



## Policy Briefing (Issue 24) **Race on the Agenda**

# **All you need to know about commissioning - grants & contracts**

### **Introduction**

Fundamental to delivering race equality is ensuring that there are services that meet the diverse needs of Black, Asian and minority ethnic communities (BAME). One way these services are delivered is through BAME third sector organisations. These organisations are reporting increased use of contracts by public bodies that used to provide grants.

BAME third sector organisations in our BAME regional network of MiNet, and our partners, are concerned that this shift in culture from grants to contracts changes the process to one they are not used to. This might lead to less resources going to BAME communities. Their concerns are around navigating the processes of tendering, bidding and winning contracts, which is different to grant applications. Therefore ROTA has been asked to provide information on what are **commissioning, contracts** and **grants**, and the differences between them.

Traditionally the third sector has funded their services through self funding (donations) or grants from government. Organisations in the BAME third sector rely heavily on receiving funding from local and central government. This funding is provided to deliver a wide variety of services and outcomes. Grants were the general method that local and central government used to support organisations.

The move towards awarding contracts rather than giving grants is a part of a general reform of public services so more and more services are provided by external providers in either the private or third sector. Therefore the Governments preferred route to provide funds to the third sector is changing to contracts to deliver services that meet the needs of communities.

There are significant differences between **grants** and **contracts** which change the nature of how, as an organisation, you can operate. By understanding these differences you can identify the appropriate funding mix for your organisation to maximise the resources available to deliver your services.

This briefing paper will give BAME third sector organisations a basic knowledge of the differences between grants and contracts and what you should consider as a BAME third sector organisation when considering which is appropriate for your organisation.

## About ROTA

Race on the Agenda (ROTA) is one of Britain's leading social policy think-tanks focusing on issues that affect Black, Asian and minority ethnic (BAME) communities. Originally set up in 1984, ROTA aims to increase the capacity of BAME organisations and strengthen the voice of BAME communities through increased civic engagement and participation in society.

**ROTA's Articles of Association state that the charity is set up "to work towards the elimination of racial discrimination and to promote equality of opportunity, human rights and good relations between persons of different groups".**

For historical and demographic reasons, our work prioritises London, but our activities and a number of our projects have national and international significance. To this end we work in close partnership with our membership and others interested in race equality, human rights and the promotion of good relations.

Our presence in London is enhanced by the regional network, [MiNet](#). **MiNet** is the London focused BAME network of networks, which joined ROTA in 2002 to strengthen the voice for London's BAME Third Sector in the development of regional policy.

## ROTA definition of BAME and approach to race equality

ROTA works on social policy issues that have an impact on race equality and BAME communities. We use the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, nationality or religion which includes but is not exclusive to people of African, Asian, Caribbean, East European, Irish, Jewish, Roma and South East Asian decent. ROTA adopts a holistic approach to race equality and works in partnership with other Third Sector organisations that complement its expertise and have a similar vision.

