



# User-Led Organisation Wave 2 Site

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## Product 6

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# Becoming & Staying Tender Ready

## Document Status: Final Product

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# ULO Learning Product Summary

**Organisation:** *Southampton Centre for Independent Living CIC*

**Name of product:** *Becoming & staying tender ready: Understand tendering regulations and how to optimise your uniqueness.*

**Summary of product:** *A Journey through the legislative framework that regulates procurement and informs tendering processes for public monies, with a view to supporting ULOs to make informed choices about tendering and considering how they might diversify their resource base, prepare for and bid for tenders. Looking at local interpretation and creating a checklist.*

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# Becoming & Staying Tender Ready

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# Graphic Executive Summary

Workstream 6 Tender ready U.L.O's



Policy & legislation constantly changing

Complex!

A rough guide to getting ready for tendering



To include minimum & larger Contract examples



We need to be on more of a level playing field

Don't want a roll's royce, want a mini!



Lowest price VS Most Economically Advantageous Tender

Using diagrams & maps to help people make sense of all this



Risky to depend only on contracts



SCILL's ROLE IN QUESTIONING WHETHER TENDERING IS THE BEST APPROACH FOR LOCAL AUTHORITIES

When & how do local authorities decide on their approaches?

Inconsistencies?

# Preface

Tendering for public money is one way of User Led Organisations (ULO's) securing funding. However, it is not the only way; nor can it resource many of the activities ULO's might want to initiate.

Although there is a potential for influencing public spending, this is limited and commissioners are constrained by what they are allowed to spend it on and by the ways in which they can spend it.

Public tenders are subject to European, national and local priorities and rules. They are for the most part drafted by public bodies for goods and services that they have decided to provide. The people who can receive these goods and services are determined by the public body who drafts the tender. The nature of those goods and services are determined by the public body which produces a specification to describe what must be provided by the organisation who secures the contract.

So, some of the big questions ULO's need to ask themselves are:

- Do we want to tender for bids per-say?
- Is it in keeping with our Objects and powers as outlined in our governing documents (i.e. your Constitution)?
- Do we want to tender for this specific contract?
- Is it in line with our strategic and operational plans?
- Do we have the means to complete a tender within the timescale allowed?

What seems to be advisable is to not become reliant on tenders as the one and only source of income. You can also obtain funding in other ways:

- being innovative and finding other pots of money for projects that serve the organisation;
- undertaking fund raising activities, these could also serve as promotional and thus 'kill two birds with one stone';
- accept donations; and
- develop income generating projects (selling services for a profit).

It is through diversifying in this way that sustainability might be achieved.

This last, income generation, is the subject on another of SCIL's ULO reports, in relation to developing opportunities for the participation of young people not only in the life of the organisation, but also their personal development and as leaders of the future.

# 1. Introduction – the political backdrop to tendering & how ULO's fit in

In the 'Third Sector Action Plan', consultation draft, the National Offender Management Service (NOMS) wrote:

***“Third sector organisations have a critical role to play across all the business of the Ministry of Justice, and already make significant contributions to its work. The Ministry includes the delivery of court services, legal aid, support to victims, witnesses and those who have suffered domestic abuse, adult prison and probation services, youth offending services, community and civil justice. We also want to re-engage people with the democratic process and improve the public's understanding of the justice system. This gives us a very wide remit, and already the third sector makes a significant contribution to our work and ambitions.***

***The Government defines the third sector as non-governmental organisations that are value driven and which principally reinvest their surpluses to further social, environmental or cultural objectives<sup>1</sup>. There is a wide variety of organisations that make up the third sector, categorised most simply as: voluntary and community organisations (VCOs); social enterprises; and, cooperatives and mutuals.” NOMS (2008) Third Sector Action Plan”***

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For the 'Ministry of Justice' read Department of Health; for the list of functions replace health and social care; for the 'justice system' read welfare system.

A search of the DoH website for 'third sector strategy' yields the first 500 results in a second, 12 in social care, all reiterating the department's commitment to a building a sustainable partnership with third sector and, more importantly, *user-led* organisations.

A [national programme](#) for commissioning third sector organisations announces three intended outcomes:

- increased awareness and understanding of the value of commissioning the third sector – offering training for *commissioners* in the third sector through Chartered Institute of Public Finance and Accountancy (CIPFA)
- more third sector involvement throughout the commissioning process – also offering training for *commissioners* in the third sector through the Institute for Voluntary Action Research (IVAR)

- improved bidding practices - the Association of Chief Executives of Voluntary Organisations (ACEVO) will facilitate workshops and provide intensive support for third sector organisations, such as one-day seminars on adapting to individual budgets or the 'personalisation agenda', and direct intensive support in bid writing.
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## **The National Programme for Third Sector Commissioning – (extracted from the internet)**

The Programme was first announced in Partnership in Public Services: an action plan for Third Sector involvement, published by the Cabinet Office in December 2006.

The first phase was managed by the Improvement and Development Agency (IDeA) on behalf of the Office for the Third Sector (OTS). It was supported by an Advisory Group consisting of third sector organisations and representatives from seven key government departments.

The first phase of the Programme set out to deliver the following benefits:

- implementation of policy to include greater involvement of the third sector in the shaping and delivery of public services by the most significant commissioners
- high-quality commissioning that enables providers to meet the needs of local communities and service users
- processes that set out what is necessary to involve the third sector in service design, improvement, delivery and holding the public sector to account
- improved access to service delivery for smaller third sector organisations
- recognition of the third sector as a partner in designing services and a constructive campaigner for change
- a comprehensive package of training for commissioners on what the third sector can offer.

## **Evaluation of the programme**

The evaluation assesses the programme's outcomes and the impact on the involvement of the third sector in commissioning.

[Evaluation of National Programme Phase 1 - final report \(PDF, 63 pages, 1042KB\)](#)

[Evaluation of the National Programme, February 2008 \(PDF, 50 pages, 375KB\)](#)

[Summary of the evaluation, February 2008 \(PDF, 9 pages, 1700KB\)](#)

## **A better return**

Based on research by the New Economics Foundation, the National Programme for Third Sector Commissioning has published the report 'A better return' on how spending on public services can be directed to achieve the best return for communities, the environment and the public purse.

[A better return \(PDF, 28 pages, 557KB\)](#)

[A better return – appendix \(PDF, 68 pages, 1052KB\)](#)

The NEF research looks at HM Treasury's definition of value for money. With pressure to make savings to the public purse, value for money is often interpreted as being at minimum cost. At best, it is seen as the relation between financial cost and quality or quantity of outputs, or unit cost. In fact, HM Treasury guidance requires a consideration of the full range of social, economic and environmental costs and benefits, as well as suitability to users.

The report provides 12 practical examples of tried and tested methods that will help public service commissioners measure the full value of public services. The case studies included in the report show that:

- working with service users and communities in design and delivery can make the best use of resources, leading to more effective service provision that encourages better outcomes and saves money over the long term
- investing in preventative measures and achieving better outcomes can reduce the need for costly interventions
- working across the public sector to achieve wider social, economic and environmental benefits can lead to considerable cross-departmental savings.

Sarah Wood, Manager of the National Programme for Third Sector Commissioning, comments on the research: *"The public sector is under a lot of pressure to decrease costs, but at the same time it needs to deal with increasingly complicated issues and changing policies. I firmly believe that clever commissioning of services can help with these problems."*

Dr Eva Neitzert from NEF says: *“The public sector is under huge pressure to decrease cost, but efficiency savings are a very blunt tool. They often generate greater costs in the long term and worse services in the short term. Real savings will be created when we deliver effective services, and our research shows a range of ways in which services can be commissioned to achieve this.”*

The NEF report recognises that responsibility for change cannot rest solely with commissioners. It sets out ways for public service leaders to develop a framework that ensures intelligent commissioning becomes the norm.

The report recommends a range of measures that would enable intelligent commissioning, including:

- establishing a framework, such as Social Return on Investment (SROI), to measure importance and provide the evidence for decision making to achieve a number of long-term environmental and social benefits
- creating an incentive and funding structure that encourages performance across a range of outcomes and over the long term.

Dr Neitzert concludes: *“Some of these changes will not be easy to achieve. But the evidence presented in the report provides a strong argument for continued investment in public services, particularly during the economic downturn. This type of investment maximises public value in the longer term.”*

<http://www.idea.gov.uk/idk/core/page.do?pageId=13355188>

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## **The Office of the Third Sector**

As part of the Cabinet Office, the Office of the Third Sector (OTS) leads work across government to support the environment for a thriving third sector (voluntary and community groups, social enterprises, charities, cooperatives and mutuals), enabling the sector to campaign for change, deliver public services, promote social enterprise and strengthen communities. The OTS was created at the centre of government in May 2006 in recognition of the increasingly important role the third sector plays in both society and the economy.

