

The Tendering for Care Glossary of Terms for Public Procurement Updated March 2012

2004/18/EC – the updated EU Procurement Directive. This is a consolidated Directive which sets out the Europe-wide rules for public procurement in the three areas of works, supplies and services. The Directive came into force on 31st January 2006. (see EU Directive).

Any Qualified Provider (AQP) – the system which is based on the Restricted tendering process which is used by the NHS to establish framework agreements.

Appraisal – the system by which tenders are assessed and scored.

Award Stage – the second stage of the tendering process. This may be incorporated into the first stage to make a single tendering procedure. Sometimes a shortlist is formed during the selection stage during which tenderers are selected for entry either to a short list or a select list. In these cases the award stage forms a separate phase of the tendering process.

Back Office Costs – the cost of the activities necessary to run the business, sometimes referred to as "indirect costs". It is current Government thinking that substantial savings can be made in the prices paid for the delivery of services by reducing Back Office Costs.

Best Value – a framework introduced in 1999, based on a set of indicators defined by statute to help local authorities plan, measure, manage and improve their performance. Although still in force it has largely been replaced by the Comprehensive Performance Assessment (CPA).

Bid – usually used in connection with grant funding. The funder sets out the problems which the grants are intended to address Bids from applicants offer a variety of ways of solving the problems and at various costs. Successful bids result in the award of a grant. Unspent funds may be "clawed back" by the funder.

Business Continuity Management Programme – a programme of Business Continuity Management set out in BS25999. The Standard provides a programme based on Business Continuity Management good practice. A Business Continuity Management programme which is aligned to or compliant with the Standard is becoming a standard requirement in tendering for Health and Social Care tenders.

Business Continuity Policy – a policy and its accompanying procedure which is approved by the Board and drives a company or organisation's Business Continuity Management Programme and is now essential for successful public sector tendering.

Call off – the second phase of procurement in a Framework. This selection procedure may be direct – for example by request for quotations or by mini competition amongst those companies which have been admitted into the Framework.



Case Law for procurement – A set of nine of the most important procurement related judgements in the European and UK courts which have interpreted aspects of the Directives. The judgements are listed using the commonly used reference names.

i) *Telaustria* – Even where contracts fall outside the scope of the procurement Directives purchasers of public services must ensure there is a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures used to be reviewed. This includes tenders for part B services (please see entry below). *Case C-324/98 Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria AG (formerly Post & Telekom Austria AG)*

ii) *Lianakis* – it is not sufficient for a purchaser to provide just the “high level” contract award criteria (i.e. 60:40 or 70:30). Nor is it sufficient to list the criteria and sub-criteria “in no particular order”. All sub-criteria, and weightings must be made available so that tenderers can take these into account when preparing their tenders. The grounds of the judgement were that the deciding of the evaluation methodology after the bids had been received breached the fundamental duty of transparency. A further point emerging from the Lianakis judgement is that “experience” is not a valid award criterion, because this is a “selection” criterion that determines whether a tenderer is qualified to bid, not whether the tender is the best. Regardless many purchasers continue to use “experience” during the award phase, action which could be the subject of a challenge. *Emm G Lianakis AE and Other v Dimos Alexandroupolis and Others Case C-532/06*

iii) *Newham* – the term “**Letting International**” is sometimes used. A Judgement in the UK courts which developed the Lianakis Decision in the ECJ. This addressed the complex issue of criteria and sub-criteria in the appraisal of tenders. The Judge decided that there is no useful distinction to be made between “sub-criteria” and “criteria”: anything used to assess the “most economically advantageous tender” is a criterion. Further the judgement requires that those tendering for a public sector contract must be provided with all of the criteria and weightings are to be used in appraising the tender. This must be set out in the tender documents for all those participating in the tendering process. In the Lettings decision it was held that “the loss of a significant chance of obtaining the contract is enough to found a claim”. This firm stance taken by the courts emphasises that there is no room for carelessness on the part of contracting authorities when setting out requirements and evaluating tenders. *Letting International v London Borough of Newham [2008] EWHC 1583 (QB)*