## What is Commissioning?

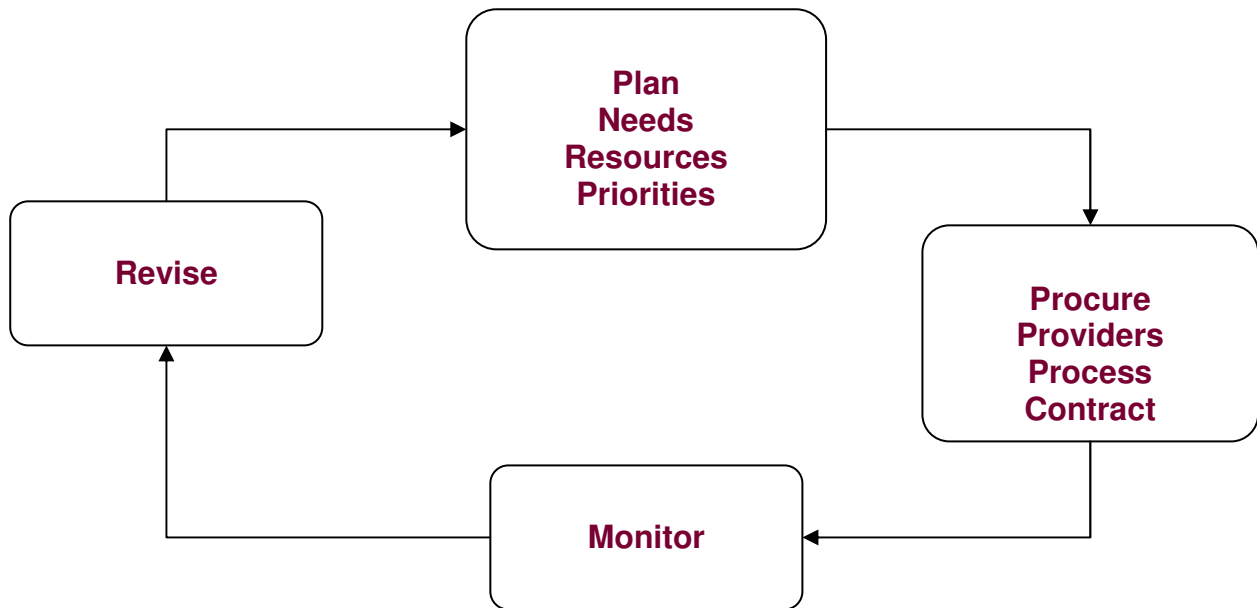
Commissioning is the entire process of a public body assessing the needs of a community or client group, working out how to fulfil those needs, and subsequently designing and securing the provision of that service to that client group or community.

The commissioning cycle involves:

1. Assessment (or reassessment) of need;
2. Identifying resources;
3. Planning how to use resources;
4. Arranging service delivery through a procurement process;
5. Monitoring and reviewing service delivery.

It can be broken down further into the following cycle

## The Commissioning Cycle



It is often confused as a separate process to providing grants. It is generally used for choosing contracts but it is an overarching process for designing the delivery of services. As such it can include giving grants to organisations as well as arranging contracts.

Commissioning is a process that will usually be led by one organisation, for example a local authority, which is responsible for meeting the need. Good commissioning should include in the planning stage others organisations such as statutory partners or potential provider's like the third sector. This is to aid development of a well designed service, and in the case of the third sector to access service users and ensure their needs are fully met by the service. This is particularly relevant role for BAME third sector who are often the only representatives for BAME service users and their particular needs.

Once the type of service to be provided is identified then it is necessary to see if a grant or contract will be the most appropriate way to do it. To understand this you will need to understand the difference between a grant and a contract.

### What are grants?

Grants are a specific amount of funding given to an organisation for specific activity to be delivered within a specific time frame. Funders are usually government departments, local authorities, other large charities or charitable trusts.

A grant is a lump sum of money that is essentially a gift that does not have a legally binding status. It is usually subject to conditions set by the funder such as to provide a service or complete an activity in a certain way. An example would be a youth organisation receiving a grant to buy sports equipment.

Conditions can be very detailed and include the process by which money is paid, what the money will be spent on, and even who will spend the money. Also if the activity is not delivered the funder can stop paying further sums. But these can only be determined by the conditions laid out by the funder and a grant does not give rise to a legal relationship between the two parties.

Although there are no specific legal obligations for grants other than the terms and conditions of the funder there is best practice that is recommended.

In 1999 the Compact was agreed. This is an agreement between government and the third sector that stated the best practice for organisations to work with each other. It laid down standards that third sector organisations should meet, including transparency, professionalism and successful delivery. It also outlined how public sector and government should treat third sector organisations including consulting with them, paying on time, and treating them fairly. These were **not required by law** to be followed but it is recommended to achieve good relationships and it is recommended you point this out to your funders. You can find out more information at <http://www.thecompact.org.uk/>

Grants offer the opportunity to undertake activity that cannot generate income in itself to cover its costs. It is very useful for supporting research and development, piloting new activities or working with new client groups. They can also cover core costs of an organisation giving it the opportunity to develop further projects and services on top.

There are some problems that can occur with grant funding and so a few issues to remember.

