mango

Helping NGOs do more with their money

# How the increasing use by DFID of Contracts and Payment by Results may affect INGOs

*This paper was originally written in June 2014 and has been updated in June 2015*

## Summary

There are significant opportunities for INGOs to achieve key organisational objectives and increase their scale, reach and influence through accessing DFID contracts, including payment by results (PBR) contracts.

However, both DFID and INGOs would need to address a series of strategic, operational and organisational challenges to make effective use of these opportunities. Both DFID and INGOs should also work together more collaboratively to address possible dis-benefits and unintended consequences of extending the use of contracts and PBR mechanisms as a way of funding civil society organisations.

The most critical challenges are summarised below:

1. DFID has committed itself to greater use of PBR in "Sharpening incentives to perform: DFID's Strategy for Payment by Results", which was published in June 2014. The Conservative Manifesto for the 2015 election committed the new government to increasing use of PBR, including through DFID. DFID has been honest in admitting that "evidence about how Payment by Results can be most effective is still at an early stage." However, DFID is advocating a 'learning by doing' approach to this and appears to be planning to make PBR their default approach.

2. The UK voluntary sector's experience of the introduction of PBR has not been positive. The intended benefits of encouraging innovation have not been achieved and there are risks that the most marginalised are priced out of service provision. There also appear to be unintended consequences such as the polarisation and reduced financial resilience of the voluntary sector.

3. The difficulties and additional costs of measuring results and transferring risk from government to suppliers may reduce, rather than improve, value for money.

4. INGOs will need to develop more coherent policy positions on Results Based Aid and Results Based Financing.  Some INGOs may have sceptical or even antagonistic views on how these funding mechanisms relate to New Public Management and the implications for the relative roles of the state, the private sector and civil society.

5. There are significant practical considerations that mean INGOs should be cautious in how they approach contracts, especially PBR contracts, including:

   5.1 Legal considerations which might affect INGOs' ability to raise sufficient funds to underwrite the significant cash-flow requirements and risks of contracting.

   5.2 Competitive analysis and a need to ensure INGOs are clear enough about their value added and ways to consolidate and protect their knowledge and intellectual property.

   5.3 The ability of INGOs and/or DFID to design PBR triggers that will help both parties manage costs and risks effectively to ensure value for money is achieved through the PBR mechanism.

   5.4 A shift to working with donors as 'clients' requires changes to organisational culture, transparency and accountability which may have some negative impacts.

## 1. Introduction – the future of PBR within DFID is unclear

Payment by results (PBR) is a form of financing which makes payments contingent on the results being achieved. Within international aid and development financing, PBR can broadly be categorised as Results Based Aid (RBA) or Results Based Financing (RBF):

- RBA is where the aid relationship is between a donor and a partner government.
- RBF is where the donor contracts a service provider (which could be a private sector organisation or an NGO) or where the donor is offering some form of incentive to the ultimate beneficiary of the service.

Existing examples of PBR include:

- The Global Partnership on Output-Based Aid and Results-Based Financing for Health.
- The World Bank's Program-for-Results, a new results-based lending instrument.
- The EU is exploring results-based approaches for the aid component of the multi-annual financial framework from 2014.
- USAID is rolling PBR out across the world in health and family planning programming.

### DFID and PBR

The UK government started to adopt PBR in the National Health Service during the last Labour government. The 2010 Conservative manifesto promoted six areas where PBR would be introduced across public services, including International Development. The UK Department for International Development is piloting Cash on Delivery Aid (a form of results-based aid) and results-based financing programmes in a number of countries.

Since 2013, DFID has started funding a number of NGOs through mechanisms which include RBA and PBR. PBR forms part of the payment mechanism in the Girls Education Challenge, which are accountable grants being managed by a fund manager, PwC, on behalf of DFID. PBR was also part of the funding mechanism in the WASH tender which took place in December 2013.

