
Think Procurement
The Online Procurement Bulletin from Brian Farrington Ltd

May 2008 Issue:

- 1. Corporate Social Responsibility**
- 2. Definitive guidance on Liquidated Damages**
- 3. Defining Material Breach**
- 4. Procurement Transformation**
- 5. Advice on Tendering – Supply Side**

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This Month's Hot-Links

The links below are addressing events addressing supplier-buyer relationships:

Marketing to the Public Sector 6 May, St Helens
<http://www.thestartingpoint.org/events/details.asp?event=761>

Commercial Awareness

6 June, St Helens
St Helens Chamber

Competitive Tendering

2-3 July, London
<http://www.hawksmereltd.co.uk/hawksmere/event.php?event=26169>

Items for newsletter May 2008-04-22

1. Corporate Social Responsibility

2008 is well-documented as a landmark year for Liverpool but few events can match the scale of Field of Women. Imagine 10,000 people standing side by side in a show of support. This will be the scene at Liverpool Cricket Ground on Sunday 6 July, 2008. Field of Women is an event organised by Liverpool-based breast cancer unit, The Linda McCartney Centre. It is designed to bring together men, women and children who have been affected by breast cancer and helping to raise £1million from the campaign. To register a place at the event, visit www.fieldofwomen.com

To register your company and discuss sponsorship opportunities please contact the fundraising team on 0151 706 3153 or email info@fieldofwomen.com

2. Definitive guidance on Liquidated Damages

We have recently had a query about liquidated damages. It continues to be a subject that concerns many buyers. If you need definitive guidance we suggest that you access the House of Lords case [1914] UKHL 1 dated 01 July 1914. The case was between Dunlop Pneumatic Tyre Company Ltd and New Garage and Motor Company Ltd. Despite its age it makes relevant reading. Here are some extracts:

- Though the parties to a contract who use the words 'penalty' or 'liquidated damages' may prima facie be supposed to mean what they say, yet the expression used is not conclusive. The Court must find out whether the payment stipulated is in truth a penalty or liquidated damages.
- The essence of a penalty is a payment of money stipulated as in terrorem of the offending party; the essence of liquidated damages is a genuine covenanted pre-estimate of damage.
- The question whether a sum stipulated is penalty or liquidated damages is a question of construction to be decided upon the terms and inherent circumstances of each particular contract, judged of as at the time of the making of the contract, not as at the time of the breach.

It adds that it will be held to be a penalty if the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach.

3. Defining 'Material breach'

We are currently involved in the procurement of services to a value > £500m. Contractual matters continue to exercise our client's lawyers, procurement advisers (us) and the potential contractors. One issue is 'material breach.' It often appears in contracts giving either party the right to terminate if the other commits a material breach of any term of the contract and fails to cure the breach within an agreed period of time. It is therefore, written this way, mutual and protects both parties. A 'material breach' is a failure so severe that it threatens the value of the entire contract. We strongly advise you to define what a material breach shall be. This will require intellectual effort and open discussions with the bidders. This is the only way, in our view, to avoid later costly disagreements and legal action.

4. Procurement Transformation

We are very pleased to announce our retention by a leading Financial Services organisation to provide procurement transformation services. This will include working with the procurement team to enhance their skills and knowledge; re-negotiating contracts; category management; revising standard terms and conditions of contract; determining forward procurement strategies and policies and other specific advice.

5. Advice on tendering - supply side

For the past two years we have provided services to local SME's through the St Helens Chamber of Commerce. We were set a target of winning contracts for SME's of £200k per

annum. At the end of the second year we are delighted to say that they have won contracts with a value greater than £11m! This is an exceptional performance and is contributing to the creation of employment opportunities. We are advising on completing PQQs and tender preparation. We are also providing 'How To Tender' seminars. We have a very successful process and it is available to other clients.

Until next month,

Stephen Ashcroft

Brian Farrington Ltd

Helping procurement and related professionals manage third party expenditure and mitigate risk:

- Commercial governance
- Learning and development
- Project support
- Performance improvement

How we work with clients:

First, we identify the opportunities for improvements through discussions with the client.

Second, we analyse the identified opportunities using an extensive suite of proprietary techniques to quantify the extent of the benefits obtainable.

Finally, we undertake installation to realise the identified benefits.

Initial discussions with one of our senior team of consultants are free and without obligation.

To arrange a 40-minute appointment, at your offices, please contact [Margaret](#) Bate or telephone 01744 20698 who has access to our available diary dates.

Brian Farrington Ltd
Rainford Hall
Crank
St Helens
WA117RP
T 01744 20698
F 01744 27897
E thinkprocurement@brianfarrington.com
URL www.brianfarrington.com

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