

DFID's Use of Contractors – Written evidence submitted by Bond

Introduction

1. Bond is the UK membership body for over 450 non-governmental organisations (NGOs) working in international development. www.bond.org.uk

Executive Summary

2. Key recommendations include:

DFID should continue to use a range of modalities for contracting services and should avoid a slow creep to larger and larger contract sizes.

DFID should value the distinctive features that NGOs bring to the development sector, such as long-term commitment, deeper relationships with local communities, and being more responsive to local opportunities and challenges.

DFID needs to retain a cadre of knowledgeable and specialised staff in order to achieve its objectives.

DFID should look at how it is collating and capturing learning across outsourced programmes to ensure that the development sector as a whole benefits from the knowledge, materials and approaches developed by contractors and sub-contractors in its programmes.

DFID should be encouraged to commission or develop a new 'code of best practice' or similar to govern the consortium relationships of private contractors.

DFID should consider what steps it can take to promote the inclusion of mutually beneficial guarantees to contractors and sub-contractors when assessing contracts, with a particular focus on the fair contractual treatment of any national partners.

DFID should acknowledge the comparative advantage it currently enjoys as a result of its historical leadership in programme design and delivery, and commit to continued aid harmonisation and country driven development.

Question One: Costs and Advantages

3. In general, the most appropriate delivery model will be determined by the desired results of the programme, and by the operational context. There are some advantages to programming at scale. For example, research on multi-donor funds to support civil society does suggest that by pooling resources, donors are able to extend funding more deliberately to a wider range of civil society actors.¹ Yet some of the supposed advantages of the big players are perhaps assumed, rather than evidenced. For example, it is not always the case that big businesses have management systems that are able to effectively respond to the needs of large, complex development or humanitarian programming.

4. Unsurprisingly, some Bond members raised the issue of the different respective motivations, or values, that underpin the development work of private contractors and NGOs. This is not about

¹ INTRAC (2014) Study on support to civil society through multi donor funds. Commissioned by DANIDA.

being 'anti-private sector', but a conviction that civil society organisations have a distinct and valuable contribution to make, and a perception that the trend towards the use of contractors may be undermining their capacity to make that contribution. Having said that, Bond members of course also recognise the advantages that come with the use of large private contractors, such as their access to capital markets and financing that allows them to bear risk.

5. Recommendations

- DFID should continue to use a range of modalities for contracting services and should avoid a slow creep to larger and larger contract sizes. Maintaining a variety of contract sizes will help keep a diversity of actors in the sector and will ensure that DFID gets direct access to a range of approaches, expertise and viewpoints.
- DFID could support much better comparative analysis between different modalities by demanding that financial reporting from all contractors is much more transparent. DFID should require contractors to provide clearer information on where costs and margins are retained within the different levels of their systems and what the corresponding value added/services are that are being provided by that level to the programme. DFID's move towards Open Book Accounting is a positive step towards this level of transparency and Value for Money analysis.
- The distinctive features that NGOs believe they bring to the development sector include long-term commitment; being more connected to the local operating environment, and having deeper networks and relationships with institutions and communities; and being more responsive to local opportunities and challenges. DFID should value these aspects when selecting delivery partners.

Question Two: The balance between the use of contractors and the development of in-house skills

6. The decisions about when and where DFID uses contractors are internally driven, and not much is known about the decision-making process. But it is widely recognised that because the increased aid budgets – which have, overall, enabled DFID to increase its impact in tackling global poverty and inequality – have not been matched by increased staffing levels with DFID, a greater use of contractors has become inevitable. It has also resulted in more 'light touch' management, with little time for field visits, etc.

7. Over time, DFID has lost many technically skilled advisors in favour of recruiting generalists. The loss of Technical Programme led posts (around 2005) left DFID with significant gaps in many technical areas. DFID needs sufficiently experienced and knowledgeable staff on the ground, who are able to direct funding based on a thorough political economy analysis, and to build relationships with key local players. This allows DFID scope for a much more politically sensitive and nuanced approach to supporting change, and so ensures that the impact of aid spending is maximised.

8. Members report that these developments undermine a more direct dialogue between them and donors. This reduces donors' access to a more complete picture of what is happening, and also DFID's ability to support civil society organisations where there are growing restrictions on their ability to operate.

9. There is a risk that reduced numbers of DFID staff leaves the focus on compliance rather than learning. One agency felt that DFID annual reviews are increasingly becoming box ticking exercises rather than real opportunities for DFID's own learning. In the hands of a committed and experienced member of staff the annual review is a good opportunity for review and learning and for a very productive exchange between DFID and outsourced programme managers. However, as staff have

been reduced, these reviews are often in the hands of people who do not themselves have the necessary time or indeed skills to engage with the realities of these quite complex programmes. This leads to them falling back on or being most concerned with narrow progress on logframe targets rather than the wider programme learning that sits alongside them and indeed is necessary to understand them and what is or is not working.