iv) *McLaughlin and Harvey* – This case related to the scoring of “quality” in the setting up of Frameworks. The judge found that, as quality judgement is subjective, it was even more important to be transparent. In this case The application forms limited the number of characters a tenderer could use in response to each question, so tenderers had to decide which parts to emphasise. McLaughlin and Harvey argued that, had they known the relative weighting given to the sub-sub criteria, they would have structured their tender differently. The judge concluded that they could not have been predicted by the tenderers and that in identifying sub-sub criteria within each of the categories, and then giving them weighting, the department had failed to assess the tenders transparently or objectively or in accordance with the criteria set out in the original tender documents. This case shows that public purchasers must consider carefully, before providing the information to tenderers, exactly what their methods of appraisal and scoring will be and what weighting will be given to each criterion. Tenderers should ask questions if this is not clear from the tender documents. The court also decided that it had the power to set aside the framework agreement in the case of errors in the process, so that the whole process of setting it up would have to be gone through again. This was despite the fact that the relevant EC Directive at that time stated that if a contract had already been entered into, then the court has no power to order any remedy other than damages. *McLaughlin and Harvey Ltd v Department of Finance and Personnel (No 2) [2008] NIQB 91*



v) **Presstext** – this judgement sets out the conditions under which an existing contract must be the subject of a re-tender. This is very important as it provides certainty at a time when there might be uncertainty as to whether or when an existing contract might continue. This is such an important matter that we are quoting verbatim from the judgement *“In order to ensure transparency of procedures and equal treatment of tenderers, amendments to provisions of a public contract during the currency of the contract constitute a new award of a contract ... when they are materially different in character from the original contract and, therefore, are such as to demonstrate the intention of the parties to renegotiate the essential terms of that contract.”*

The Court added that for this purpose an amendment to a public contract may be regarded as ‘material’ when:

- *it introduces conditions which, had they been part of the initial award procedure, would have allowed for the admission of tenderers other than those initially admitted, or would have allowed for the acceptance of a tender other than the one initially accepted*
- *it extends the scope of the contract considerably to encompass services not initially covered*
- *it changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the terms of the initial contract.*

Case C-454/06 presstext Nachrichtenagentur GmbH v Republik Österreich (Bund) and Others

vi) **Federal Security Services** – The courts had found a requirement for a standstill period to arise even in the case of some Part B services contracts and below threshold contracts. Although the Directive does not provide for a standstill period in Part B contracts, and there is no automatic requirement for this, in certain cases the characteristics of the contract and the procurement process may require one. This is in order to comply with the requirements of transparency, non-discrimination and equal treatment imposed by the EC Treaty. In this judgement the High Court of Justice in Northern Ireland has narrowed further the distinction between the treatment of Part A and Part B contracts. This further erodes the differences. The court’s decision leaves it up to contracting authorities to make a judgement on Part B cases as to whether to include a standstill period or not. The suggestion is that, If a contract is worth advertising, it’s a good idea to have a standstill period. Further, if a contracting authority considers that a standstill period is required, it should normally be 10 days. *Federal Security Services Ltd v Chief Constable for the Police Service of Northern Ireland and resource group Ltd.*

vii) **Teckal** – This case gives rise to the so-called “in-house company” exemption”. This exemption allows contracts to be awarded to a company without competition provided the company is “in-house”, that is to say it shares the same governance such as, for example, a direct services organisation. The court established that two conditions are necessary for a company or other entity to fall within the Teckal exemption:

- Control – does the local authority exercise a control over the company/ entity which is similar to that which it exercises over its own departments?; and
- Essential part – does the company/entity carry out the essential part of its activities with the local authority which controls it?

If a service is delivered by an entity or company which does not comply with both of these conditions then Teckal says that the service is not “in-house” and therefore the subject of competitive procurement.

Case C-107/98 Teckal Srl v Comune di Viano, Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia. (“Teckal”)

viii) **Uniplex** – An ECJ ruling which related to an earlier ruling which stated that any challenge to a procurement process “had to be commenced ‘promptly’ and in any event



within three months of the date of the alleged infringement". This meant that the limitation period began to run even if a tenderer did not know the infringement had taken place. If a tenderer found out more than three months after the infringement occurred, then any claim

was by that stage out of time and the only option available to the tenderer was to persuade the court to exercise its discretion to extend the limitation period. The *Uniplex* judgement states that the term 'promptly' in the current legislation does not comply with European Community law in terms of offering sufficient clarity, precision and predictability. Also the date from which time should begin to run, the court has held that the law must be interpreted to mean the three-month period only starts from the date the claimant knew, or ought to have known, of the infringement of the rules.