When DFID's new PBR strategy "Sharpening incentives to perform: DFID's Strategy for Payment by Results" was published in June 2014, the language appeared to suggest PBR would become the default approach. However, since then there have been reversals of decisions to use PBR in some significant procurement processes, eg within BRACED. Key stakeholders within DFID have voiced their scepticism and concern about the general applicability of PBR, e.g. Stefan Dercon DFID's Chief Economist writing the *12 Principles for PBR in International Development* with Paul Clist in late 2014. At the Key Supplier Conference in 2014, Mark Lowcock, DFID's Permanent Secretary, responded to a question from Mango about PBR indicating that PBR was seen more as a means of contracting (governments and suppliers), rather than grant-making to NGOs. However, this begs the question whether NGOs are going to able to compete on an equal basis with suppliers for contracts, given the different legal considerations and organisational capabilities which affect NGOs compared to private contractors, especially large private companies.

Mango and Bond have been seeking further clarity and are engaged in ongoing dialogue with DFID on contracting and PBR, but there remains a lack of clarity about how far and how fast DFID will seek to introduce PBR.

### INGOs and PBR

INGOs may want to have a policy position on PBR as a whole and on these two forms of PBR: RBA and RBF. INGOs will probably only be able to access funding via RBF.

This paper briefly considers some of the issue INGOs will need to consider in reaching a policy position on PBR. The primary aim and scope of the paper is to explore the practical implications to INGOs of accessing PBR funding via RBF.

## 2. Key policy considerations for INGOs in relation to PBR

PBR is seen by most sceptical commentators as part of 'New Public Management'. New Public Management denotes broadly the government policies, since the 1980s, which have aimed to 'modernise' the public sector. The argument of new public management is that market-oriented management of the public sector will lead to greater cost-efficiency for governments, without having negative side-effects.

### Results Based Aid (RBA)

Many NGOs and the Big Push Forward group would probably wish to oppose the introduction of PBR and RBA into developing countries at a policy level. Manning has argued that the impact of New Public Management has been overstated, especially in relation to developing countries.

## Results Based Financing (RBF)

It may be possible to reach a policy position which is sceptical about RBA but would consider RBF on a more pragmatic basis. Many INGOs already pay some of their own suppliers on a result-based basis.

However, intellectual honesty would require INGOs to look at the evidence of whether RBF of the voluntary sector has any negative side-effects or unintended consequences.

## RBF and PBR in the UK

NVCO published [Payment by results and the voluntary sector] on 24 April 2014, in which they flagged three key concerns:

1. The risks and cash-flow implications of PBR disadvantage NGOs and will be likely to lead to more polarisation within the NGOs sector between large and small NGOs, with only large NGOs able to access funding via PBR.
2. There is no evidence yet that PBR is leading to more innovation, (despite this being claimed as one of PBR's principal benefits).
3. There are concerns that PBR may reduce the ability of NGOs to tailor services to the needs of individuals, especially the most marginalised.

The NCVO report echoed concerns raised in the [Beyond Big Contracts] report published by Collaborate at South Bank University on 23 January 2014 with support from the Institute of Government. While these two reports looked mainly at the use of PBR in commissioning NGOs for services to be provided in the UK, Mango's experience points to similar concerns about the introduction of PBR funding for INGOs.

## RBF and PBR for INGOs

Based on Mango's interviews of those involved in PBR in aid and development, we would flag three further concerns to those raised by NCVO:

1. The highly contextual nature of international aid and development does not fit easily into PBR models which seek to compare outcomes by analysing cost per beneficiary across countries or to standardise programme design and approaches.
2. The higher levels of risk in many environments, especially fragile states, will be extremely difficult for donors to cost-effectively pass on to for-profit service providers. In the UK, for-profit service providers often

manage risk at a portfolio level, by pricing in risk and making profits on some contracts to balance losses on others. If the supply-chain charges a significant premium for risk (because the environment is high risk due to contextual factors outside the control of DFID or its suppliers) it would appear to be more cost effective for DFID to keep the risk within its own portfolio, rather than pay a premium on every contract with the supply chain.

3. The use of PBR in accountable grants needs to ensure that INGOs do not take on excessive risks which will have to be funded from their reserves and unrestricted funds. It will be harder for INGOs to manage these risks at a portfolio level as DFID has been reluctant to provide financial incentives for over-performance.

4. It would appear that some contract tender processes are attracting only INGOs, and no for-profit bidders. If this happens, does it imply that the targets in the tender are unachievable or the risks are too high? It would be likely to be better value for money if such work is better funded through an accountable grant, with risk shared between DFID and the grantee.