10. Recommendations

- DFID needs to retain a cadre of knowledgeable and specialised staff in order to achieve its objectives.
- DFID needs to review its Annual Review process to see if it is fit for purpose. It needs ensure that staff have the necessary time and level of expertise to engage fully with these processes to ensure real learning.
- DFID should provide data on the number of technical advisors (and number of years' experience) in 2016 compared to 2000.

Question Three: DFID's processes, value for money, and effective long-term development

Procurement/design stage

11. Due to the challenges inherent in engaging with procurement processes for CSOs (including access to capital and ability to invest in contract-readiness), NGOs seeking to take part in the future programme have to engage in conversations with various private contractors with the hope of joining a consortia bid – but this may not result in NGOs actually being included in the tendering process. This means that DFID procurement teams are denied the opportunity to assess the (arguably greater) depth of technical expertise that can often be provided by NGOs with well-established credentials and local relationships in the target country. This is one of the distinctive advantages offered by NGOs in-country: allowing a substantial body of knowledge around context, as well as higher levels of trust at local levels, which can lead to better sustainability of outcomes. This marginalisation of NGOs in the design process also precludes them from bringing their wider institutional expertise and learning to the co-creation of intelligently designed, multi-faceted programmes.

12. Another particular area of concern is that it is not clear how DFID will hold contractors to account for delivery against the SDGs, including the pledge to 'leave no one behind.' For example, in the context of disability, DFID's Disability Framework does take some steps to encourage private sector partners to include persons with disabilities in their work: it says that private sector partners should outline their approach to disability inclusion in proposals, and encourages them to disaggregate results by disability. However, it stops short of introducing a reporting process to hold private sector partners to account for their inclusion of persons with disabilities. This is in contrast to DFID's handling of (centrally funded) civil society partners, who have to report on disability inclusion in their annual reviews. Greater emphasis in proposals on demonstrated past experience of contractors in addressing issues of marginalisation could also prove a useful approach.

13. More generally, commercial procurement systems and standards are welcome - but they need to be flexible in adapting to the context of working in unpredictable scenarios. For example, it is unrealistic to expect to set milestone-based performance contracts across a three year contract when it is difficult to predict changes in the context for the years two and three. DFID's increasingly

flexible approach under the Smart Rules is welcome in this regard, and DFID could usefully communicate more learning from emerging experience of flexible results frameworks.

Implementation stage

14. DFID is recognised as having a rigorous approach to the design and delivery of its programmes; and for decades has been respected for its great links with governments and donors at country level, having been a prime mover on aid harmonisation and sector wide approaches. This has been reinforced in recent years by the work, amongst others, of DFID's Better Delivery team and a roll out of commercial training to all senior staff. Initiatives such as Key Supplier Management and now Key Relationship Management have created a welcome space for dialogue on improved delivery between DFID and its programming partners.

15. However, the increasing trend towards centrally managed programmes risks undermining the UK's hard-won reputation for adaptive, country-level programming. Long delivery chains, and programmes that report into Fund Managers and directly into DFID in London, can lead to a lack of coherence at country-level. One member commented on their experience in delivering (as lead or as a partner) four programmes through the centrally managed Girls Education Challenge Fund – in Ethiopia, Mozambique, the DRC and Afghanistan. They were concerned that, two years into these projects, there has been limited engagement with DFID's national education priorities – although they say that DFID was keen to rectify this by linking their Education Advisers to the projects.

16. Several concerns have been raised by Bond members about the behaviour of some private contractors once that they have been awarded contracts. When NGOs are invited to join the consortia of private contractors they are routinely asked to sign stringent exclusivity, teaming or association agreements. However, the agreements most commonly in use rarely, if ever guarantee the NGO any actual part in the implementation of the contract if the associated prime bidder is successful. There are repeatedly documented accounts of NGOs being included at the bid/design stage only for them to be dropped or disengaged when the prime bidder has won the contract. This practice (which has led to the emergence of the term 'bid candy') means that DFID does not get what it paid for.

17. There is an emerging trend of some concern in programmes rated as highly performing by DFID during implementation. Having received an A or A+ rating, some private contractors then reduce or entirely remove/design out their erstwhile NGO partners so as to maximise profits.