[http://www.cabinetoffice.gov.uk/third\\_sector.aspx](http://www.cabinetoffice.gov.uk/third_sector.aspx)

## **Cabinet Advisor – Anne McGuire**

Anne McGuire MP, appointed Cabinet Office Advisor on Third Sector Innovation in November 2008 and serving until March 2010, has championed the cause of third sector investment:

- most recently she has made recommendations to the Government focusing on third sector involvement in three public service areas – health and social care, services to reduce re-offending, and education and learning.

Publishing her first report this February: 'The Role of the Third Sector: Personalisation of Health and Social Care and Services to Reduce Re-offending'. Third sector engagement underpins the development of these recommendations, the report makes recommendations intended to maximise the potential contribution of the third sector to the personalisation of services within these areas. Recommendations relate to supporting individuals to a point where they are able to make genuine choices; enabling the co-production of services; funding preventative services; measuring the value of service user engagement; and ensuring a vibrant market of services is developed. It identifies a need for the third sector and government to develop a common dialogue on how personalisation can be driven forward.

In March 2010, Anne McGuire published her second report, 'The Role of the Third Sector: Personalisation of Education and Learning Services'. The report recognises the role of the third sector in delivering personalised learning opportunities, either in their own right, or in partnership with schools and colleges. It also highlights the important role the third sector plays in driving forward innovation in this sector, informing, supporting, shaping and stimulating service improvement and redesign. Recommendations focus on how the Government can support third sector organisations to demonstrate the value of their work; how Government initiatives could be brought together to make the most of what the third sector has to offer, and how innovation in the third sector can be supported and its full potential realised.

### **'Social capital'**

*Social capital* has a number of definitions, but the meaning it carries with its usage in relation to the modernisation agenda refers to the untapped value of the collective capacity in the third sector in general. This capacity is what government policy seeks to harness through procurement, both to make public services more cost effective but also to encourage self-determinism and self-reliance among groups that face inequality and the bodies that represent them, in particular user led organisations (ULO's). The National Programme seems to be focused on enabling the larger better resourced bodies in the third sector, large and rich enough to employ *commissioners*.

## 2. Our aim

This work seeks to provide guidance for ULO's to enable them to *become* and *stay* 'tender ready'... if they decide that this is the route that they want to take.

'Why?' you might ask.

Because in recent times there has been a major legislative and policy shift in the way *public money* is made available and what it is spent on. In the past, ULO's generally secured funding through grants, service level agreements, developing innovative approaches to meeting local need. Although we have rarely been able to compete with the 'big boys', it felt that there was some recognition (hard won) of a niche we carved for our activities. More recently, in the name of 'equity, fairness and transparency', access to public money for human services have increasingly been subject to mechanisms originally designed for the production of widgets and other inanimate objects! Currently, smaller ULO's face great disadvantage in what is often felt an unfair competition. The project that this work forms part of, funded by the Department of Health as part of its strategy to deliver on the promise of ['Improving the life chances of Disabled People'](#) and to take forward the modernisation agenda.

Having researched the minefield of *tendering*, we attempt here to share what we feel to be significant for making decisions about tendering, preparing for tendering and developing the structures, the skills and relationships needed to be successful and to keep informed, not only about relevant tender opportunities but with the changes that affect these opportunities.

We look at what tendering is and the language that goes with it; what laws govern tendering processes (European, UK, Local); tendering regulations and processes; and how local authorities interpret these in policy and practice.

We also look at how tendering fits into other ways of resourcing ULO's and advocate the development of different, complementary streams of income, reflecting on our own learning as an organisation. A ULO that has, over the last 25 years, had to adapt to and take advantage of the changing patterns of funding (or non-funding!) and managed to survive, if not quite build-in security.

Finally, we will consider the strengths that ULO's can bring, the '*added value*' they can offer and how to make best use of this.

### 3. Becoming tender ready

First, it has to be said that there is no requirement for ULO's to bid for public money. It is a conscious choice organisations need to make. Clearly, the nature of many ULO's is the provision of a service to people; in the main people who generally have some entitlement to support via traditional welfare services (the 'deserving poor'), but sometimes to those who do not qualify for such support (the 'undeserving poor'). Many of us engaged in the work of ULO's will have held strong views about the rights of such people to have their needs met through the public purse. Others will have different views and will consider charitable donation a legitimate source of funding and some will espouse commercial enterprise as the way forward. It might be that a mix-and-match approach is the answer? We will come back to these choices in our conclusions.

If, as a ULO, you decide that you will enter the world of tendering and, if you are to have any hope of success, you will need to become 'tender ready'. Sounding a bit like a stuffed chicken? Well it's not a bad analogy!

One of the first hurdles is the language associated with the business of tendering.

#### **The difference between 'procurement' and 'tendering'**

**Procurement** – is the business of finding somebody to do a job (the buyer, commissioner or purchaser). This is what public bodies have to do, in accordance with a 'national strategy' for procurement'.

*“Procurement” is the process of acquiring goods, works and services, covering both acquisition from third parties and from in-house providers. The process spans the **whole cycle** from identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical “make or buy” decision which may result in the provision of services in-house in appropriate circumstances.*

*In the context of a procurement process, obtaining “best value for money” means choosing the bid that offers “the optimum combination of whole life costs and benefits to meet the customer’s requirement”. This is not the lowest initial price option and requires assessing the ongoing revenue/resource costs as well as initial capital investment. The council’s requirement can include social, environmental and other strategic objectives and is defined at the earliest stages of the procurement cycle. The criterion of best value for money is used at the award stage to select the bid that best meets the requirement.*

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*Procurement is also about making choices. The choice that members make about a particular contract or form of partnering is a very clear signal of what type of authority the council wants to be and how it wants to be seen now and in the future". (National Procurement Strategy for Local Government, October 2003 p.17)*

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**Tendering** - is the business of putting in a bid or proposal or tender to do the job (the bidder, tenderer, provider or supplier).

The tendering process and documentation is decided, in the main, by the procuring body, under the auspices of European and national legislation and local policy. For instance our local authority, Southampton City Council, published a 'Corporate Procurement Strategy for 2009-2012' in March 2009.

### **What you need to understand...and when...**

Despite many seemingly simple definitions of tendering, which seem prevalent when researching the tendering process, the process itself is far from simple. There are a wide range of factors and considerations involved in the tendering process which include not only a detailed knowledge of the information needed to complete an application for tender, but also a general understanding of tendering processes including options available including alternatives, potential barriers to tendering, and an awareness of the changeable nature of the legislation which governs the procurement process and how public bodies interpret the legislation and regulation and develop their own procedures and practice.

### **What you need to decide and do by when:**

For knowing what you need to decide and by when you will need to have a good knowledge and understanding of Local Authority time scales also detailed below in section 3 by the link to particular Local Authorities websites.

### **What you need to find out and by when:**

Before becoming involved in the process of bidding for tenders it is a good idea to find out what you will need and by what time. This will require looking at areas covered in this toolkit as well as any information which is directly relevant to a specific tender. With so much information to gather it is a good idea to find out as much information as you can early on to be well prepared and give you a good idea of likely timescales.

### **What you need to have and by when:**

The checklist includes detailed information on structures, management and operational processes and relevant documentation you will need to have before submitting a tender.

## 4.A rough guide

This section is a simple overview of some of the basic procedures which govern the tendering process.

Tendering is a process by which organisations or public bodies award contracts to suppliers. There are several stages to the tender process and these are accompanied by a great deal of relevant legislation and jargon which can serve to make the process very confusing. The aim of this toolkit is not to be an exhaustive list as there are an infinite number of variables which can occur within the tendering process. It is rather designed to be a helpful guide for navigating your way through the tendering process. This may include, using the individual strengths of your organisation to their best advantage, helping you prepare, and enabling you to have an understanding of relevant legislation surrounding tendering including how to challenge legislation.

### **Procurement Methods**

There are three main methods of procurement:

#### ***Open***

This is a process whereby all interested bidders may tender for the contract. Sealed bids are opened usually in public for scrutiny and are chosen on the basis of price or quality. This is also known as competitive or public tender. The timescale for an open procedure is 52 days for companies to return tenders.

#### ***Restricted***

All interested bidders may express interest in the tender, but only the ones who meet the contracting authorities selection criteria through a pre-qualification screening process will be invited to tender. Timescales for restricted procedures are 37 days for companies to register an interest, and 40 days from despatch of tender to return.

#### ***Negotiated***

This is a process whereby the contracting authorities consult with the bidders of their choice, and these bidders have the opportunity to all try and negotiate the terms of the tender contact with the contracting authority. This type of contract is subject to strict conditions.

### **Types of document:**

The main types of tender document giving notice and details of tenders are:

## ***PINS***

Prior Information Notices are published normally annually as an indication of the possible contracts which may be awarded in the coming year.