5. In environments where it is difficult to measure results or where outcomes are intrinsically hard to measure, this increases costs and undermines the value for money offered by PBR. DFID is also increasing costs for INGO providers by still demanding high levels of financial accountability, whereas PBR has traditionally been accompanied by reduced requirements for financial reporting.

Finally, there appears to be a theoretical disconnect about seeking to introduce PBR into the NGO or social purpose sector. DFID commissioned and published a report entitled Review of Major Results Based Aid (RBA) and Results Based Financing (RBF) in March 2010. This highlighted the Principal-Agent problem which PBR as a commissioning mechanism was partly designed to address.

The Principal-Agent problem occurs where the Agent can use incomplete or different access to information in order to pursue a purpose which was not intended by the Principal. PBR was intended to ensure better aligning of the principal's and agent's incentives, and therefore to encourage them to also align around purpose. However, it is unclear whether using such a financial incentive would have a similar impact on an NGO as a private sector organisation. Financial incentives may not produce 'additional' alignment of purpose in NGOs, who are already used to the concept of funding being restricted for particular purposes.

There is evidence that introducing financial incentives to individuals who have previously been motivated by an ethical or social purpose can undermine that motivation rather than increase it. For example, evidence that paying for blood donations reduces the availability of blood donors.

## 3. Practical Considerations for INGOs seeking RBF and PBR

### 4.1 Legal and Contractual considerations

RBF and PBR have been applied to Accountable Grants (eg DFID's Girls Education Challenge Fund) as well as commercial contracts (eg DFID WASH tender). In practice the distinction between these two forms of contract with DFID are becoming blurred. Careful consideration and negotiation of every donor contract is essential.

The following table outlines a suggested list of key issues which INGOs need to consider. INGOs must take key policy decisions to develop institutional, programme funding and contract policy. This includes choosing priorities for funding types to pursue and key roles to take, as well as being clear about "non-negotiable" areas or red lines. INGOs should reflect PBR in risk assessment guidance and templates, used to decide whether to bid or not to bid for contracts.

However, it should be stressed that where risks are high, which will usually be the case where there are significant PBR requirements; INGOs should consider seeking professional legal advice on such contracts. Mango is not a provider of legal advice. The notes should therefore be taken as indicative and not considered as legal advice on which INGOs can in any way rely.

| Issue | Key considerations | Possible Approaches |
| --- | --- | --- |
| Pre-financing | PBR and other contracts (whether accountable grants or commercial contracts) will usually require the service provider to pre-finance the cost of inputs to achieve the results. | 1. Negotiate the breaking of PBR payments into a mix of:<br>- milestones (usually related to inputs or process indicators)<br>- output-related payments and<br>- outcome-related payments.<br>Seek to recover as much of the input costs as early as possible and in relation to payment triggers which are lower risk and over which INGOs have more control.<br>2. Ensure cash flow projections are prepared which reflect possible scenarios on PBR targets not being met. Cash-flow requirements need to be assessed on an individual project level and at portfolio level to ensure the INGO's overall financial sustainability.<br>3. INGOs should consider if they would borrow funds to provide pre-financing. INGOs should seek to negotiate the recovery of interest on pre-financing of funds for donors. |
| Highly specified PBR contracts | One argument advanced for PBR is that it enables innovation, allows the provider to develop their own approach and alter it during implementation, providing it still achieves the results. However, experience of DFID's PBR contracting suggests it continues to be highly prescriptive in how services are specified.<br>In commercial contracts DFID also tends to be very prescriptive to the consultant in how the contract is implemented and may introduce variations and revisions of scope at will. | 4. INGOs should negotiate hard about the level of specificity within contracts.<br>5. INGOs should also seek to limit the power of funders to make variations or change scope and should not agree to do so without also seeking compensating adjustments to expectations, payment profiles or budgets.<br>6. INGOs should take the opportunity to revise log-frames and targets during a) contract negotiation; b) inception, c) annual reviews so as to better reflect reality and reduce risk. |