Uniplex (UK) Limited v NHS Business Services Authority (C-406/08, 28 January 2010)

NOTE: Aspects of the *Uniplex* Decision have been incorporated into the Public Contract Regulations by the Public Procurement (Miscellaneous Amendments) Regulations 2011. This sets a limit for challenging of 30 days from the date the claimant knew, or ought to have known, of the infringement of the rules.

ix) Veolia – the company applied for an injunction to prevent Nottingham County Council disclosing documents. Veolia claimed that disclosure did not fall within the statutory right of inspection and copying and that information had been supplied to the Council on a confidential basis. It argued that the information might be valuable to commercial competitors and to Veolia's sub-contractors. The Court of Appeal has ruled that documents relating to the company's financial model and profit margin should not be disclosed. The judge said commercial confidential information could be considered a "possession" and therefore protection should be provided to Veolia under Article 1 of the first protocol of the European Convention on Human Rights (the entitlement to peaceful enjoyment of possessions). *R (Veolia ES Nottinghamshire Ltd) v Nottinghamshire County Council (Shlomo Downen and The Audit Commission for Local Authorities and the National Health Service for England, interested parties) [2010] WLR (D) 273*

Category Management – This is an approach which is developing in public sector purchasing. Originally a retailing concept in which the products sold by a retailer is broken down into different groups known as product categories (examples of grocery categories might be: tinned goods, detergents, salads, etc.). Each category is run as a "mini business" (business unit) in its own right, which probably equates with a "cost centre" in the public sector, each with its own budget, targets and strategies. There are no clear definitions as to the limitations to be placed on the category size or scope. Whilst tinned goods for example are one clearly delineated and understandable category, we wonder if this can be the case with regard to public services. Would children's services include drug abuse by teenagers for example? The attraction in the current competitive environment is that the introduction of Category Management in a business tends to alter the relationship between the purchaser and supplier. The relationship is expected to move to one of collaboration, with exchange of information, sharing of data and joint business working. Suppliers are expected, indeed in many cases contractually required to suggest new service introductions and developments if this can be expected to have a beneficial effect on the turnover, profit or overall benefit the total services delivered by the category and be beneficial to the service users of that category. This is all fine, but legal ramifications might limit the usefulness of the approach (Please see *Pressetext* judgement above).

CHAS – Contractors' Health and Safety Assessment Scheme (Please see Quality Standards below)



Collaborative Working – this covers a variety of methods by which companies and charities may work together to deliver public sector contracts. The importance of this approach to tendering is growing as a result of the increasing size and scope of the individual contracts being tendered i.e. services for "vulnerable people", generic services, etc.

Commissioning – the process by which local authorities decide how to spend their money to get the best possible services for local people. Involves anticipating future needs and expectations rather reacting to present demand.

Commissioning Officers – officers who hold the budget for the purchasing of local services and make the business case for the services to be purchased. Commissioning functions must be separated from those of Procurement Officers.

Competition Law – is underpinned by Articles 81 and 82 of the Treaty of Lisbon establishing the European Community. The following are prohibited as incompatible with the common market:

- all agreements between undertakings,
- decisions by associations of undertakings; and
- concerted practices which may affect trade between Member States and which have as their object or effect the **prevention, restriction or distortion of competition** within the common market.

In particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Competitive Dialogue – a new tendering procedure which can be used for complex contracts where the final specification is yet to be decided. The process uses the selection stage to identify a number of tenderers, each of whom will be invited to contribute their ideas towards the final specification. This is the "Dialogue" phase. When the specification has been decided then the Procurement Officers must declare the dialogue complete. Those tenderers identified during the selection stage are then invited to compete for the contract in the "Competitive" phase.

Confidentiality – Whilst it is important that providers comply with contractual requirements to provide statistical returns and participate in commissioning exercises, for safety it is important that all information provided for a public body is under a clear claim of "Commercial in Confidence", and never in the body of an email. This ensures that the information is not put to any public use, including any form of publication without the prior written permission of the originator. Of course, all claims of confidentiality must be justifiable.

Consortium Tendering – this is one one model of collaborative working (see above). Referenced in Regulation 28, (see Public Contracts Regulations 2006). The Regulation defines a consortium as two or more organisations tendering together. It goes on to say that purchasing authorities shall not exclude a tender solely for the reason that it has been submitted by a consortium. See <http://tenderingforcare.com/news/working-in-a-consortium-and-tfc-12-golden-rules>. When considering tendering as a consortium care should be taken to ensure that the organisations involve do not contravene Competition Law. General



Information on the risks associated with forming and tendering as a consortium can be found at <http://www.tenderingforcare.com/collusion-or-competition> TfC strongly advises that providers should obtain advice from a lawyer specialising in public procurement, before making a firm commitment to joining any kind of consortium.