## ***ITT***

Invitations to tender are the pack of documents or notices made public in order to attract expressions of interest and generate bids.

## ***PQQ***

Pre-qualifying questionnaires are required for some tenders in order to create a shortlist of bidders.

## ***Contract Notices***

Contract Notices (invitation to tender) are aimed at specific contracts and invite suppliers to make an application to be placed on the tender list or to be provided with information.

## ***Contract Awards***

Award notices contain details of which contracts have been awarded, the awarding criteria and the successful bidder.

## **Types of Contract:**

There are a number of types of contract which will be mentioned in this toolkit, they are listed here together with an example of each:

Supplies Contract	Purchasing goods and supplies
Services Contract	Advertising, property management services, architectural/engineering etc.
Works Contract	Buildings and Civil Engineering Works
Combined Contract	Some tenders that are a combination of a supply and service contract or a works and service contract can be classified as a combined contract

## **European Legislation and Regulation**

The Treaty of European Union (The Treaty of Maastricht) applies to all public sector contracts. If you trade with another organisation, (i.e: they pay you to

provide goods or services), the word 'contract' applies. This means that contract law applies. Contract law requires buyers to behave in ways which are non-discriminatory, fair, transparent, and even handed with their suppliers or prospective suppliers. This means they must:

- Not limit the breadth of any market to local suppliers;
- Advertise their requirements in accessible forms, where full EU rules apply. This is in the *Official Journal of the European Union (OJEU)*. Where full rules don't apply, the advertising must be 'adequate', this may be in the press and on an appropriate website.

Regulations to be followed by buyers are set out in Directive-2004/18/EC of the European Parliament and of the Council of the 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

## **EU Directives into UK Law**

The Public Contracts Regulations 2006 are the regulations which implement into UK law the European Commissions Consolidated Directive on Public Procurement (2004/18/EC).

The Public Contracts Regulations 2006 covers all areas which relate to Public contracts for goods services and construction works awarded by public sector contracting authorities over a certain value (threshold). The regulations cover General Matters such as regulations regarding contracting authorities, economic operators, application, general exclusions and procedures relating to tenders of differing economic thresholds. The regulations also cover the areas of technical specifications, procedures, the selection of economic operators, the award of public contracts, the award of specialised contracts, matters relating to public contracts, miscellaneous items, applications to the court regarding tenders and subsequent/consequential amendments to the tendering processes. Requirements of the UK Regulations are virtually the same as the European Commissions Consolidated Directive on Public Procurement. The main difference is the inclusion at the front of the directive of 51 recitals which provide background, interpretation and guidance.

The Public Contracts (Amendment) Regulations 2009 SI 2009 No 2992 is an amendment to the Public Contracts Regulations 2006. It came into force on the 20 December 2009.

### **Key changes include:**

For pre-contract tenders, courts have the authority to set aside the decision to make an award, amend documents and award damages for loss due to any breach.

Post contract tenderers can make a declaration of ineffectiveness due to the following: no contract notice being advertised, a breach in the procedural

rules by the contracting authority has adversely affected the bidders chances of getting the contract or a defective purchasing system has been in use.

There are general time limits for beginning actions under regulations. Action must occur within three months of the date when the proceeding first arose. For the declaration of ineffectiveness the time limit is thirty days from the date the contract notice was published, or six months beginning the day after the date the contract was entered into.

These regulations have two levels of application, a full regime for what are known as Part A or 'Priority Services', and a lighter regime for Part B 'residual services.

'Priority services' include architectural and accountancy services, accounting and computer related services, and need to work fully within regulations. 'Residual services' would include health services, education, sport, recreation and cultural services, are not so bound by regulations. Largely, 'part B services' are those considered by the EU 'to largely be only of interest to bidders located in the Member State where the contract was to be performed.'[www.out-law.com](http://www.out-law.com))

## **Directives and UK Regulations Rules and Financial Thresholds**

Public sector procurement Directive 2004/18/EC:

These directives apply fully to contracts with the following financial thresholds (this is the when the estimated value of the contract (net of VAT) equals or exceeds the relevant financial threshold.)

- For the procurement of supplies £101,323
- For the procurement of services (or part B supplies) £156,442
- For the procurement of works £3,927,260

All relevant contracts to these financial thresholds must advertise their tenders in the OJEU.

The main requirements of the Regulations are:

- Non-discriminatory specifications (for both part A and B services);
- Competition through the tender being advertised in the Official Journal of the European Union (OJEU);
- Compliance with minimum timescales for bidders to respond to adverts, pre-qualification checks, and tenders;
- Prescribed criteria for the selection of tenderers and contract award (Part A only);
- Feedback for unsuccessful bidders and the issue of the contract award within 30 days of the award (A and B Services).

## **Timetable for issue of notices in the OJEU:**

	Supplies	Services	Works
Open – from despatch of Notice to receipt of tender	52	52	52
Open – if a PIN has been placed	36	36	36
Restricted – from despatch of Notice to receipt of tender	37	37	37
Restricted – from despatch of ITT to receipt of proposal	40	40	40
Negotiated	37	37	37

## **The Glover Review, Jan 2009**

The Glover Review of 2009 is relevant to ULO's and tendering, as it was undertaken to show the benefits of contracting authorities working with small and medium sized enterprises (SME's) and includes within it twelve key recommendations, all of which have been adopted by the government, designed to give small and medium enterprises (SME's) the opportunities to win more public sector work.

There is currently £175 billion spent on a yearly basis by the public sector on goods and services. Only 16% of contracts are awarded to small businesses, despite SMEs' massive contribution to the economy, and the often unique skills, expertise and flexibility they have to offer. To put this in perspective, the Glover Review points out that SMEs: account for 99.9% of the total number of businesses in the UK; employ 59.9% of the workforce; and contribute 52% of total business turnover. **The Glover Review aims to double the amount of contracts which are currently awarded to SME's to 30% of the total public sector spend.**

The Glover Review is also responsible for ensuring that by 2010 all public sector contracts over £20,000 would be made available in a single online portal which is [www.supply2.gov.uk](http://www.supply2.gov.uk). This will obviously reduce time taken by simplifying the whole process, making it easier for organisations not experienced in tendering procedures to find where they have to go.

## **Distinguishing between Grants and Procurement:**

Procurement is defined as being the acquisition of goods and services from third party suppliers under legally binding contractual terms, where all the conditions which form the contract have to be met. These goods and services being acquired directly benefit the contracting authority as they are necessary

for the delivery of the services the authority provides or for the running of its own business.

Grants can be received by ULO's from a variety of different sources such as government departments and other public bodies. These can be a general grant, or a grant to carry out a specific service or project. The body who gives the grant doesn't contract for something which forms part of its own business. Grants generally do not contain the specific legal obligations which tenders do. However recently it has become increasingly common for grants to be given following competitive bids for funding, and there is increasing use of competition in written agreements for grants. Consequently it appears there has been increasing confusion between grants and public procurement contracts, and for the purposes of this toolkit it is especially important to explain the distinction between the two.

## **How our Local Authorities interpret these laws in their policies and practices**

### ***Why Local Authorities have to tender***

In some circumstances Local Authorities or public bodies are required by law to look for tenders when entering into a new contract with a service provider. The requirements can come from a number of different sources. They can come from European Legislation relating to tendering, UK Legislation, Local Council's tendering Regulations 2009 or the standing orders (or rules) of the public body itself. These standing orders will regulate the manner in which the competition is invited, the type of procedure that is used and the financial thresholds above which competition is required. Local Authorities and public bodies are widely concerned with the notion of achieving best value as they are a business operating in a competitive market. Therefore it can be the case that even when a Local Authority is not obliged by law to tender they might actually do so anyway as a means of ensuring best value.

### ***Local Authority Alternatives to tendering***

There are a number of alternative ways of doing business with public bodies:

#### **Subcontracting opportunities**

The largest value contracts which are awarded by public bodies will generally be awarded to the largest companies. Smaller organisations such as ULO's can gain more opportunities by subcontracting or by forming consortiums (associations) with other companies (this is discussed in more detail later in the toolkit). There are a variety of different ways to gain information about subcontracting opportunities. For example you can find out about these types of opportunities by looking at public sector organisation websites, some of which will advertise their contracting opportunities there. Alternatively you can look at resources such as the OJEU and search out suppliers yourself.

## Framework Agreements

These opportunities will initially be advertised in the OJEU and therefore are subject to EU procurement regulations. Framework agreements outline agreements and terms and conditions with buyers. The agreements outline the terms and conditions under which specific purchases (call offs) can be made throughout the term of the agreement. Not all services will have to be advertised through the OJEU and these others will be advertised through the Office of Government Commerce (OGC).