| Issue | Key considerations | Possible Approaches |
|---|---|---|
| Role of commissioner in appointing staff | Contracting tender processes normally require the bidder to submit CVS of at least the senior team. Some donors also seek to have oversight of any replacements and even to get involved in recruitment processes, | 7. INGOs should resist clauses and which give donors too much oversight and control over staffing decisions. |
| Sub-contracting | There is no requirement that a prime contract pass on the obligations in its prime contract to the sub-contractor.<br>Some contracts require any sub-contractor to have been declared during the bidding process or have a significant authorisation process around introducing sub-contractors later. | 8. INGOs should resist accepting PBR or other onerous contracting requirements from prime contractors.<br>9. INGOs should note carefully and requirements around sub-contracting and ensure these are complied with or negotiate to vary these terms. |
| Default and breach of contract | The contract should clearly distinguish different forms of breach and the rights both parties have. | 10. INGOs should not accept clauses which enable a donor to hold the provider in breach of contract for a minimal infringement as that would create significant losses in the context of pre-financed PBR.<br>11. INGOs should carefully negotiate the rights of the donor to monitor and implications of changes requested by the donor as a result of annual reviews or evaluations. Negotiating changes takes time.<br>In a PBR or pre-finance context, delays can leave INGOs paying for running costs with ultimately less likelihood of achieving targets and payment. |

| Issue | Key considerations | Possible Approaches |
|---|---|---|
| Termination and force majeure clauses | Some contracts leave too much of the decision-making around termination at the donor's discretion | 12. INGOs should ensure they have the ability to terminate contracts, especially if there is a PBR element. Where possible, INGOs should seek to have the right to vary PBR schedules and payment profiles for circumstances outside their control. |
| Indemnities, guarantees and liability clauses | Most commercial contractors require providers to take out professional indemnity insurance.<br>Many donor contracts seek to have very wide-ranging indemnity and liability clauses making the provider liable for everything, even if they have not been negligent. | 13. INGOs should investigate their ability to secure and when needed increase their professional indemnity ("PI") insurance. It can be possible to negotiate levels of PI cover to be only related to the professional fees, ie not expenses (including procurement of expensive inputs), or grants (in a fund management context.)<br>Could combined purchasing of PI cover by a group of INGOs prove cost-effective?<br>14. INGOs should seek legal advice on contracts which have very wide indemnity, guarantee or liability clauses. In some case it may not be possible to negotiate changes in donors' standard conditions but letters of comfort can be secured to clarify what would be considered negligent or reasonable efforts to prevent fraud. |

| Issue | Key considerations | Possible Approaches |
|---|---|---|
| Specifying and designing PBR targets | Selection and design of targets is critical. There is a danger that while being measurable, some targets don't add value (eg quarterly meetings). | 15. The aim is to set the right targets from a project design perspective and ensure they are practical to implement from a PBR and contractual perspective.<br>The project design perspective needs to consider the Theory of Change, programme design and the possible contingencies and alternative pathways the programme might take.<br>The contractual perspective needs to ensure the targets are cost-effective to measure and be independently verified on a timely basis so as to secure payment.<br>The PBR perspective involves also looking at risk and cash-flow trying to ensure the targets do not place excessive demands on the INGO. |
| Inflation and exchange risk | Donors will be seeking to pass these risks on in commercial contract. | 16. The premium put on risk during the bidding process is a key aspect of contract pricing. If it is possible to negotiate risk sharing with the donor around risks outside INGO's control this would be preferable and likely to achieve better value for money for both the donor and the INGO.<br>Failing that INGOs will need to price in risk and also consider managing risk where possible, eg by purchasing currency forward. |

## 4.2 Working in Consortia and Different roles that INGOs might play

Consortia forming and working is a characteristic of the majority of contracts. This reflects the larger scale of the contracts and the aim of commissioners to see specific technical areas of specialist expertise combined with other strengths. The prime contractor needs to have the financial and risk management infrastructure to deal with the contractual considerations described in 5.1.

INGOs could play a number of roles in different possible bids and contracts. The following table explores these and suggest some possible approaches and issues that INGOs should consider in playing these roles.