Copyright – Tender documents are the property of the purchaser and may not be shown to or otherwise shared with any third party, except insofar as it is necessary for obtaining professional advice for completing the tender. This provision would include for example, providing tender documents for research or statistical purposes. It should therefore follow that material provided in a tender is the property of the tendering organisation. Whilst it is important that providers comply with contractual requirements to provide statistical returns and participate in commissioning exercises, for safety it is important that all information provided for a public body is over a clear copyright statement ©, and never in the body of an email.

Continuous Improvement Plan – a set of activities designed to bring gradual, but continual improvement to a process through constant review. The Deming cycle (often abbreviated as PDCA) is among the best known. “Plan, Do, Check, Act” has been adopted as the basic structure for the ISO22301 Business Continuity Planning specification

CPD – Common Procurement Directive. This is the European legislation which governs purchasing across the EU. Set up for Supplies and Services following the Single Market Treaty of 1986. The Directive for Services came into legislation in 1993. A new consolidated Directive was approved in March 2004, implemented into UK law on 31st January 2006. The purpose of the Directive is to open up purchasing so that there is a single market across Europe and to increase competitiveness for contracts funded by public money.

Procurement Thresholds – the value of a contract over which the Directive requires publication in the OJEU. The new thresholds came into effect on 1st January 2012 for the years 2012 and 2013 (The European fiscal year is the calendar year):

For purchasing by government bodies and generally also the NHS
supplies and services this is £113,057
works this is £4,348,350

For purchasing by other public sector bodies such as Local Authorities
supplies and services this is £173,934
works this is £4,348,350

CPV Codes – Common Procurement Vocabulary. The numerical system of identifying goods and services in the tendering process. Also used as part of the e-procurement process to identify services offered by the tendering organisation. Please see the explanatory section on the TfC website at <http://tenderingforcare.com/part-a-and-part-b-tenders-cpv-codes>

Credit Rating – The ratings allocated to companies by credit Reference Agencies. Some purchasers require tenderers to score above a stated level, some use the recommended contractual limit for guidance. For other procurement the so-called “delinquency score” with regard to the payment of invoices is important. The credit rating, however this is applied, is increasingly becoming a “pass/fail” gateway question (please see below). The monitoring of scores and reports by potential tenderers is therefore becoming crucially important.

Credit Reference Agency – there are two which are used most frequently. These are: Creditsafe UK; and Dun & Bradstreet. Also used to a lesser extent by public sector purchasers are: Eqifax and Experian.



Criteria – these are the factors which are used to assess and score the tender. Each criterion may be weighted according to the importance to the purchaser. The “high level criteria” define the relative weightings of Quality:Price when using the MEAT appraisal process. “Sub-criteria” are the criteria and weightings used to appraise the tender.

DDA – Disability Discrimination Act 1985

Due Diligence for Tendering – the assessments undertaken by the purchaser during the tendering process, designed to establish capacity and capability to enter into a contract. For more information please see <http://www.tenderingforcare.com/news/due-diligence-for-tendering>

EoI – Expression of Interest. A first stage in a tendering process. Prospective tenderers express interest in the way described in the advertisement. This results in the tender documents being sent to the prospective tenderer. The EoI may require prospective tenderers to submit a summary of the proposed activities and an indication of cost. Not as stringent or detailed as a PQQ

e - Auction – an online exercise in which suppliers compete against each other to lower the tender price. Sometimes known as a "reverse auction". Can be used by the purchaser to establish the market price.

e- Marketplace – an internet based facility that enables trade between one or more purchasing organisations and a variety of suppliers.

e-Tendering – sending requests for information and prices to suppliers and receiving the tender responses from suppliers using Internet technology. Following the Government's acceptance of the Glover Report, from the end of 2010, all contracts with a total value of more than £20,000 must be the subject of e-Tendering. This target has not been met.

Efficiency Savings – a term used in the Gershon Report of 2004 entitled "Releasing Forces for the Front Line" has led to public sector purchasers to expect tenders to show where savings of this kind will be made.

Equality and Diversity – a development of the Equal Opportunities Policy which is much broader in its application. References to some legislation are a requirement.

EU Commission – the politically independent institution that represents and upholds the interests of the European Union as a whole. It proposes legislation, policies and programmes of action and it is responsible for implementing the decisions of Parliament and the Council amongst other things for the implementation of European Treaties.

EU Directive – a European Union legal instruction or secondary European legislation which is binding on all Member States but which must be implemented through national legislation within a prescribed time-scale. The European single market is covered by a number of Directives, which must be implemented by each of the 27 Member State into their own legislative framework, and give detailed instructions on tendering procedures.

Form of Tender – the section of the tender documents in which the tenderer sets out and confirms their unconditional offer as a party to a contract to perform their part of the bargain.

