

## FREQUENTLY ASKED QUESTIONS FROM THE TRANSFORMING REHABILITATION INFORMATION WORKSHOPS

### Question topics:

1. **The PQQ and competition timeline**
2. **The scope of TR**
3. **Contracts and award criteria**
4. **Payment-by-results**
5. **Demonstrating impact**
6. **Supply chains**
7. **Other considerations for potential subcontractors**
8. **Sustainability of funding and other services**
9. **Probation staff and TUPE**
10. **Future events and support**

### 1. The PQQ and competition timeline:

#### **Q: When is the deadline for the PQQs to be submitted from interested bidders?**

The PQQ deadline has been extended from the 31<sup>st</sup> of October to **2pm on the 14<sup>th</sup> of November 2013.**

#### **Q: How many Tier 1 providers will be shortlisted in each area?**

It is likely that between 3 and 7 primes will be shortlisted to each CPA. MOJ will publish the names of shortlisted organisations.

#### **Q: Due to the passage of the Offender Rehabilitation Bill through Parliament, is it possible that these reforms will not be completed before the next election?**

This is unlikely; Lord McNally (Minister of State for Justice) has said that this is going to happen regardless of opposition. However, the Offender Rehabilitation Bill is not guaranteed to become legislation.

### 2. The scope of services under Transforming Rehabilitation (TR):

#### **Q: What are the Community Rehabilitation Companies (CRCs) and when will they take over from the Probation Trusts?**

The current Probation service, comprised of 35 Probation Trusts, will be restructured to form 21 Community Rehabilitation Companies (CRCs) and a National Probation Service (NPS). It is expected that the CRCs will be constituted by April 2014. The CRCs will be government owned and managed by a team appointed by the Ministry of Justice (MOJ). All current probation staff will be transferred over to the NPS or the CRCs. The 21 CRCs will be aligned to the 21 proposed contract package areas (CPAs).

Ownership of the CRCs will transfer to the successful Tier 1 providers on contract award. MOJ are aiming to have awarded contracts by the end of 2014. The Crown will retain shares in the CRC and will have a veto on certain actions.

**Q: What is the scope of work to be delivered through TR?**

The winning bidders who take over the CRCs will be responsible for managing the majority of offenders in the community sentenced to Community Orders, Suspended Sentence Orders and those subject to licence conditions or supervision requirements. They will need to ensure that the sentence of court requirements are met through the provision of appropriate services. Additionally, subject to the Offender Rehabilitation Bill, supervision will be extended to offenders sentenced to less than 12 months, resettlement services will be provided in custody (at resettlement prisons aligned with CPAs), as will 'through the gate' support.

Further details on the scope of TR can be found in the MOJ's [Target Operating Model](#)

**Q: What is the balance between traditional probation delivery and additional rehabilitation services?**

How much of these contracts end up in 'traditional methods' currently utilised and how much ends up embedded within rehabilitative activities will depend upon each Tier 1's delivery model. Reducing reoffending is an objective of these reforms, and a percentage of the contract will be paid on a payment by results (PbR) basis which will be linked to reductions in reoffending. However, the focus of the Tier 1 providers, at least initially, is likely to be on delivering court requirements, maintaining financial stability and seeking efficiencies.

**Q: Where does mentoring fit in these contracts? Are mentoring services the same as supervision?**

The Justice Secretary, Chris Grayling, has placed a lot of emphasis on 'mentoring' and referred to his desire to have reformed ex-offenders mentoring every newly released offender. However, in reality current mentoring capacity does not match demand and it is difficult to get security clearance for reformed ex-offenders to return to prison to deliver mentoring activity. The [current evidence](#) available about the effectiveness of mentoring has been cited by MoJ as '*showing promise*' and we anticipate that mentoring will play a role within these contracts. However, mentoring, particularly voluntary mentoring, *will not* be equivalent to supervisions.

**Q: Will 'through the gate' services be compulsory?**

'Through the gate' services will be a key element of the rehabilitation programme. It is the MOJ's expectation that most offenders are given continuous support by one provider from custody into the community. However, the [Target Operating Model](#) indicates that Tier 1 investment in 'through the gate' services will be subject to PbR and therefore may not be a core service requirement.