Extra Tips for finding opportunities:

- Contact public sector organisations directly and ask what contract opportunities they have to offer;
- Register on a website such as [www.Supply2.gov.uk](http://www.Supply2.gov.uk) and publish a 'supplier profile' of your ULO to make yourselves known;
- Look out for publications, news and events which may provide opportunities for you to advertise your profile.

Each Local Authority will interpret the legislation governing procurement slightly differently. This section is a brief overview of the main principles that Local Authorities use in relation to tendering and the differences there are. When bidding for a tender with a particular local authority or public body you will need to have a good knowledge of that particular body's policies on areas such as risk, data protection etc as these will also be expected to be adhered to along with compliance with current legislation. For more detailed information for each Local Authority click on the headings for link to the relevant website.

### [Southampton City Council](#) (SCC)

Governed by three sets of principles:

**EU Treaty Principles** - equal treatment of all potential bidders and suppliers, fair competition, proportionality, transparency, no discrimination and the requirement of tenders must be relevant to the subject matter of the contract.

**General Principles** - best value, non-discrimination and competition

**EU Procurement Directives** - See above (under European Legislation)

It is a good idea to look on the Southampton City Council Website (link at the top of this section) to get an idea of the way processes differ for contracts of differing values.

### [Southampton City Primary Care Trust](#) (SCPCT)

**Is a procurement required?** SCPCT will consider whether or not the contract actually has to go out to tender if there is a suitable service provider who is already in place.

Key principles and considerations:

- Transparency
- Proportionality
- Non-discrimination
- Equality of Treatment
- Use of Any Willing Provider (AWP)
- Commercial considerations
- Key risks to the success of a procurement

[Hampshire County Council](#) (HCC)

There are five main areas of purchasing which include:

- Goods and services
- Property maintenance and construction projects
- Civil Engineering and highways works
- Passenger transport
- Social care

Those interested in bidding for a tender with HCC should be familiar with the relevant council policies for each of the following areas:

### **Insurance Requirements**

The minimum insurance cover acceptable to Hampshire County Council for any one occurrence, or a series of occurrences arising from one event is listed below:

- Public Liability Insurance- £10 million
- Product Liability-£10 million
- Employers liability-£10 million
- Professional Indemnity-£5 million

### **Health and Safety Requirements**

Tenders need to be in line with the policies and practices which are set out in the council's Health and Safety Policy Statement.

### **Equality**

Successful tenders are subject to regulations set out by the [Single Equality Scheme 2009-2012](#).

The Single Equality Scheme 2009-2012 is the Department of Health's commitment and implementation of the duties placed upon them by equality and Human Rights legislation. The aim is to embed this legislation in both

policy and practice, across the equality strands of ethnicity, gender, impairment, age, sexual orientation and religion or belief. It also incorporates the Human Rights programme. It seeks to bring all of these different equality strands into one single equality strand. For more detailed information visit the Department of Health website [www.dh.gov.uk](http://www.dh.gov.uk).

## **Sustainability**

Another key area for Hampshire County Council is sustainability. Potential bidders will need to show evidence of practices which take into account the sustainability of local communities and improving the local environment. Hampshire County Council has established a sustainable development strategy, 'The Green Buyers Companion', which outlines its priorities in terms of these considerations.

## **Agreements with public bodies**

Third sector and voluntary organisations can work in various ways with public bodies which are not just limited to contracts; this can sometimes involve engaging in joint working agreements which can vary in terms of formality and legal standing. This work can be in the following types of way:

- An informal arrangement which may only outline protocols at an operational level
- Grant Agreements
- Memorandums of understanding
- Legally binding contracts such as Service Level Agreements

These arrangements are not mutually exclusive and can be used alongside one another in some cases. Whether or not these contracts are legally binding is at the discretion of the parties involved. However, it is important to note that if a public body wishes to procure a service it is generally viewed that a contract will be the best practice.

## **Challenging Local Authority's/public bodies**

It is important to remember that as well as local public bodies being subject to certain EU and UK Regulations, they will also be subject to their own standing orders and process frameworks. There is the opportunity to challenge contracting authorities if they breach relevant regulations. All tenders are subject to the principles of transparency so if, for example, certain pieces of information relevant to bidding for the tender were not made available to potential bidders when they received all information relating to the tender bid the contracting authority could be challenged for not being transparent. For example the case '*Letting International Limited v London Borough of Newham (2008) EWHC 1583*' shows not only how contracting authorities can be challenged, but also marks the start of much stricter regulations on ensuring

contracting authorities provide all information relating to the evaluation criteria of a tender.\*

## **Scoring tenders**

Scoring of tenders is usually done on the basis of two methods:

- Lowest Price
- Most Economically Advantageous Tender (MEAT)

In the case of the method chosen being that of MEAT each individual criterion needs to be specified. These must be linked solely to the scope of the specific contract and, depending on particular cases, may refer to the following:

- + Price
- + Quality
- + Aesthetic and functional features
- + Efficiency
- + After-sales service
- + Technical assistance
- + Date of delivery
- + Environmental performance
- + Life cycle, cost etc.

Individual criteria do not have fixed percentages in terms of scoring. The percentages and weightings will differ between each contracting authority.

In the case of MEAT being applied, tenders are evaluated based on a technical score and price. The awarding authority will set out specific criteria related to the tender and will set its own scoring weightings to these criteria. A technical score will be awarded based upon the weightings of the criteria and a score for price will be awarded based on the percentage difference to the lowest priced tender. The awarding authority will also set a relative weight between technical and price scores, and the final score will be calculated using this weighting. So it is not possible to say what you must focus on to score well.

### **E-Tendering:**

E-Tendering is a process whereby all documentation is issued and submitted electronically. This includes everything from advert document production and supplier registration to the delivery of documents between the buyer and supplier, the evaluation of submissions and finally the contract award and publication. It is currently not being widely used by local authorities, but its

popularity is increasing due to the fact that it can support a range of different types of tender.

## **Where you can find relevant tender opportunities**

Tenders will be advertised in a number of places-

- For those over the a certain financial threshold EU Regulations require that the tenders be advertised in the Official European Journal (OJEU)
- [Tenders Electronic Daily](#) (TED) which is an online version of the OJEU
- [Supply2.gov](#) advertises lower value contracts, and you can publish your 'supplier profile' on this website.
- Business Link This is a website which gives information and advice on how to start and grow your own business
- Relevant local authority or public body websites e.g. [Southampton City Council](#) ♦ [Portsmouth City Council](#) ♦ [Hampshire County Council](#) ♦ [Isle of Wight](#)
- The local press
- [The Central Buying Consortium](#) (CBC) is the largest Local Authority purchasing consortium in the UK. It has seventeen Local Authority members and it represents most major local authorities outside London from the Midlands to the South East. To access relevant tender opportunities here once in the website there is a link to the CBC contract register where you will see all the CBC contracts and will be able to contact the lead buyer.

## **Policy in place to empower ULO's to work better with public bodies & requiring public bodies to develop their processes to be effective for ULO's**

Current legislation is urging local authorities to put funding and resources into the development of ULO's and other third sector organisations. This Legislation and also relevant reports are in response to both the barriers ULO's face in relation to tendering and an acknowledgement that their participation and engagement in the procurement process is essential, not only for their own sustainability but for effective delivery of services.

In January 2005 the Government published [Improving the Life Chances of Disabled People](#).

A key recommendation in this report states that:

*"By 2010, each locality (defined as that area covered by a Council with social services responsibilities) should have a User-led Organisation modelled on existing CIL's (Centres for Independent Living)".* (Department of Health User Led Organisations- Steve Strong [www.equalitysouthwest.org.uk](http://www.equalitysouthwest.org.uk))

[The National Centre for Independent Living \(NCIL\) and the Association of Directors of Social Services \(ADASS\) joint protocol 2006](#) aims to ensure that the support and development of CIL's/ULO's is promoted and explicitly embedded in commissioning models and legislation, and seeks to support Local Authorities in the implementation of this aim. The paper outlines key recommendations for Local Authorities to consider in relation to support for local user/carer led groups.

It recommends that Local Authorities endeavour to place tendering opportunities on a 'level playing field' for Disabled People's and carer's organisations to compete in any tendering process.' It also highlights the fact that many areas either lack this much needed user led organisation to provide support services, or if they do exist they may need much support in building both their skills and capacity in order to become a viable competing service provider. The paper states that *'Supporting the creation and development of User Led Organisations would directly link in to the key target 4.3 of the 'Improving life chances for Disabled People' White paper (that each locality should have a user-led organisation modelled on existing CIL's.)'* Knowledge of the information contained in the NCIL/ADASS Protocol will empower you as a ULO to work effectively with local authorities as you will not only be aware of the recommendations put forward but also why they are relevant to achieving success not only for ULO's but also for Local Authorities in terms of delivering on key legislative priorities.