Freedom of Information Act 2000 – (FOIA) useful for obtaining information regarding the



plans which a public body may have to provide services in the future, rates being paid for services and even for obtaining copies of tenders and contracts, but please see Veolia judgement above.

Framework Agreement – the first phase of the restricted tendering process by which up to 20 companies/organisations are selected to take part in a Framework. A Framework Agreement is not a contract, neither is acceptance into the Framework a guarantee that a contract will be offered in the future. It is possible for Framework Agreements to be in place for up to seven years. In the NHS groups of providers who have been identified using an selection process are included in Framework Agreements and known as Any Qualified Provider (please see AQP).

European Court of Justice – the European Court of Justice (ECJ) is based in Luxembourg. It is an institution of the European Union (EU) and should not be confused with the European Court of Human Rights. The ECJ plays a crucial part in the process of the integration of the EU Member States. Its role is to interpret the EU Treaties. These Treaties are a type of international law, but are also part of the internal common law of the Member States.

Gateway Question – a series of PQQ questions, usually scored either “Pass or Fail”. In the event of a “Fail” score for any one of this set of questions the tender is immediately excluded from the process. Some purchasers are using a self-selection approach. They are laying their gateway questions out under a heading which asks tenderers who answer “no” to any of the following not to submit a PQQ.

Government Procurement Card – a payment card issued by an authority to staff that may be used to purchase goods and/or services up to an agreed value from certain suppliers. Although similar in operation, it is not a credit card that can be used anywhere and there is no credit facility. For suppliers typically payment in full will be made direct to their bank accounts usually within three working days.

Guarantee or Performance Bond – an increasingly common type of Guarantee, usually put in place through insurance, whereby the supplier guarantees to pay the purchaser a fixed proportion (usually 10%) of the total contract value in the event that the contract fails, however, there have been examples of bonds of up to 40% of the total contract value being required. (Please see Performance Bond below).

Information sharing Agreement – together with the Confidentiality Agreement forms the first stage of any consortium development process.

ITT – "Invitation To Tender" sometimes referred to as a call to tender. This is sent to tenderers who have completed the PQQ and successfully passed the selection stage. The ITT starts the second or award stage. Usually requires the completion of a Method Statement. The ITT sets out tender requirement, content, appraisal criteria and scoring, deadline, etc. The ITT frequently requires the tenderer to identify “experience”. The Courts have decided that experience is a “selection” question and should therefore not be used in the award or ITT stage.

KPIs – Key Performance Indicators. KPIs are tools which help purchasers to measure the performance of suppliers against their contractual obligations. KPIs are normally relate to outcomes and are detailed in the service specification document. KPIs are quantifiable measurements, agreed to beforehand, that reflect the critical success factors of a contract or an organisation as a whole. They will vary from contract to contract and should be approved by the Board of governance.



Lead Contractor – the company or organisation which leads in the preparation of the tender on behalf of a consortium, regardless of the model used. The Lead Contractor accepts liability for contract delivery.

Letter of Intent – an implication of the Remedies Directive has been a general compliance with the requirement for a standstill period. As a result, public sector purchasers are tending to issue letters of Intent rather than contract award letters whilst awaiting the outcome of the standstill.

Lowest Price – One of two systems which the EU allows for tender selection. This allows for selection on the basis of price and financial appraisal only.

MEAT – Most Economically Advantageous Tender. One of two systems which are allowed for tender selection. This enables tender evaluation on the basis of the quality of the tender the offer as well as the price. The quality is scored against a set of criteria identified for each tender.

Merlin Standard – an agreed set of standards for best practice in the management of supply chains. The Standards can be used as the basis of a system for the management of sub-contracts.

Method Statement – a statement of the methods and resources to be employed in executing work specified in a contract. The statement is closely linked to the contract delivery. Failure to deliver the methods and resources set out in the method statement could lead to an action for breach of contract.

Negotiated Procedure – a tendering procedure which is generally used for large capital projects where a range of solutions to deliver the requirements specified are possible. The selection stage is used to select those organisations who will proceed into the negotiated award stage.

Non-Disclosure Agreement (NDA) – a legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to by third parties. An NDA creates a confidential relationship between the parties to protect any type of confidential and proprietary information or trade secrets.

NUTS Code – Nomenclature for Territorial Units for Statistics. a Geopolitical standard for referencing the administrative divisions of countries for statistical purposes. The standard was developed by the European Union, and thus only covers the member states of the EU in detail. The EU has also devised a hierarchy for the 10 countries that joined the Union in 2004, but these are subject to minor changes. The NUTS divisions do not necessarily correspond to political or administrative divisions within the country.