18. Another significant area of concern is that contractors are imposing excessive and restrictive standards on NGOs, often in the name of 'value for money', although in practice the effects may be the opposite. Working through Fund Managers is potentially advantageous, in that by introducing an element of competition, DFID can move beyond the 'usual suspects' and see what the market has to offer – particularly around cost, innovation and creative ideas. In practice, however, Bond members have experienced a range of disproportionate requirements imposed by Fund Managers that adversely impact on their effective operational functioning, and so would seem to undermine the objective of maximising value for money. Examples include: insistence on complete budget revisions (a very time consuming process) simply to carry money over to the next year; insistence on extremely complex monitoring and evaluation expectations, templates, and guidance, which can place unexpected financial burdens in terms of salaries of monitoring and evaluation staff; and inappropriate monitoring visits, such as very early in the project before activities are properly established or only a few days after receiving the report of the previous visit.

19. Consistent application of the UK Aid Transparency Guarantee and the associated requirement of publication of data to the International Aid Transparency Initiative could assist in relation to the issue of ensuring proportionate levels of accountability. Currently, only 22 private sector suppliers to DFID publish information to IATI, compared to over 230 civil society recipients of DFID funding. DFID has historically been more rigorous in compelling NGOs to publish to IATI than the private sector, and even less prescriptive with its multilateral partners. DFID needs to adopt a consistent approach to transparency around use of public funds, irrespective of organisational type, and ensure clarity in contract conditions around this and verification of the quality of published data. Bond encourages DFID to follow through on strengthened Aid Strategy commitments around transparency, both for stronger accountability of contractors, and to ensure a level playing field.

20. The above concerns notwithstanding, it should be stressed that NGOs do also report having enjoyed positive experiences where private contractors use a truly 'blended team' approach, fully involving a range of NGO partner staff in on-going programme implementation and iterative design. This is further enhanced by regular cross-consortium meetings with DFID representatives in-country.

Learning and accountability

21. One of Bond's own priorities in relation to DFID's approach to contracting is the extent to which it fosters, or hinders, learning. There is a risk that the use of private sector contractors ends up privatising development knowledge, turning learning from programmes into commercial property.

22. Bond members report that private contractor legal departments are attempting to impose increasingly heavy intellectual property clauses on sub-contractors working on programmes with them. These try to establish ownership on approaches and materials coming out of programmes and to require sub-contractors, often who are responsible for developing these, to seek permission for their use. This is understandable from a commercial perspective but is inappropriate for publicly funded programmes and is detrimental to learning and sharing about what works and does not work.

23. Getting contractors' timing right is also critical to maximising learning. For example, one member running a Zimbabwe Voice and Accountability project reported that the Monitoring and Evaluation partner was brought in towards the end of the inception phase. This created challenges in aligning baseline and formative research findings.

24. In some contexts involving contractors, seeking feedback from partners of contractors and reporting this to DFID may be a useful accountability mechanism. For example, the grant-holder survey that Bond has carried out with recipients of UK Aid Direct funding has led to improvements in relationships between grantees and the contracted Fund Manager, and standards relating to it have been embedded in DFID's contract with a new Fund Manager for UK Aid Direct.

25. Recommendations

Bond members believe current DFID procurement regulations could be tightened to improve high quality competition and to ensure that funding is used as intended. It can be argued that whilst some of the treatment of NGOs by a minority of private contractors is questionable, their conduct points towards a lack of contractual disincentives for such behaviours in DFID's engagement of contractors. This needs to be addressed in order to ensure Value for Money, sustainability and resilient procurement.

- DFID needs to compose its head contracts to ensure that all organisations and bodies involved in implementing development programmes benefit from the knowledge, materials and approaches developed by contractors and sub-contractors in its programmes.
- DFID should look at how it is collating and capturing learning across outsourced programmes to ensure that knowledge from these programmes does not remain with private contractors or individual consultants but is available to DFID.
- DFID should consider the contracts awarded to private contractors at award stage, and what is eventually implemented after negotiation (thereby tracking the 'bid-candy' effect).
- DFID should be encouraged to commission or develop a new 'code of best practice' or similar to govern the consortium relationships of private contractors; there should be contractual incentives for adhering to such a code, and a referral mechanism within DFID for extreme cases of sub-contractors not being engaged according to the code.
- DFID should consider what steps it can take to promote the inclusion of mutually beneficial guarantees to contractors and sub-contractors when assessing contracts, with a particular focus on the fair contractual treatment of any national partners.

All such measures should cover the life of all commercial contracts and be subject to regular review.

- More generally, DFID should acknowledge the comparative advantage it currently enjoys as a result of its historical leadership in programme design and delivery, and commit to continued aid harmonisation and country driven development.