INGOs should consider lobbying DFID to introduce a code of conduct for prime contractors, as has been introduced by some commissioners in the UK context. This should prohibit primes from passing on more onerous conditions than their contract with DFID and indicate a preference for non-exclusivity.

| Role in Consortia | Key Issues each INGO would need to address | Possible Approaches for INGOs |
|---|---|---|
| Prime Contractor | 1. Ensure it has the financial resources required to pre-finance the entire contract (although it may be able to negotiate that some of its sub-contractors are paid in arrears.)<br>2. Have a process of gathering intelligence, carrying out due diligence and rapidly selecting and confirming teaming agreements with relevant consortium members which might include private sector organisations, especially in areas of specialist technical skills.<br>3. Have confidence and robust arrangements with other delivery partners.<br>4. Each INGO will need to consider whether it demands exclusivity and how it wishes to deal with confidentiality. | 1. Set risk and financial criteria and limits. Develop a risk assessment and sign-off process. Bid/no bid decisions need to be made swiftly, but will require proportionate levels of management and potentially trustee oversight, (including possibly legal advice), according to the financial scale and other risks.<br>2. Develop a client relationship management process and system for gathering intelligence on potential consortium partners. Develop due diligence processes and a standard teaming agreement.<br>3. Carry out due diligence and capacity building with potential delivery partners to ensure it has 'bid-ready' partners which it is confident to include in bids and could supply the data and evidence that would be needed to support a bid process.<br>4. It would appear to be good 'NGO practice' not to demand exclusivity. Private sector partners will be likely to demand confidentiality, but could be required to disclose full financial information to the INGO acting as prime. NGO partners may be willing to have more mutual sharing of information. |

| Role in Consortia | Key Issues each INGO would need to address | Possible Approaches for INGOs |
|---|---|---|
| Sub-contractor to a private sector prime | 5. INGOs may have ethical considerations about sub-contracting to some potential private sector primes.<br>6. INGOs may need to accept risks and terms of payment from the prime without full information about the prime's competencies, plans, costs, profit levels and the relative burden of risk.<br>7. The prime may seek to impose onerous contract requirements either by flowing-down the contract with the donor or by introducing additional clauses and requirements. There is no requirement in law for INGOs to accept a flow-down of the contract, or to accept similar risks, pre-financing or PBR.<br>8. Sub-contracting to respected private sector primes may provide opportunities for INGOs to learn and develop a track record in contracting.<br>9. If an INGO intends to prime in the future and compete with private sector primes, this requires consideration of how to handle this within the relationship. There may also be a need to consider how much commercially valuable or sensitive information, INGOs should share. | 5. INGOs should develop an ethical policy around contracting partners and maintain a list and cultivate relationships with potential primes that meet that policy. The primes with DFID framework agreements are and obvious list of potential primes.<br>6. INGOs will need to strengthen their capacity to analyse the possible financial and legal scenarios and risks and the impact this could have on their reputation and finances. INGOs may need to strengthen its capacity to negotiate effectively to ensure it obtains the maximum possible information, input into programme design and a fair share of risk and reward.<br>7. INGOs need to be able to access the legal expertise needed to negotiate contracts with primes (which are likely to be more negotiable than those between the prime and the donor).<br>8. INGOs should gather intelligence on potential respected primes and be clear about its objectives in acting as sub-contractor.<br>9. INGOs should consider how it protects its intellectual property and commercially valuable information. |

| Role in Consortia | Key Issues each INGO would need to address | Possible Approaches for INGOs |
| --- | --- | --- |
| Sub-contractor to an INGO sector prime | The above considerations for private sector primes may also apply to NGO sector primes, as well as the following:<br>10. In some senses, the more alike one INGO is to another INGO the more the competitive issues come to the fore. How would do the role and specific competencies of each INGO complement each others to enhance both INGOs' reputation and track record?<br>11. Sub-contracting by less experienced INGOs to respected INGO sector primes may allow a more open partnership based relationship which will enable fairer sharing of risk and reward as well as better provide opportunities for the less experienced INGO to learn and develop a track record in contracting. | 10. &11. INGOs should develop a policy and around contracting with NGO partners and maintain a list and cultivate relationships with potential primes that meet that policy. |
| Fund manager | 12. INGOs will need to have processes in place to assess new potential grantees that it has not worked with before quickly and cost effectively and to contract and monitor their performance and reporting effectively.<br>13. INGOs will be unlikely to be able to pass down pre-financing requirements and PBR to NGOs which cannot finance this. This will therefore require a larger pre-financing and risk appetite for INGOs wishing to be fund managers.<br>14. INGOS acting as fund managers will need due diligence processes as well as procedures and approaches which assess and mitigate the risks of fraud and corruption within organisations they fund. | 12. Develop processes and tools for grantee assessment, due diligence and performance monitoring.<br>13. As per 1. above, set risk and financial criteria and limits.<br>14. Review and if necessary strengthen due diligence and assurance processes designed to mitigate risk of fraud and corruption. |