OFT – Office of Fair Trading - The OFT is the UK's consumer and competition authority. Our mission is to make markets work well for consumers. We are a non-ministerial government department established by statute in 1973.

OJEU – Official Journal of the European Union. The OJEU replaced its forerunner the Official Journal of the European Communities (OJEC) on the 1st February 2003 following the Treaty of Nice. It is published Monday to Saturday every week, except on days which are public holidays in Belgium. It carries calls to tender above the CPD threshold from all 27 EU



Member states, the EEA countries and from the USA and Australia under the WTO agreement. Average contents of a single issue of the OJEU are in the region of 3-4,000 calls for tender. OJEU can be purchased in paper format or viewed online at Tenders Electronic Daily which can be found at <http://ted.europa.eu/>

Open Procedure – a tendering process in which the selection stage is followed almost immediately by the award stage in order to identify a single contractor to deliver the supplies or services specified. Sometimes both the selection stage and award stage are combined into a single phase .

"Part B" Services – those services included in an Appendix "Part B" to the Directive 2004/18/EC and the Public Contracts Regulations 2006. In procuring these services, which include health education and social care, purchasers are not required to comply with all of the regulatory requirements. Please see the explanatory section on the TfC website <http://tenderingforcare.com/part-a-and-part-b-tenders-cpv-codes> In its 2011 review of the Directive 2004/18/EC the European Commission has sought to remove the differences between Part A and Part B services. It is expected that the new Directive will limit Part B to Health and social care procurement.

Parental Guarantee – an increasingly frequent requirement for holding companies and others in Groups of companies or organisations to guarantee the total contract value of their subsidiaries should the contract fail.

Performance Bond – Please see Guarantee Bond above.

PIN – Pre- Information Notice. A short notice indicating that a call for tenders is planned during the coming three months. The publication of a PIN means that the deadline for submitting the tender from the publication of the call may be shortened.

PQQ – Pre-qualification Questionnaire. This document forms the basis of the first or selection phase of the tendering process. The PQQ forms the gateway to the tendering process. Failure to submit a successful PQQ and therefore succeed at the selection stage means that the tenderer is excluded from the process and cannot proceed to the award stage. The amended PCRs require buyers to inform any tenderer who are rejected at the time the decision is taken. Buyers may not wait until the selection process has been completed.

Preferred Provider – a term used in two circumstances a) those providers who have been selected to participate in a Framework Agreement following a selection process (please see restricted tendering); b) the winner or winners of a tendering exercise before the contract has been signed.

Presentations – tenderers may be invited to make a presentation as part of the tender process. This can happen either as a) one from a number of criteria used to assess the MEAT, award stage process; or b) the MEAT assessment may be used to produce a short list. These short listed tenderers are then invited to make a presentation which is assessed prior to contract award. It is important that the option being employed is clarified before entering into the tendering process.

Pricing of Tenders – a process which identifies the precise costs of the delivery of the actual contract only plus a margin or surplus.



Procurement – the purchase of goods and/or services by publicly funded bodies at the best possible total price, in the right quantity and quality, at the right time generally via a contract. The functions of procurement are a) ensuring legal compliance; b) purchasing supplies or services; c) entering into contracts. Procurement must be kept separated from Commissioning. Procurement forms one part of the “Commissioning Cycle”.

Procurement Officers – legal officers who undertake the procurement functions. They are usually based in a Procurement Department which form part of the Chief Executive's or public authority's legal department. Procurement Officers are usually at least qualified to Membership of the Chartered Institute of Purchasing and Supply (CIPS).

Procurement Requirement – all companies, charities, Housing Associations and organisations which receive 51% or more of their income from public sources are themselves considered to be Public bodies and must, as a result comply with the Public Contract Regulations, The general rule has to be; if in doubt, comply with the rules.

Public Contracts Regulations 2006 – the UK legislation which was brought into force by Statutory Instrument (SI Number 5) dated 09.01.2006. The Regulations set out the rules which govern all aspects of public purchasing in England and Wales. The Regulations were updated by: Statutory Instrument, 2011 No. 2053, PUBLIC PROCUREMENT: The Public Procurement (Miscellaneous Amendments) Regulations 2011, dated 1st October 2011.

Public Interest Test – (the FOIA please see above) Many of the exemptions to the right obtaining information under the FOIA are qualified. This means that even if the information falls within the area of exemption, the public authority must release the information unless the public interest of withholding the information outweighs the public interest that of disclosing it. This test has a presumption in favour of disclosure. It is for the public authority to show that the public interest is in withholding the information is greater than in disclosure.