- Grant funding tends to be short-term. If activity is to continue after funding ends, activity funded through grants needs to have a plan for how it will be funded longer-term (also known as an 'exit strategy')
- Often grant funding is given after actual activity, i.e. at the end of each quarter. This makes it very difficult to get projects started as many BAME third sector organisations do not have the funds to start the activity initially.
- Many funders have specific priorities for types of activity they want to fund – and this doesn't always correspond with what you want to do!
- Grant funding is often oversubscribed. The total amount of grant funding received by the voluntary and community sector has fallen in recent years and is likely to fall further as a consequence of the 2008/09 recession. There are also more organisations and groups looking for funding which means greater competition.
- Funders may have terms and conditions that require you to manage your organisation in a particular way. For example, you may need to introduce additional financial procedures and systems.
- Grants are good sources for funding at the start of an organisation, but are not commonly used for long term funding, and subsequently are not a source of sustainable income. For that requires organisations to deliver services over the long term, which is usually done through contracts.

## What are contracts?

Contracts are essentially a legally binding promise between two parties, usually for the supply of goods or services in return for a '*consideration*'. The '*consideration*' is usually money. In terms of the third sector it applies to the arrangement where the third sector organisation will provide a service, usually to a public authority, for an agreed price. It is significant because the relationship between the two parties is defined by contractual law as opposed to the particular terms and conditions of the funder. A contract gives rise to a legal relationship between the two parties.

Practically, a contract is delivered when the specifications of delivery are met. This means that the contract contains a description of the completed service, known as a specification. This is one side of the agreed promise. Once this specification is met, the full *consideration* or payment, the other side of the promise needs to be met. All parties need to fulfil their side of the promise to fulfil the contract. If either party does not fulfil their side, there has been a contravention of the legal relationship, for which there can be serious ramifications. In reality this could mean compensation being paid, which could be more than the value of the contract

The benefit of a contract is that the party paying the money only has a right to determine the specification of the completed service and agree a price. There is no right to know how money is spent and if a contractor can meet the specification cheaper they can keep the excess. Contracts are also legally binding to both parties so the funder is equally responsible to treat the third sector organisation correctly and do what they say they will. Issues to consider are<sup>1</sup>:

- Length: due to the investment needed and the impact they have, contracts tend to be longer than some grants.
- Legally binding for both parties, meaning that there is a legal obligation on the funder as well as the provider of services. This also means that an organisation needs a very good reason not to deliver the service.
- Negotiation: some contracts are negotiable, which means organisations should feel confident about challenging unfavourable terms and conditions
- Transparency: as per European Union regulations, contracts should be paid promptly and be awarded transparently.
- Involvement: contracts enable organisations to improve the design and delivery of services to beneficiaries
- Partnership: there are a growing number of chances to collaborate and work with other organisations to deliver contracts

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<sup>1</sup> <http://www.fundingcentral.org.uk/Page.aspx?SP=6090>

## Differences between a grant and a contract

Grant	Contract
A grant is a gift, usually with conditions attached	A contract is an agreement between two parties
A grant is not legally binding, (but Compact is recommended for governing them)	A contract is a legally binding relationship between two parties
If you fail to meet the conditions of a grant only the amount of the grant needs to be repaid	Failure to meet the contract can result in a claim for damages worth more than the contract
Usually you have to outline how a grant will be spent on the project	You don't have to outline how you will spend the money to achieve the specification
If you don't spend all of the grant you have to return what's left over	If you don't spend all of the money on delivering the service you can keep what's left over.
The price of the grant is based on delivering the project	The price of the contract is based on what is outlined in the tender or what can be negotiated.
Usually grants are for one off time limited projects	Contracts can be for ongoing continuous services

## Things to consider when receiving a grant or signing a contract

- Is what you want to deliver a one-off or an ongoing service?
- Have you, or anybody else tried this delivering service before? Is this a pilot project?
- Is anyone already delivering this or a service like this
- Is anyone interested in buying this service? Are any public authorities thinking of delivering this service
- Are you sure you can deliver this service?
- How much risk can you take? Can you afford to pay compensation if things go wrong?
- How much control do you want over the service? How much control do you want over how you spend the money?

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