| Role in Consortia | Key Issues each INGO would need to address | Possible Approaches for INGOs |
|---|---|---|
| Technical adviser | 15. INGOs will need access to staff and consultants with credible track records that can be put forward and deployed rapidly.<br><br>16. Organisational processes and tools are required through which knowledge around technical advice is captured and quality assured so that value added extends beyond individuals' expertise to the organisational level. | 15. Develop a staff and consultants skills database.<br><br>16. Ensure organisational knowledge management and quality assurance processes are documented and disseminated. (NB Consider protection of intellectual property around such processes.) |

## 4.3 PBR Models and the designing of payment triggers

It is too early within DFID's exploration of PBR to describe any established practice let alone good practice in models of PBR and the design of payment triggers.

NCVO has described emerging models of PBR being used in the UK, see box on following page.

### The proportion of the contract amount that should be covered by PBR

NCVO suggested that the most common proportion of contracts subject to PBR was 20%. According to CIPFA's expert on PBR, John Maddocks, who Mango interviewed, good practice suggested that the proportion of PBR should be 5-15%. He suggested the proportion of PBR above 20% increases the risk significantly, which is likely to lead to providers pricing in this risk and poor value for money for the commissioner.

A relatively modest proportion of PBR appears to be in line with DFID's expectations about levels of PBR within the Girls Education Challenge Fund. It remains unclear what expectations DFID had about the proportion of PBR it was expecting in the WASH tender in December 2013, but it appears some INGOs may have interpreted this as 100% PBR.

### Designing payment triggers

Based on Mango's research, interviews and prior experience of Mango staff we offer the following observations on the design of payment triggers:

- Choose the measures which best fit the Theory of Change and programme design, provided they can be measured cost-effectively by both you and the independent verifier of results.
- Seek a balance between: milestones-based payments (usually related to key inputs); output-based payments triggers and outcome-based payment triggers.
- There will always be a trade-off between how much risk you are willing to take, which involves including greater proportion of payments related to outcome-triggers which may be outside your complete control, with the perceived value this will have to the commissioner.
- The payments attached to payment triggers must be broadly commensurate in both cost and timing with the activity-based costing of producing those inputs/outputs or outcomes. However, it is advantageous to price in indirect costs to those payment triggers

which are earlier in the project and relatively lower risk so as to maximise cost recovery.

- It is possible to request monthly invoicing, which may help cash-flow. However, the costs and staff time involved in carrying out monitoring and evaluation, reporting and invoicing at monthly intervals should also be considered.

- Where payment is tied to the achievement of quantitative targets, eg numbers of beneficiaries provided with key outputs, it is advantageous in managing risks to aggregate similar targets in different locations where possible so as to enable over-achievement to balance under-achievement. It is also helps manage risk to request a frequency payment model (ie price per beneficiary reached as and when that target is achieved) rather than a binary payment model (Payment only being due when an agreed absolute target of beneficiaries is reached, which risks the target being missed altogether.)

- It appears to have been normal practice in DFID commercial contracts to price both indirect costs and a risk premium into the professional fee rates (usually calculated at £ per day). Private sector providers would also include their profit within the fee rate. Until recently there was no suggestion that DFID required a breakdown of the fee rate into its constituent components. The DFID WASH bid appeared to ask for indirect costs and 'profit' to be stated as a separate single line and therefore not included as part of fee rates. It is unclear if this is being complied with by bidders.

## Models of PBR - Extract from NCVO website

### Binary and frequency models

*Binary payment models*

Payment is achieved only on absolute completion of the target, with no gradation. It is a ‘yes/no’ against the measure of success. So partial achievement or reduction in occurrence levels doesn’t count to any payment. The ‘binary hurdle’ occurs where, for example, once you hit the agreed level of performance (ie 10% rise on last year) you then get paid.

*Frequency payment models*

Payments are made for percentages of target population who achieve outcomes. This is a stepped model, which is often capped – the more results you get, the more you are paid.

### Different proportions of financing set at risk

*Highly varied PBR proportions*

From PBR accounting for nearly 100% of contracts, to PBR starting at only 10%. The most common proportion from commissioners we spoke to was 20% PBR.