Purchase-to-pay cycle – the post tender purchasing process whereby a public authority raises a purchase requisition, places an order, receives goods or services and make payments to suppliers.

Quality Assurance – tenders are required to provide evidence of quality in two areas (a) the quality of management [please see ISO 9001:2008 above]; and (b) the quality of the service to be delivered. Both are essential for tendering success.

Quality Standards

i) CHAS – the Contractors Health and safety Assessment Scheme. A health and safety pre-qualification assessment certified to a nationally recognised and accepted threshold standard. CHAS is a founder member and past Chair of Safety Schemes in Procurement. Therefore certification of Health and Safety policies and procedures to the CHAS standard is becoming a standard requirement for tenders.

ii) ISO 9001:2008 – the international standard which accredits the quality of the management of the tendering company/organisation. This is frequently a requirement, in any case companies/organisations holding the standard will have a competitive advantage in any tendering process.

iii) ISO 14001:2004 – international standard which accredits the quality of the company or organisation's Environmental Management System. This is frequently a requirement, in any case companies/organisations holding the standard will have a competitive advantage in any tendering process.



iv) ISO 17021:2006 – One of a set of standards which for the audit and certification of management systems of all types (e.g. quality management systems or environmental management systems) and for bodies providing these services. Bodies performing this service are therefore third-party conformity assessment bodies. In selecting a certification body for any quality standard it is essential that it holds ISO 17021, or one of the associated standards to be certain that the quality certification is valid and recognised by all public purchasers.

v) OHSAS 18001 – The standard has been developed to be compatible with the ISO 9001 (Quality) and ISO 14001 (Environmental) management systems standards, in order to enable organisations to integrate their quality, environmental and occupational health and safety management systems. The specification for the standard sets out the requirements for an occupational health and safety (OH&S) management system, to enable providers to control its OH&S risks and improve its performance. It does not state specific OH&S performance criteria, nor does it give detailed specifications for the design of a management system.

vi) BS 25999-2007 (Code of practice) and BS 25999-2008 (Specification) – These two Standards underpin good practice in Business Continuity Planning which is now a standard requirement for tendering. **(See Business Continuity Management Programme)** . Compliance with the standard can help to provide a competitive edge in this increasingly important aspect of tendering for public sector contracts. Certification of compliance is difficult for health and social care providers. Sometimes set BCMP compliance within the context of the Civil Contingencies Act 2004. In Section [1] the Act states - *[1], local authorities are lawfully required to provide business continuity advice and guidance to both commercial and voluntary organizations operating within their jurisdiction.*

v) ISO 22301 – Societal security — Preparedness and continuity management systems – Requirements is a delayed, new standard which develops Business Continuity planning to an international level. At the start of 2012 the draft was out for signature by the members of the ISO. Approval is expected in May 2012. There is no equivalent standard at EU level.

vi) ISO 5001:2011 – The new ISO 5001 Global Energy Management Standard was launched in June 2011. One example is a small company of 36 employees reduced their energy consumption by 14% over a two year period. There are six steps that any organisation can take to get started on ISO 50001 today and gain a competitive edge:

- Secure support from top management;
- Collect, track, and analyse energy data;
- Identify key energy uses;
- Establish a baseline;
- Identify energy-saving opportunities;
- Prioritize opportunities

Remedies Directives – a set of Directives, setting out the rules under which the decisions of public purchasers may be challenged, in some cases, this may take place even before the contract has been signed. The most recent 2007/66/EC of 11 December 2007 amends Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts. This sets out legal remedies which can be introduced at a stage before a public contract is actually concluded, have not been sufficiently effective in all Member States and therefore required strengthening. In addition, illegal direct awards of public contracts, which are the most serious violations of Community law in the area of public procurement, were believed to be combated more fiercely. The new



Directive provides businesses, wherever in the EU they would like to tender for public contracts, with more effective national review procedures when awarding authorities have violated the EU Directives on public procurement. It also makes provision in certain circumstances for the courts to annul an awarded and signed contract. The Directive applies to Part B contracts in the UK and was implemented on 20th December 2009

Request for Quote – a less formal system of purchasing, used where the value of the goods or the nature of the services are not covered by procurement legislation. The degree of formality is for the purchaser to decide.

Reserved Tender – a tendering process under Regulation 7 of the Public Contracts Regulations which "reserves" the contract, and therefore those tendering, to companies engaged in certain, defined types of sheltered employment.

Restricted Procedure – a tendering process which uses the selection stage to set up a select list or framework of providers. The list may then be used for a defined period of up to eight years to invite tenders or request quotes as specific services as required. Please also see "Frameworks".