**Q: How many resettlement prisons will there be, and where will these be?**

The current proposal suggests there will be 70 resettlement prisons and a list is available from the MOJ [here](#).

**Q: What will happen to the existing resettlement activity in prisons?**

MOJ's [Target Operating Model](#) outlines the way resettlement will work from designated resettlement prisons. Those prisons that are not designated as resettlement prisons will not have resettlement services. However, the prison offender supervisor will contact the CRC in the prisoner's 'home' CPA to arrange for the provision of a resettlement service.

The existing provision and funding of mainstream and co-commissioned services (i.e. those addressing health needs, substance misuse, employment, education and training) and provision of offending behaviour courses will remain in place for now, however commissioners may amend their commissioning strategy to align provision to maximise integration between their own funded services and those provided through the TR contracts.

**Q: Where does the female estate and services for women offenders fit into the TR model?**

MOJ have recently announced new reforms for the female estate. The reforms are in response to a review of the female custodial estate and the response to the Justice Select Committee report on the failures in implementing the [Corston Report](#). As part of the new model all women's prisons will become resettlement prisons so female offenders serve their sentence as close to home as possible, allowing them to maintain crucial family relationships, especially with children. These reforms will sit alongside the TR reforms and further detail can be viewed [here](#).

**3. [Contracts and award criteria:](#)**

**Q: Will the contract terms vary between each Contract Package Area (CPA) and how long will each contract/subcontract be for?**

Each contract will have different requirements and as such each winning tender will not be identical. The Tier 1 provider's successful bid will form part of the contract for that CPA. However, some terms and conditions will be standardised across all contracts. Draft standard contracts are due to be published by MOJ.

The prime contracts will be for 7 – 10 years with the possibility of up to a 3 year extension.

The Tier 2 and 3 contracts will follow industry standards but you should negotiate your contract length as appropriate for your organisation. Please bear in mind that contracts will have break clauses which either party could enact.

**Q: Will there be a cap on the number of contracts each Tier 1 can win?**

Yes, the cap is set at 25% market share. This will be based on the value of the contracts. The 21 contracts are worth approximately £450m per annum in total, 25% of this is £112.5m. The London contract alone is worth up to £72m per annum, so this would meet a significant proportion of the maximum market share with just one contract. However, the North Yorkshire, Humberside and Lincolnshire, West Yorkshire, South Yorkshire, and Norfolk and Suffolk *combined* are worth up to £70m per annum.

The cap is not based on the number of contracts a bidder can win, but the value that these have collectively; therefore a provider could bid for and win a number of small contracts, or a large contract, such as London, and perhaps a couple of smaller ones.

Tier 1s will also be subject to caps individual to their organisation based on their current financial standing.

**Q: Will the Tier 1 bids be assessed on Social Value?**

Social Value will be an aspect of the assessment process once the qualifying bidders pass PQQ stage. However, fundamentally the contracts will be awarded based on defined price and quality scoring criteria.

**Q: Will Tier 1s be required by MOJ to demonstrate a diverse supply chain?**

Contracts will be awarded on a price and quality scoring. It is likely that some diversity within supply chains will be required in order to demonstrate some quality measures, such as local knowledge and partnerships, but a 'diverse supply chain' will not be a direct requirement.

**Q: What will be the split between price and quality in the evaluation process?**

MOJ have not yet released the evaluation criteria for the ITN stage of the competition.

**4. Supply chains:**

**Q: What are the Tier 1 providers likely to look like? What are the management structures likely to look like?**

Tier 1 providers are expected to structure their models in a variety of ways. At one end of the spectrum are managing agents, who will not deliver the majority of services themselves, but will subcontract others to do so. At the other end of the spectrum are primes who will look to deliver a significant proportion of services themselves, with shorter supply chains. Bear in mind that the CRC will be a subsidiary of the Tier 1 organisation and will play a significant role in delivery.

**Q: How much work in TR will be delivered by Tier 2 and 3 organisations?**

This will vary from area to area depending upon the Tier 1 provider awarded each contract. We do not expect any Tier 1 provider to keep *all* delivery in-house, but the proportion of delivery subcontracted to Tier 2 and 3 organisations will vary. Also, it should be noted that there will be no minimum requirements for subcontracting with specific sectors as this is against EU procurement law. There are not likely to be restrictions on the number or levels of subcontract.