The paper strongly recommends throughout, that Local Authorities work closely with ULO's, essential as it will encourage better quality support services, and highlights the ways in which this can be done.

Within Contracting:

- + Public bodies need to make sure that their contracting processes do not discriminate.
- + Public bodies should make sure that local policies recognise the 'added value' which organisations such as ULO's offer in relation to having credibility with service users. This in turn, raises the standard of quality assurance and means the Local Authority and CIL/ULO are working towards an identified Independent Living outcome.
- + Part of the Local Authority's role is to develop local communities so by promoting the development of local groups along with CIL/ULO infrastructure resources which will lead to inclusion and added benefits for service users.

Local Authorities need to recognise that in order to develop CIL's/ULO's and other third sector organisations need sustainable sources of funding.

By funding development of the skills, policies and practices of CIL's/ULO's, Local Authorities can ensure that service users who are less represented and

have been shown to be less likely to take up Direct Payments and individual budgets, can gain better representation.

Benefits of ULO's and CIL's highlighted in the report:

- They are expert in the development and promotion of Independent Living
- The successful use of Direct Payments, which are essential for Independent Living rely on access to appropriate support , given by CIL's/ULO's'.
- Recommendation for support for commissioners to develop regional Action Learning Sites for Commissioners.
- Another body of work which will be useful for guiding Local public bodies in the areas relevant to supporting ULO's in tendering is Breakthrough UK's report 'Principles of Inclusive Commissioning'. The report highlights key areas and details points which are needed for inclusive commissioning in each area. For example the report looks at the application process for tenders and recommends for inclusive tendering, that application forms should be available in a range of accessible formats, have guidance notes on completing the application and that each tender pack should contain an evaluation and a complaints form so that meaningful feedback can be provided.
- From Putting People First (HM Govt 2007) - By 2011 All council's will be expected to have ' a commissioning strategy which includes incentives to stimulate development of high quality services that treat people with dignity and maximise choice and control as well as balancing investment and support for those with high level complex needs. This should have the capacity to support third sector innovation.'(DH, 2008 a pg 24)
- Local Government White Paper-'Strong and Prosperous Communities' October 06: A £16.5 million Real help for communities modernisation fund to help with the cost of mergers and partnerships for at least 3000 third sector organisations.
- Local Strategic Partnerships (LSP) - Each local area will have an LSP. Decides on local priorities, third sector organisations are full and equal partners.
- Local Area Agreements (LAAs)-Agreements between central government, LA's, and their partners to improve services and quality of life in an area.
- Comprehensive Area Assessment (CAA)-Assesses how well local public bodies are working in partnership to deliver agreed priorities set

out in local area agreements. The CAA can be a useful tool for third sector organisations in holding public bodies to account.

- That 'value for money' has been considered in the context of the added value contributed by local possibly smaller organisations.
- MEAT-'Whole life costing': Looking at the whole life process of a particular tender rather than simply more immediate considerations and apparent value.

## 5.A Checklist for Tender Readiness

This part of the toolkit is comprised of information taken from relevant Local Authority regulations, and examples of pre-qualification questionnaires. It provides a general overview of areas which should be looked at to aid tender readiness.

Appendix 3 provides a checklist of structures you need to have in place and information you are likely to need when actually completing your tender.

### **How to best prepare for tendering:**

Tendering is the main focus of the procurement process as a whole, as it is the part of the process where a potential tender bid can be won or lost. However it only takes up a proportionately small amount of time in comparison to the procurement process as a whole, lasting on average a matter of a few weeks. Because of this very short space of time in which the tender is actually won it is essential for organisations wishing to tender that they take the time to prepare fully before the period of the actual tendering. The procurement cycle may start months before the actual service in question is put out to tender. In order to prepare a contract for tendering the relevant public body will have to:

- Set a budget;
- Decide whether the service needs to go out to tender or can actually stay with the existing provider;
- Develop a service specification.

It is actually possible to have an input into the process before the tender is advertised. It is a good idea to try and contact key decision makers in your local area and inform them what your organisation stands for, does, and the particular benefits they can bring to the type of service in question. The types of people you should be aiming to contact are, local councillors, procurement officers, the local voluntary sector council (as they often represent on decision making forums such as LSP's) and members of the Local Strategic partnership (LSP). Also there may not always be a need for something to go out to tender in the first place. The services which ULO's will provide will generally fall into the part B services as defined by EU Regulation, and although advertising is required for tenders above a certain financial threshold (as detailed earlier in EU Regulations) they will not be bound by the regulations and processes of many other types of tender. It is not always so competitive and there is more room for negotiation. In fact, there are regulations in the EU guidance which state that 'a compelling reason argument' can be made for not putting a service out to tender. As the interpretation of EU Regulations varies so much between different public bodies, there is worth in challenging your Local public bodies on whether

certain services actually need to go out to tender, especially if they are of relatively low value as the administration costs of preparing the tender alone can be more than the actual value of the contract.

### **Completing the tender:**

There are two stages to completing the tender the first is the pre-qualification questionnaire (PQQ). If you are successful in this the second stage will be completing a full tender.

Generally under EU Regulations there are thirty seven days to complete the pre-qualification questionnaire, and forty days to complete the full tender. Each particular type of contract is detailed above in the section on regulations and timescales. However, if the service you are tendering for does not subject to the full EU Regulations you may be able to challenge the timescales.

### **Resources to enable tender readiness**

Below is a list of policies, procedures and considerations you may need to alter or take into account before completing your pre-qualification questionnaire to ensure your documentation is up to date and compliant.

#### **Necessary Policies and Procedures**

General:

- Health and Safety at Work etc Act 1974
- Employment Law (TUPE)
- Risk Assessment
- Adult and Child Protection policies; Safeguarding Vulnerable Groups Act 2009
- Quality Standards- i.e. Investors in People-A framework for delivering business through people

For Minimum Agreement/ Contract (Where total value of contract does not exceed £5000 over a three year period):

- Necessary CRB checks
- Funding spend evidence
- Evidence of feedback from users of services
- Complaints procedure
- Insurance at the appropriate level for the contract
- Acknowledgement of funding
- Data protection Act 1998

- Correct use of funding

#### Further Considerations (for larger contracts)

- Equal Opportunities policies
- Access to services and monitoring
- Confidentiality
- Payment
- Timescales
- Service(s) to be provided

Think carefully about exactly what the service will provide down to the very small details as you will be asked to provide a detailed description of this e.g.

- Who will be provided with a service
- Quality Assurance – how will you collect and provide evidence to demonstrate you provide a high quality service?

#### Annual Income and Expenditure Accounts (audited)

Generally, public bodies and contracting authorities will require accounts of income and expenditure for the last three years. This can present a problem for more newly established companies and current legislation relating to supporting smaller organisations with tendering recommends that contracting authorities take this into account and only ask for two years evidence of accounting with more fledgling organisations.

#### Service User Involvement:

How the provider gets user feedback and encourages users and carers to be involved in the planning and operation of the service, and the desired outcomes of the user. These considerations are central to public body policies and you need to consider how you will capture service user feedback and involvement which has taken place within your organisation. This may be in the form of written evidence, interviews, annual reports etc (only given with the consent of the person/s it is representing).

#### Consortia tendering:

Consortia tendering is where two or more organisations will work together to deliver a particular service whilst at the same time retaining their own individual identities. This is becoming increasingly popular as contracting authorities are looking to reduce the number of service providers that they deal with and it is easier to deal with a consortium as there is one lead organisation. It is a way for smaller businesses to gain a share in more contracts, however, they may not be the lead organisation, and there are many problems associated with consortia such as allocation of tasks and competition.

## Knowledge of TUPE Regulations

TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (Referred to below as TUPE 2006). This is the main piece of Legislation governing the transfer of an undertaking, or part of one, from one organisation to another. The Regulations are designed to protect the rights of employees in a transfer situation ensuring they enjoy the same terms and conditions, in the continuity of their employment, which they had formally. The TUPE Regulations originally came about to comply with the relevant EC Directives concerning transfers of undertaking. They focus in the following areas: a more comprehensive application of regulations in situations where services are outsourced, 'insourced' or assigned to a new contractor, in order to achieve greater assurance that TUPE applies to labour intensive services; To make the transferee more aware of employee's rights, obligations and liabilities upon transfer; where certain legislation known as 'ETO Defence' can be applied to change the terms and conditions of employment and in which employers can lawfully make transfer-related dismissals, and the transferor and the transferee are jointly and severally liable for any failure to inform and consult with the transferring employees. This may be applicable if the contract for which you are bidding is currently being delivered by another service provider. The contracting authority will not always specify whether or not you need to include TUPE costs when drawing up your budget. If you are unsure the best course of action is to contact a TUPE specialist and they can advise you on the best course of action.