Section 43 – the section of the Freedom of Information Act (please see above)

Selection Stage – the first phase of the tendering process The selection stage involves the completion and an assessment of the PQQ. This is based on an appraisal of business and financial acumen and most importantly, risk. Sometimes called "shortlisting" with those reaching a required standard going onto the Award Stage. The selection stage is usually managed, and PQQs scored, by Procurement and legal officers. The selection stage is sometimes outsourced to firms of solicitors. Never assume that the PQQ will be scored by Commissioning Officers.

Service Level Agreement – that part of a contract which specifies the services to be delivered. It has been practice for purchasers to enter into contracts based on Service Level Agreements which are in themselves contracts but do not set out full contractual terms, simply detailing the services to be delivered and minimal information such as contact details, addresses, etc. regarding the contractor. Sometimes used between Departments within public authorities.

Single Market Act 1986 – the European legislation which established the Europe-wide principle of the free movement of goods and services. This is the basis of for the Competition Articles – 85 in the Treaty of Maastricht 2003; 81/82 in the Treaty of Lisbon 2009.

Specification – a detailed description of the supplies or services to be purchased. If an organisation is unable to deliver what is required exactly as set out in the specification it is not worth submitting a tender.

SPV – Special Purpose Vehicle – a legally incorporated company, formed from the members of a consortium for the management of the delivery of a specific contract. The SPV is an effective model for managing a consortium. The SPV subcontracts elements of the contract to its members.

Standing Orders – all procurement activities must comply with the purchaser's own rules which are contained in their Standing Orders. These Standing Orders regulate how a purchaser Council conducts business.



Standstill Period – the period immediately after the tender award is announced which allows those who feel there has been a lack of compliance with the process to following a defined route to challenge. The period is of 15 days if the notification is by post; 10 days if the notification is sent electronically.

State Aid – State aid is a European Commission term which refers to forms of assistance from a public body, or publicly-funded body, given to companies, charities and organisations on a discretionary basis, with the potential to distort competition and affect trade between member states of the European Union. The State Aid Rules govern the limits by which a public body may offer grants.

Statutory Instrument – Statutory Instruments (SIs) implement EU legislation into UK law.

Sub-contracting – the process through which a company or other organisation signs a contract to perform part or all of the obligations of a contract held by a lead contractor. It is important to remember that the total liability for the delivery of the entire contract rests with the lead contractor..

Supply Chain – whilst originally used to describe some manufacturing processes, the Supply Chain is becoming an increasingly important factor in the delivery of services. The public sector contract is usually between a large management company, known as the Prime Contractor and the public purchaser, sometimes for a section of activity such as Adult Services. A chain of suppliers is then set up for increasingly small parts of the total specification.

Sustainability

i) Corporate – public sector purchasers require re-assurance that their contractors will stay in business throughout the duration of the contract. They therefore require evidence of sound governance, effective management systems, policies and procedures. In particular it is important that there is evidence that the Board of governance accepts responsibility for contractual compliance.

ii) Financial – evidence of financial stability and sustainability is a standard requirement. This includes a range of sources of income. It is not unusual for there to be an expectation that the total value of the contract will represent between 5% and 25% of the tenderer's total annual income.

Tender – a written offer to contract to provide goods or services precisely as specified in the tender documents at a stated price or rate. Successful tenders result in the award of a contract to deliver the goods or services specified.

Tendering and Procurement Practice – the only OCN accredited level 3 qualification in tendering and procurement set at level 3 with six credits. Developed and delivered by TfC. In January 2011 the course had almost 80 graduates.

TUPE – the Transfer of Undertakings (Protection of Employment) Regulations 1981. The purpose of TUPE is to preserve continuity of employment and to safeguard employment rights of all employees whose employment transfers to a new employer as a result of a relevant transfer.

Value for Money – the optimum combination of whole-life cost and quality or fitness for purpose to meet the purchaser's requirements.



VEAT Notice – Voluntary Ex-Ante Transparency Notice.

<http://tenderingforcare.com/veat-notice>

Webinars for Tendering – a style of tendering training introduced by TfC in November 2010. Combines telephone conference with slides sent to the participants' computers in real time, during the session. Typically each session runs for just over an hour. Participants can join from any location, their desk, work place or from home. They simply need access to a telephone landline and an internet connection to a computer or laptop. Open programme of Webinars will be available from February 2011.

Whole Life Costs – the whole life cost is what it costs now to buy the services plus on-going costs of receiving the service plus any cost of discontinuing the service.

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