



## **Brian Farrington Limited Procurement and Business Solutions People**

**October 2004 Newsletter**

### **Contracts**

This is a theme that reoccurs in our newsletter. We have recently presented a contractual risk lecture to a UK client. The talk was occasioned by the Purchasing Director being told by a main board director that contracts took up too much time and, anyway, suppliers should be trusted! So there is the challenge. We do need contracts and in large measure this is because some suppliers cannot be trusted to complete their contractual obligations in a timely and acceptable manner. We have gone back to 1932 to find the comments of Lord Wright. He said, 'But it is clear that the parties both intended to make a contract and thought they had done so. Businessmen often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise.'

In our practice we are constantly reviewing contracts, particularly when there is a dispute. At times we are aghast that purchasing and legal services took no part in the formation of the contract. Suppliers have a habit of being 'helpful' and provide the draft contract for signature. The purchasing profession must become more proactive in explaining the role they can play in this vital area of business. In the first instance they may wish to create a contract data base and conduct an audit

of contractual risk. That process should be very revealing.

### **Red Review of Tender Documents**

Our Managing Director has recently been engaged to advise a major European company on the submission of their Pre-Qualification document and ensuing tender. This work arose because of the grapevine informing that we are often preparing these documents and evaluating the responses. This client believed that they may learn something from a critical analysis of their documents. They did! We all learned that when deadlines are set by important buyers Saturdays and Sundays are not sacrosanct!

It is a fascination to share the way in which buyers think with senior Board Members of an international business. In some instances they failed to recognise the reasoning behind some questions and in other instances they failed to provide the appropriate level of detail, taking too much for granted.

This work builds on similar work where we have taken the role of a difficult buyer in training a sales team in negotiation. Perhaps these activities may be of interest to your business?

### **Business Data Bases Held By Buying Departments**

Every buying department holds data. It is this data in relation to suppliers that needs some thought. What information do you need

and how do you keep it up to date? You may also question the cost of this activity and how you demonstrate value for money. The data base should include all the pre-qualification information, financial analysis of key suppliers, the product and/or service capability, contract performance metrics and achievements, cost breakdowns, key personnel, market share, Form 10K in the case of US companies and significant contracts data base. Creating the data base is one thing; maintaining it is quite another.

### **Open Book Accounting.**

We have been researching this subject for a client. It is a feature of most partnering contracts. The degree of access is agreed during negotiations. The access should be sufficient to provide confirmation of cost drivers, overheads and profit. It should also isolate contingency amounts. The associated process should not be so disruptive that it interferes with normal business. It is designed to provide confidence on how the partner's monies are being disbursed and what profit/surplus, loss, deficit is arising. In reality, of course, it will require high level financial skills to evaluate the data being presented. Many suppliers now access the principles of open book.