### ***Tips on writing your full tender:***

If you are successful and are shortlisted after submitting your pre-qualification questionnaire you will then be required to submit a full tender to the contracting authority. When writing the tender you will need to refer to all of the considerations listed in this checklist section of the toolkit. There will also be additional considerations such as how to actually write the bid. Here are a few things you should consider when actually completing the forms:

- Make sure that you answer every question which is in the form as everything which is listed in the form is a point which will be considered by the contracting authority, and if you leave a question blank you will lose points.
- You can enlist help and support from people who are more experienced in completing tenders.
- Make sure that you stick to the word limits which are specified in the forms. If you go over the specified word count then the information will be ignored and your tender may even be disqualified.

- Make sure that you proof read your work as tender forms are lengthy and no matter how careful you are there are likely to be at least a few mistakes. Clear, concise, and error free tenders submitted will give an excellent impression of your organisation when coupled with competent and relevant answers.
- Similar to the point about answering every question, also make sure that you answer each question fully in order to gain the maximum amount of points for each section.
- If you are not sure of any issue, contact and ask the buyer in good time before the deadline (there is usually a question period when all bidders can ask questions and have answers which are shared with all bidders).
- If there is something within your bid that the buyer does not understand they will ask you to explain and you must give your explanation by the original deadline unless they say otherwise.

### ***Technical and professional ability:***

The contracting authority will want to know what skills and qualifications the supplier has to enable them to meet the contract. They are likely to focus on the areas detailed below. In this section in particular ULO's can seek to capitalise on their specialist knowledge of personalisation, involvement of service users and carers and promotion of Independent Living, as these will be some of the key areas that the contracting authority will look for evidence of both in practice and documentation. Some examples of this can be seen within particular areas below.

- Does the supplier have sufficient resources available for the contract?
- What similar work has the supplier undertaken in the last x number of years? They will want evidence of previous experience working with the client group. They will also want to see evidence that your organisation has wide knowledge of the areas related to the service you will provide. For ULO's this will include knowledge of key policies and issues surrounding user-led organisations work with individuals such as having choice and control, up to date knowledge of legislation surrounding Direct Payments individual budgets. Also knowledge of the current reports and legislation from the government and other ULO's including recommendations. Another consideration they will look for will be knowledge of the surrounding local area. -The timescales will depend on the Local Authority contracting. They may, for example, require details of services you have provided for the last three years. This will include details of the value of the contract, the contract service and the length of the contract. They may also require details of any default in relation to tenders, and on any contracts where you have not been re-invited to tender.

- What references can the supplier give from recent clients? - Again the amount and preferred criteria will differ between the contracting authority. (In the case of Hampshire County Council for example they give preference to Local Authority or public sector references).
- What are the employers' skills and qualifications that enable them to meet this contract? -This will include areas such as types of training which have been completed by staff members, evidence of similar work or contracts having been successfully undertaken, and again criteria relevant to the specific contract, i.e. for ULO's supporting individuals the contracting authority may require the organisation in question to provide examples/evidence of working with service users in a person centred way which promotes independence. They may also require copies of external audits and reports which show evidence of the various requirements.
- The contracting authority will require details of the staffing and Management structure including key named people in relation to management and operations, as well as details of training undertaken. They are also likely to want information on staff turnover, staff recruitment and the number of staff employed who will be working on the contract.

Overall the contracting authority will be looking for a proven track record in providing services of a similar nature to the tender contract you are bidding for. Evidence of delivering public service contracts on time will be another element that they will want evidence of. Capacity in the organisation to deliver and manage the project, a commitment to continuous improvement and evidence of effective risk management will also be key considerations for which you will need to provide evidence of. This will require developing effective strategies and policies in these areas if your organisation does not already have them developed.

### ***Suitability to pursue the professional activity:***

This applies to Article 46 of Directive 2004/18/EC, which takes into consideration the methods of 'scoring' which are mentioned in section three of the toolkit. The lowest price and the most economically advantageous tender look both at economic and qualitative criteria. This means that in deciding on suitability contracting authorities will score directly on what is set out in the contract specification, they will also look at areas such as meeting the needs of the public concerned in a particular contract, and meeting environmental requirements.

With regard to transparency and fairness the contracting authority must not only show directly the criteria the applications will be scored against, but they must also give an indication of the weightings which they will give to each

area to be scored. (Except occasionally in cases of extremely complex tenders)

### ***Further considerations:***

There are many other more general considerations you will need to take into account when preparing to bid for a tender. This is a summary of more general areas which may need to be considered.

#### Timescales

It is important to be realistic when preparing for submitting your tender, taking full account of timescales for submitting the tender and meeting the closing date and the time of receipt, and for meeting the service delivery schedule. Tenders will specify a deadline for completion and this will be absolutely non-negotiable.

#### Specification criteria

You will need to think carefully about all the criteria set out in the specifications section of the tender, and whether your service meets these specifications set out in the tender document. These specifications are likely to relate to the methods (e.g. planning, monitoring, evaluation, risk assessment) which your organisation will employ to get the job done, and the expected outcomes (e.g. positive changes for service users) which the contracting authority will have from a service put out to tender. Another area which you will need to prepare for will be on information regarding previous related contracts, references for these, and details of the personnel who will be involved in the contract in question and their relevant qualifications.

#### Budgeting

Another hugely important consideration will be budgeting, and the budget that you have to provide the service/ complete the contract. This involves being fully and realistically aware of exactly what you can provide, and for exactly how much money. You need to apply full cost recovery rules to contracts including the costs of preparing your tender. You will need to know the unit cost for services you provide (e.g. hourly rate, administration etc) as you will be asked to detail this providing figures and will need to prepare thoroughly so you have a clear idea of all potential unit costs, such as frontline staff costs, management overheads, related costs and charges. When providing these costs make sure you explain the rationale behind each particular cost.

#### Full Cost Recovery

Full Cost Recovery means recovering or funding the full costs of a project or service from any tender you submit costings for. The principle is that in addition to the costs directly associated with the project, such as staff and equipment, projects will also draw on the resources of the rest of the organisation. For example, adequate finance, human resources,

management, and IT systems, are also integral components of any project or service.

"The full cost of any project therefore includes an element of each type of overhead cost, which should be allocated on a comprehensive, robust, and defensible basis." (Source: Acevo)

Rather than spend a lot of time and paper explaining this more, we recommend you look at the many excellent resources on the Internet for more information. We found the following particularly useful:

[www.fit4funding.org.uk/help-and-advice/preparation/full-cost-recovery/](http://www.fit4funding.org.uk/help-and-advice/preparation/full-cost-recovery/)

### Marketing with a view to Capacity Development

It is important to prepare realistic plans for undertaking a contract but it is equally important to market and sell yourselves as an organisation. Consider the image of your organisation and what image you project to people, as this can be a brilliant way of conveying your organisations ethos and what you do. Having a developed image of the organisation which you can market will provide success not just in presenting a strong image for helping to win potential bids, but it will also help in general to promote your organisation. You could consider if there would be a suitable agency or organisation which would be well placed to promote your organisation, and setting up your own website, as both are good ways of making yourselves known to others. Another way of making yourselves known is to make links with other organisations, or by looking for membership or affiliation.

### Challenges to decisions

If you wish to challenge a particular contracting authority with respect to the awarding of tenders you can do this through public law. However, using this process does not enable you to challenge the actual decision but rather the decision making process which was used. The Public Law Project, a national legal charity can be used to challenge public bodies and hold them to account. You are best placed to challenge if you feel you are able to prove that the decision making process was unfair or biased, was not transparent or did not include sufficient consultation with stakeholders or service users.

([www.publiclawproject.org.uk](http://www.publiclawproject.org.uk))

You can also refer to the OGC's Dispute Resolution Guidance if you need to complain. If you have submitted a tender and you wish to challenge the contract authority's decision on awarding a contract you can do so within a ten day 'standstill' period in the High Court if you believe that they have not kept to the EU Procurement Directives. (As many have been adopted into UK law)

## 6. How to win tenders – unique selling points of User-Led Organisations

ULO's are instrumental to realising the key objectives of personalisation and equality, priorities highlighted in various recent government reports. Consequently these objectives will be a key feature of tendering requirements and ULO's can capitalise by using their expert knowledge to score highly in these areas. The way that these objectives relate specifically to certain tendering requirements has been highlighted in various parts of this report. The parts of the toolkit regarding legislation, checklists and the tender and procurement process are essential to prepare you to complete and submit a bid successfully; to be aware of the potential hurdles; and the areas that you can challenge.

This section highlights the areas that will enable you to 'up your game': from your tender being a potential winning tender to putting your tender above the rest, as it highlights your organisation's unique selling points, and making it the winning tender.

