic activity is one which consists in offering goods or services on a given market and which could, at least in principle, be carried on by a private actor in order to make profits. If a service is provided in a market or there is potentially a market of providers that might be interested in delivering the service, it could be considered an economic activity.

³¹ State Aid is when an authority, whether at local or national level, selectively grants public resources to an entity which is engaged in economic activity and provides that entity with an economic advantage. The Treaty on the Functioning of the European Union states that State Aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or the production of certain goods, is illegal.

³² 3rd Biennial Report on Social Services of General Interest, Commission Staff Working Document, Brussels, 20.2.2013 SWD (2013) 40 final

In its view, SSGI should be addressed to all citizens who without them could not fully participate in society. Access, however, for those most in need should be guaranteed. In its view, it is important to confirm the universal concept at European level and the role of the principle of subsidiarity, so that every member state can define the services and the beneficiaries concerned and the ways in which the mission of those services is implemented, depending on users' needs.

Identifying community development, local development and social inclusion interventions as Social Services of General Interest is one way to ensure that programmes such as SICAP and its successor programmes are exempt from tendering processes, with all their consequent implications. The same argument could be used for other services and supports delivered by the community sector and the voluntary sector that were heretofore funded by a grant arrangement. This is an area that requires further exploration as recommended this study.



The background is a solid teal color. In the lower right quadrant, there is a large, semi-transparent gear icon. The gear is a darker shade of teal and has a circular center. The text is centered horizontally and partially overlaps the gear's center.

CONCLUSIONS & RECOMMENDATIONS

CONCLUSIONS & RECOMMENDATIONS

CONCLUSIONS

This project was intended as a step towards building an analysis and informed critique of the risks associated with procurement and competitive tendering. It was intended to begin a debate about whether the competitive tendering route is appropriate or necessary in the case of work that addresses poverty, social exclusion and inequality. The report presents sufficient evidence to begin that conversation and to begin to look for alternative ways of supporting community work in and with the most disadvantaged and marginalised communities in the country.

While the report focused on community work, there are implications for a range of activities and services such as youth work, domestic violence advocacy, drugs services, and social services, because if the current policy direction is not challenged it will be broadened to cover these and other supports and services.

Drawing on international evidence and the emerging evidence available in Ireland, it is apparent that competitive tendering is not compatible with the nature, principles, characteristics and values of community work. In fact, based on the evidence presented, we would suggest that competitive tendering is fundamentally at odds with the principles and practice of community work, and will undermine the role and potential of community development to address inequality and social exclusion in Ireland.

Autonomous community work in Ireland has, in recent years, been subjected to a significant level of erosion. Community development, it was argued by those participating in the primary research for this report needs to be independent and autonomous of the state if it is to serve, empower and give voice to the most marginalised



and minority communities. Community Work Ireland members have repeatedly reported significant loss to their autonomy and their ability to respond to the needs of their communities as they are 'contracted' to deliver a set of centrally designed services to a centrally prescribed number and range of targets. They have also reported that 'front-line service delivery' is being prioritised over policy work and collective action to affect collective change, and that their work is becoming increasingly individualised.

Community development is not an activity or a service that can be 'delivered to' a community. When community work is configured as a service to be delivered under contract by community organisations on behalf of the state, it fundamentally changes the role of the community organisation and the relationship it has (a) with the state and (b) more crucially, with the community. It implies that the primary reporting relationship will be to the state, rather than to communities, and therefore in the exercise of its 'contract', the organisation becomes an agent of the state. This is wholly incompatible with community development processes and principles that seek to enhance participation and empowerment of communities experiencing disadvantage, who independently engage in responses to the issues they are facing.

The fundamental premise that competitive tendering leads to enhanced outcomes has not been supported by the UK experience.

The legal imperative and public procurement argument is not consistent with the grant aiding of a whole range of community activity by both the state and the EU. However, it does appear to be the case that once this type of tendering is introduced it is difficult to reverse without risks of legal challenge.