*Stepped PBR proportions over time*

The PBR proportion grew by 10% each year before being capped.

*Clawback*

Upfront funding, with poor performance causing discounts at the end of the programme. Views on this model are mixed, with some commissioners suspecting the upfront payment doesn’t drive enough incentive for providers to closely observe and manage their performance.

### Providers stipulating proportion at risk

In at least one procurement, providers decided what proportion of the fund was subject to PBR when they made their bids. This accounted for 25% of the possible score of the bid. Another 25% was on price and the remaining 50% on quality.

In this case, the variation of money bidders put at risk was between £45,000 and £180,000. The successful bidder put in the highest cost but also the highest proportion at risk.

## 4. Common problems that INGOs are finding with contract implementation and compliance

The key problems Mango has become aware of in contract implementation and compliance are listed below. These are generalisations and may or may not become key issues for an individual INGO.

| **Issue** | **Possible explanations** |
|---|---|
| *Timely identification and recruitment of key personnel to lead bids and then subsequently programmes.* | NGO recruitment processes tend not to be well suited to rapid recruitment and negotiating terms on an individual basis with specialist experienced staff or consultants.<br><br>Expectations of individuals used to being contracted by private sector contractors may not fit with established salary scales, benefits packages and expectations about pace and hours of work and contract duration. |
| *The rapid pace of inception and then subsequently programme implementation* | NGOs can struggle to adapt existing working practices to a long hours and faster pace of producing written outputs and results demanded in a contract environment.<br><br>Induction, training and team-management processes are given high priority by many NGOs in order to maintain the organisational culture and values.<br><br>However, contract teams can struggle to find time to engage with the wider organisation due to their focus on achieving deadlines and results. |
| *Shift from a donor relationship to a client relationship* | NGO staff with experience of grants may struggle to shift into the more active client relationship that contracts bring. The client will want more information and a role in programme design and management that would not be expected in grants.<br><br>Expectations and relationship management of the client is a key skill which NGO programme managers need to achieve success in the eyes of the client. |

| **Issue** | **Possible explanations** |
|---|---|
| *Compliance may be lighter although DFID appears to want the best (or worst) of all worlds.* | In theory compliance and detailed financial reporting should be lighter for contracts, especially PBR, as the focus is meant to be more on results reporting and verification.<br><br>However, pressures on DFID around transparency and accountability suggest that they may have higher expectations around reporting and verification of results alongside higher expectations on detailed financial reporting and other aspects of compliance.<br><br>If NGOs have not allowed sufficient investment in staff, systems and training to cope with this double-reporting load they may either struggle to meet DFID's expectations or lose money. |
| *Insufficient use made of opportunities to renegotiate programme design, scope, and targets.* | Programme managers may be used to ongoing expectations management and informal ways to renegotiate targets with donors in accountable grants. Renegotiation is a more formal contractual process in contracts with defined contractual windows: contract negotiation; inception; changes in budget/scope; annual reviews.<br><br>DFID staff with a more commercial focus may be seeking to negotiate higher targets, lower costs and the transfer of more risk to contractors at each available opportunity. NGO staff may not be negotiating hard enough to resist this or obtain more achievable, lower risk contracts. |
| *Inadequate forecasting of income and expenditure* | Donors place a high value on achieving both results and budgets against the timescales achieved. A lack of integration between programme and finance staff in NGOs can undermine their ability to ensure accurate forecasting. |
| *Separation of contracts teams and 'projects' from mainstream organisational culture and strategy* | The above issues seem to give contract teams a distinct culture and it appears that many NGOs struggle to recruit staff from within to manage contracts. The speed with which bidding opportunities appear and their large scale compared to existing country programmes can appear to either hijack or bypass longer-term strategies and plans. This may create resentment or hidden costs because NGOs have typically invested time and money in |

| Issue | Possible explanations |
|---|---|
| | developing these long-term plans, not just of their own staff but of other key stakeholders.<br><br>Contracts should offer potential synergy as well as increased scale for objectives within organisational strategy as well as greater ability to influence key stakeholders, especially government.  However, if contract teams are separated and leave rapidly at the end of the contract – some of the knowledge gained and relationships developed are lost. |