Some key selling points that give 'added value' for ULO's:

- ULO's can support council's to deliver on key priorities-such as personalisation and service user involvement- and therefore improve their performance e.g. individual budgets, carers' strategy, promoting health.
- Supporting the voluntary and community sectors through the procurement of goods and services contributes to the local economy by keeping money local and providing an alternative means of sustainability for the sector outside of funding which may be sporadic and uncertain.
- Person Centred Services, such as information, advice and advocacy support-Research shows that the take up of Direct Payments is highest in areas with ULO's.
- ULO's and other third sector organisations can gather information to give knowledge of unmet need.
- ULO's are key to promoting choice and control and Independent Living.
- ULO's such as social enterprises and those operating in the voluntary and community sector, may have better access to hard to reach customer groups and can offer employment to groups who may find it difficult to secure it in mainstream organisations.
- ULO's have an ability to secure funding not available to the public sector and increase the resources to a given service.
- ULO's can often respond quickly and flexibly to need.

- ULO's are frequently close at hand and will have a vested interest in making services work.

There are a number of strategies that ULO's can employ to develop their capacity to become and stay tender ready. These include:

- Involving a range of players (stakeholders) at different levels across the Local Authority can ensure that a broad support network is built up.
- Having a political plan will help be prepared for a potential tender. This could include a clear relationship management plan with resources, roles and responsibilities for key players involved.
- Be aware of your organisation's own unique selling points, in other words, what does your organisation do or offer that others do not? In the climate of increasing competition and many similar types of service provision this may well be the key element which tips the scales and wins you the tender.
- The importance of working together with local authorities has already been highlighted a number of times in this toolkit, but it is important to stress that work done previously in this area has highlighted the importance of active engagement with the local authority throughout the entire process-from the earliest moment, and ongoing.
- Governance and membership development, how to grow support and manage membership.
- Strategic planning for the future in an inclusive, realistic and pragmatic way including consideration of issues around sustainability .Planning skills to in order to effectively plan, implement, monitor and review. Also analysis of training needs in an organisation in order to secure skills and ways of working which will deliver results in terms of the organisation carrying out strategic aims of a particular tender.
- Implementing ways to ensure relevant policies are up to date developed and carried through.
- Weigh up the benefits and costs of preparing and submitting particular bids in terms of: capacity, expertise, timescales, local knowledge and resources.
- Working with funders and commissioners to prepare and negotiate funding bids and tenders and also gain knowledge of where to seek funding.

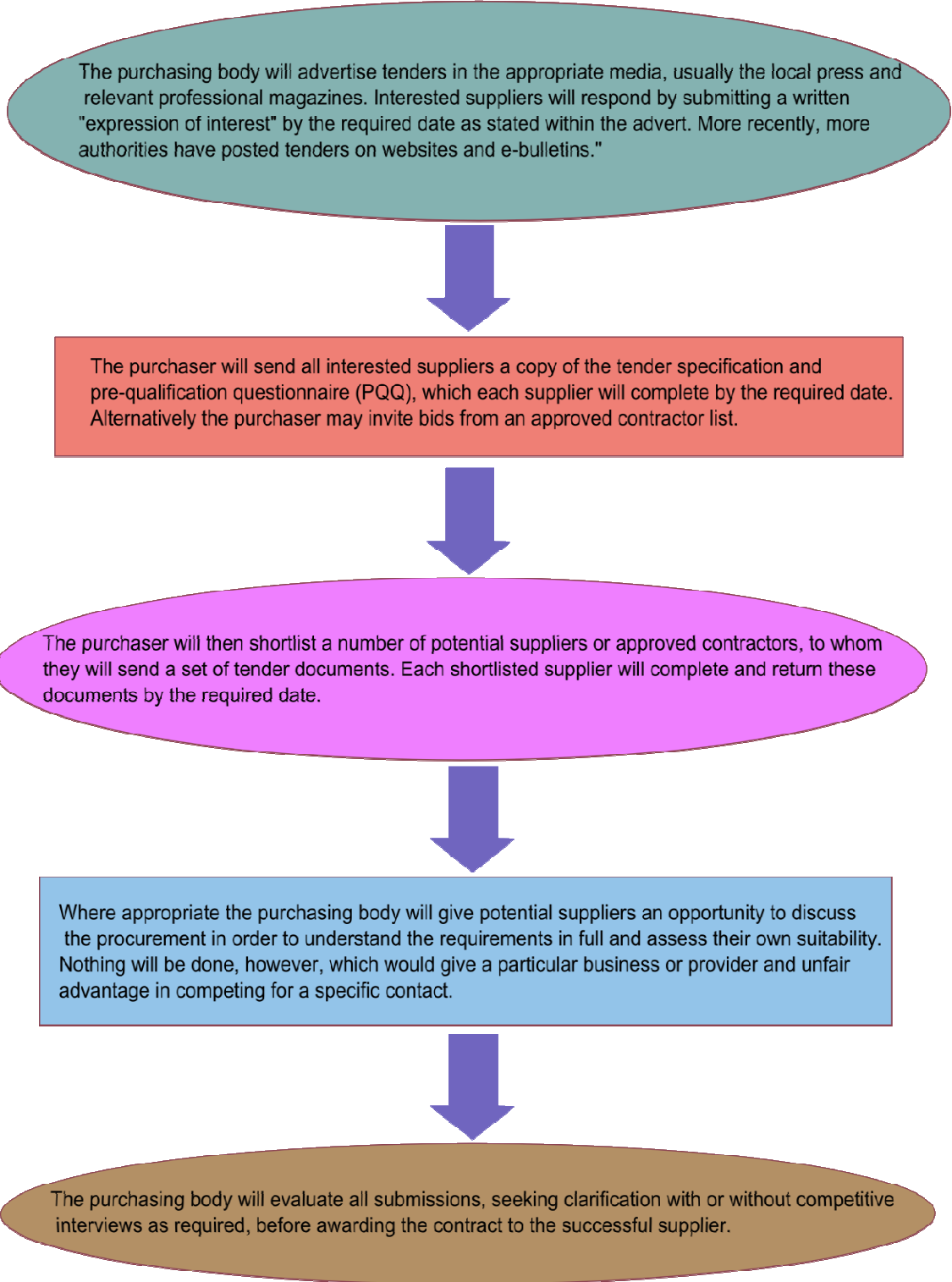
As mentioned earlier in the toolkit ULO's can help local authorities to deliver on particular key agendas and is this is highlighted in a number of studies e.g. 'Secure clear commitment from important statutory authorities, particularly the council, by making clear arguments that connect the value of a ULO to council indicators, such as those around delivering the personalisation

agenda, tackling worklessness, and reducing health inequalities. Mutual understanding of benefit can create momentum upon which the sustainability of the project can be based.' (Learning Lessons: Building Sustainability into the creation of a user led organisation- [www.ncil.org.uk](http://www.ncil.org.uk) )

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# Appendix 1 – Tender Process Flow Chart



## Appendix 2 – Glossary of Terms

**Any Willing Provider** - Describes a set of system rules whereby any provider in the market who meets the criteria may bid

**Bidder** – Organisation or individual bidding for a tender

**Commercial considerations** - Considerations related to business activity

**Commissioning** - the act of granting certain powers or the authority to carry out a particular task or duty

**Commissioners** - Person or organisation who commissions the tender

**Consortium (consortia)** - An association of two or more individuals, companies, organisations or governments with the objective of participating in a common activity or pooling their resources for achieving a common goal

**Contract** - A formal and binding agreement between two or more parties

**Full Cost Recovery** – Adjusting fees/prices for goods/services so that all the cost of operations and maintenance are covered for supplying the given goods or services, including infrastructure and organisational costs

**Litigation** - The conduct of a lawsuit

**MEAT** - Most Economically Advantageous Tender

**Procurement** - The buying of goods or services

**Protocol** - A rule or guideline which guides how an activity should be performed

**Public Bodies** – Publicly funded organisations

**Service Level Agreement** - A negotiated agreement between the customer and service provider formally outlining the details of services to be provided

**Spend Procedures** - What is spent, and where it is spent

**Statutory Authority** – A government organisation which has the right to enact legislation for specific areas of the law

**Sustainability** - Ensuring that long-term social and environmental impacts resulting from services carried out are accounted for

**Third Sector** – Non-governmental organisations operating on a not-for-profit basis e.g. charities and voluntary organisations

**Transparency** - (With respect to tendering) The degree to which processes and methods of assessment are made available to tenderers

**ULO** - User-led Organisation

## **Appendix 3 – A Checklist**

Use this checklist to determine your organisation's state of *readiness* to tender for contracts and for identifying review and updates.

There are many questions that you will need to answer; there is a lot of information that you will have to gather and process; there are a number of documents you will have to have up to date and relevant, there are people you will have to involve, and there is research and/or consultation that you will have to undertake.