The impact of a competitive tendering culture in the UK has been found to impact negatively on disadvantaged communities, in ways that can be seen to reinforce disadvantage and inequality. According to the National Coalition for Independent Action, where competitive tendering of community activity took place, no attention was paid to equality of representation by geographic communities or long-term cooperation between communities in the delivery of these contracts (NCIA, 2011).

In Ireland, opportunities to participate at decision-making levels have already been significantly eroded for the most marginalised communities. Whereas projects funded under the Community Development Programme created the conditions for members of their target communities to be involved at all levels of the work, including at management level, these have largely ceased to exist, poorly replaced by an extremely limited number of 'community and voluntary' seats on the boards of Local Development Companies and Local Community Development Committees.

Not only does this run counter to the Government *White Paper on a Framework for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector*, but it will undermine the work of the organisations who support the participation of disadvantaged communities in decision-making processes, an activity emphasised by the UN Human Rights Council as follows:

'Recognizing the important role of civil society at the local, national, regional and international levels... special emphasis should be given to measures to assist in the strengthening of a pluralistic civil society...and to the real and effective participation of the people in the decision-making processes...'

UN Human Rights Council, 23rd Sept. 2013

The question is now whether there is an alternative to the current policy direction and whether there is the will on the part of policy makers to change. Exploring the concept of Social Services of General Interest as a way of differentiating work to address poverty, social exclusion and inequality from other service provision will be crucial. Community development should not be considered as an economic activity or a service, and as such, competitive tendering, which has the potential to lead to the privatisation of community development and any form of social inclusion work, should be ruled out. As it is not an economic activity, there appears to be no legal basis for procurement regulations to apply to community development.

It is further apparent that there is, in fact, no impediment to community work being funded by the state through grant allocation. Many of the same community organisations that have tendered for the SICAP programme, for example, continue to receive grant funding from the State. It would appear that the decision to pursue competitive tendering was more to do with policy direction than legal imperative. There is no reason, apart from current policy priorities, why funding for community development and social inclusions programmes cannot revert to the state, its government departments or intermediaries (such as Pobal).

³⁰ Ireland is currently a member of the United Nations Human Rights Council and a champion of participation

CONCLUSIONS & RECOMMENDATIONS

RECOMMENDATIONS

The move to procurement of community, social inclusion and local development work in Ireland is currently at a very early stage. The primary research, focus group discussions, workshops and one to one interviews with Community Work Ireland members and other key stakeholders, which have informed this study, however, highlight a number of core areas which we believe require immediate attention. By taking action now, we believe that Government can intervene to ensure that the resources, programmes, processes and initiatives seeking to tackle the poverty social exclusion and inequality experienced by many marginalised communities throughout this country, are meaningful and effective. Failing to do so however, will, we believe, further undermine the efforts of community development organisations seeking to build an inclusive, just and equal society.

This study therefore recommends:

1. That all programmes and interventions to address poverty, social exclusion and inequality be exempt from tendering processes on the basis that they are Social Services of General Interest and on the basis that the impact of tendering fundamentally changes the nature of the way that they work;
2. The establishment of a distinct community development programme, based on a grant-giving model, to support work in and with marginalised communities. The programme should be designed in a manner that ensures that work at local level is based on locally directed needs analyses of the most marginalised communities and underpinned by the All-Ireland Standards for Quality Community Work;

3. In the immediate term, that further research and monitoring be undertaken on the impact/ implications of the nature of SICAP and the implementation of horizontal principles of community development and equality on the communities it seeks to serve;
4. That an independent European study of the impact of procurement and competitive tendering on community development, local development and social inclusion work with communities experiencing poverty, social exclusion and inequality be undertaken;
5. That a broad-based inclusive consultative forum on the future of community development in Ireland be established to develop a strategy for appropriate support for community development work outside of procurement and competitive tendering.





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