Exactly what you will need to do and what information you need to gather to enable tender readiness will obviously differ depending on the specific tender specification and local process. It is best to be prepared for all eventualities that you can think of...you will never be ready for everything!

### ***Sections***

1. Legal and financial status
2. Governance
3. Strategy and planning
4. Risk assessment and management
5. Marketing
6. Financial management
7. Organisational management

Parts of the checklist are based on that produced by Fusion in Wave 1 of the project With thanks to their work.

## 1. Legal & Financial Status

Details of the organisation:-	Yes	No	Action/Comment	Review date
Full name of the organisation				
Legal status e.g. sole trader, partnership, private limited company, public limited company, community interest company, charity etc.				
Copies of certificate of registration				
Full postal address (incl. postcode)				
Registered address (if different)				
Registration number (if a registered company)				
How long you have been trading under this name/status				
Full name of contact				
Designation/role of contact				
Contact numbers				
Do you comply with relevant legislation? e.g. Company Law, Charity Law				
Insurance (Employers Liability, Public Liability, Professional Indemnity)				
Full details of the company's legal standing- this will				

include supplying details if any of the following apply to your organisation: outstanding claims, litigation, professional misconduct, bankruptcy or convictions. They will also require evidence that tax or social security obligations are fulfilled.				
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2. Governance				
Organisational structure:-	Yes	No	Action/Comment	Review
Do you have a copy of your governing documents?				
Are you a membership organisation?				
Do you have an agreed organisational structure, recognised by all members, the governing body (directors/trustees) staff, volunteers and <i>service users</i> ?				
Are you user-led?				
Have you sought to ensure that your governing body, staff and volunteer team are representative of the community you support?				
Do you have a current list and details of your governing body?				
<b>Policies and Procedures:</b>				
Equal Opportunities/Equality				

Policy/Procedure				
Confidentiality Policy				
Current registration and procedures compliant with the Data Protection Act 1998				
Current registration and procedures compliant with the Freedom of Information Act				
Misconduct Policy				
Disciplinary policy/procedure				
Complaints, compliments, comments policy/procedure				
Grievance policy/procedure				
Child protection policy/procedure				
Adult protection policy/procedure				
Health and Safety Policy (compliant with the Health and Safety at Work Act 1974)				
Emergency evacuation procedure				
Policy/procedures in place for Accidents and Incidents				
Risk Assessment and management				

Security Policy				
Transport Policy				
Whistle blowing Policy				
Recruitment policy				

<b>3. Strategy and Planning</b>				
<b>Do you have:-</b>	<b>Yes</b>	<b>No</b>	<b>Action/Comment</b>	<b>Review</b>
A current strategic/business plan?				
Operational plans for each area of work in your organisation?				
A strategy in place to network with public sector bodies and third sector organisations?				
A checklist of required policies for development?				
An agreed process for policy implementation within your organisation?				
Are you aware of key personnel external to your organisation?				

## 4. Risk Assessment & Management

Contracting:	Yes	No	Action/Comment	Review
Is entering into contract work part of your business strategy?				
Have you tendered for work with a public authority or other large organisation before?				
Do you have a process for appraising the implications of entering into contract work?				
Have you a process for undertaking a cost benefit analysis of preparing and submitting every bid?				
Do you have the expertise or access to relevant expertise to put together a feasible business case with realistic costings?				
When considering an individual proposal, have you undertaken the necessary research to ensure you are pitching it at the right price?				
Do you have an exit strategy in place within your business case to include workforce issues and long term financial planning?				

Do you have access to expertise to support contract submissions which include Transfer of Undertakings Protection of Employment (TUPE)				
<b>Consortium working in relation to contract work:</b>				
Name of the lead organisation if you are the member of a group or a consortium				
Do you have the necessary agreements and documentation in place to ensure all partners are aware of their roles and responsibilities?				
Does your agreement include an established procedure to address a breakdown of communication within the consortium or failure of one or more parties to deliver?				
Does the contract require that the consortium is legally constituted?				
<b>Partnership working</b>				
Are you aware of the different models of partnership working?				

Are you aware of the benefits of partnership working?				
Do you know the processes required in order to build and work within a successful partnership?				
Do you have strategies in place to influence others to contribute effectively to your partnership work?				
Are you aware of the requirements in order to maintain a successful partnership?				

<b>5. Marketing</b>				
	<b>Yes</b>	<b>No</b>	<b>Action/Comment</b>	<b>Review</b>
Do you have a Mission Statement?				
Have you identified a suitable marketing consultant and/or organisation/s to promote your services/work?				
Do you have a website?				
Do you have leaflets and information about your organisation (and in accessible				

formats)?				
Have you established links with other organisations?				
Do you actively seek network membership or affiliation?				

<b>6. Financial Management</b>				
	<b>Yes</b>	<b>No</b>	<b>Action/Comment</b>	<b>Review</b>
Do you have a finance manager (or access to such expertise)?				
Are you aware of relevant financial legislation and regulation governing your organisation and its practices?				
Do you have standardised and agreed processes for ensuring financial planning and budgeting?				
Do you have standardised and agreed financial functions and recording processes?				
Do you know where to seek funding?				

Do you have the necessary expertise (or access to such) to prepare and negotiate funding bids and tenders?			
Do you have the following information with respect to submitting your tender?			
Your company's annual turnover			
Turnover in respect of products or services to which the contract relates over the last three financial years			
Balance sheet information			
Bank statements			
Full copies of the company's audited accounts and annual reports for the last three years			
If there are any outstanding claims or litigation then you will need to provide details of this			
Insurance cover For each type applicable to the contract you are bidding for you will need to provide the following details:			

Insurer			
Policy number			
Extent of cover			
Expiry date			

<b>7. Organisational Management</b>				
	<b>Yes</b>	<b>No</b>	<b>Action/Comment</b>	<b>Review</b>
Do you have policies and procedures incorporating up to date legislation and regulation for your organisation?				
Do you have quality and performance management systems in place within your organisation?				
Do you have an established model of service delivery to ensure an effective and efficient service?				
Do you have a process for assessing, providing and maintaining the suitability of your IT systems?				

Do you inform all staff, trustees and service users of their responsibilities in line with the organisation's equality policy?				
Do all line managers respond to the diverse needs of the workforce appropriately and in line with the equality policy?				
Do you have training in place to support this?				
Do you have a HR manager (or access to such expertise)?				

## Appendix 4 – Resources Used

1. <http://archive.cabinetoffice.gov.uk>
2. 'Putting People First: Working together with user-led organisations'  
[www.shapingourlives.org.uk](http://www.shapingourlives.org.uk)
3. Competitive Procurement of Adult Care Services  
[www.southeastiep.gov.uk](http://www.southeastiep.gov.uk)
4. [www.ogc.gov.uk/procurement\\_policy](http://www.ogc.gov.uk/procurement_policy)
5. [www.aequalis.co.uk](http://www.aequalis.co.uk)
6. [www.sbs.gov.uk](http://www.sbs.gov.uk)
7. [www.tenderingforcare.com](http://www.tenderingforcare.com)
8. A Gathering Storm? Procurement, re-tendering and the Voluntary Sector social care workforce [www.scie-socialcareonline.org.uk](http://www.scie-socialcareonline.org.uk)
9. [www.communitycare.co.uk/\(articleID=28715\)](http://www.communitycare.co.uk/(articleID=28715))
10. What criteria should I use to award the contract?  
[www.publicprocurementguides.treasury.gov.uk](http://www.publicprocurementguides.treasury.gov.uk)
11. ULO Report FINAL [www.breakthroughuk.com](http://www.breakthroughuk.com)
12. Are You Ready For Business? [www.livingoptions.org.uk](http://www.livingoptions.org.uk)
13. [www.cabinetoffice.gov.uk/third\\_sector/\(localgovernment\\_partnership.aspx\)](http://www.cabinetoffice.gov.uk/third_sector/(localgovernment_partnership.aspx))
14. [www.publications.parliament.uk/pa/cm200708/EMselect/cmpubadm/1209/1209.pdf](http://www.publications.parliament.uk/pa/cm200708/EMselect/cmpubadm/1209/1209.pdf)
15. <http://www.cabinetoffice.gov.uk/media/107235/consortium%20guide%20final.pdf>
16. <http://www.scie.oas.org/dictionary/GP-e.asp>
17. 'Public procurement law: the basics' URL<<http://out-law.com/default.aspx?page=5964>>

## **Appendix 5 – Recommendations for SCIL**

1. Create and disseminate a clear strategy for future resourcing of SCIL with clear position on tendering.
2. Test and improve the checklist.
3. Resource the further development of this piece of work to develop a practical toolkit and its maintenance.
4. Establish and resource a systematic review of all governing documentation, policy and procedure and all financial and legal processes and related documentation to enable up to date information to be readily available for tendering.