**Q: What will the opportunities for Tier 3 providers be in TR and who will manage the Tier 3 contracts?**

There are likely to be some opportunities, but this programme is by no means a huge opportunity for smaller specialist organisations. Particularly during the first few years of

delivering, Tier 1 providers will be securing their core services, maintaining financial stability and making efficiencies, so subcontracting opportunities may be scarce in the early stages of contract delivery.

It is likely that all contracts will be held with the Tier 1 providers, but it may also be possible that larger Tier 2 or a consortium of providers manage some Tier 3 subcontracts with smaller organisations.

**Q: Will subcontractors be expected to deliver services across the whole CPA?**

Primes will put together the most commercially viable supply chain taking into account potential subcontractors capacity and geographical reach. The size of subcontractors contracts will be negotiated with primes. No one should take on contracts that are too large for them to manage viably.

**Q: What can supply chain organisations expect in terms of working relationships with Tier 1s?**

It is important to have a clear understanding of what the Tier 1's expectations are and to get clear processes, reporting requirements, and lines of communication established from the beginning. This will ensure that demands on time and resources are not unexpected and do not become too difficult to manage.

**Q: If you are a specialist organisation which delivers interventions aligning to the resettlement pathways (e.g. employability, housing etc.), but you currently do not deliver specifically to offenders, will there be room for you in the competition?**

Potentially yes, if the interventions that you provide have an evidential link to reductions in reoffending rates then it is possible that a Tier 1 provider would subcontract to you.

**Q: How will quality throughout the supply chains be ensured?**

Tier 1 providers will ensure quality throughout their supply chain through a robust selection process, selecting commercially viable providers who can demonstrate that their services reduce reoffending. Tier 1 providers will also proactively manage their supply chain, using contractual performance management regimes to ensure key performance indicators, targets and outcomes are met. As a last resort underperforming subcontractors would be managed out of the supply chain.

**Q: Is there yet any clarification on what IT systems will be required to deliver the services? Will there be any support in developing these systems?**

Ministry of Justice have circulated their initial thoughts on IT strategy to potential primes but we are not aware of their plans to share this more widely.

**Q: If potential subcontractors are able to provide buildings, estates and facilities, will this be a competitive advantage?**

In some CPAs this might be attractive to Tier 1 providers; however, in other areas the Tier 1 provider may prefer to maintain existing estates and facilities. Other factors, such as the level of security of the buildings would be important.

**Q: Will Tier 1 providers cover any overheads, for example public liability insurance requirements, on behalf of their supply chains?**

Experience of past prime-sub relationships would suggest that this will not be standard practice. Tier 1s are not obliged to cover overheads or insurances, and we recommend that all providers hold their own insurances to sufficient levels.

**5. Payment terms:**

**Q: What will the PbR element of the contract be based on?**

For Tier 1 providers, it will be based on an agreed reduction in binary and/or frequency measures of reoffending rates (i.e. complete desistance across a cohort of offenders, and a reduction in frequency of offenders). The detail of exactly how these measures will be applied, and/or potentially interact has yet to be confirmed. The [latest update on the payment model](#) contains several options the MOJ are investigating, and clearly states *'Details of the updated payment mechanism to be used in the competition will be provided to shortlisted bidders at ITN stage, and this is the only payment mechanism that bidders should rely on.'*

**Q: Will the PbR element of the contract be applied from the start?**

This is currently being decided within MOJ. They are considering a 'PbR holiday' which means that there may be a period from the start of the contracts where PbR would not be applied.

Over the life time of the contract, a 'learning curve' discount will be expected. This means Tier 1 providers will have to reduce their Fee for Service (FFS) payments and increase their PbR contract percentage year on year, and will need to look at how they can become more efficient and effective throughout the contract life.

**Q: Will PbR be applied to all organisations in the supply chain?**

This will depend on how Tier 1 organisations decide to subcontract with their supply chain. The [latest update on the payment model](#) released by MOJ suggests that Tier 1 providers will be able to set the percentage of the contract they are willing to put at risk through PbR, though how this is stepped down through the supply chain will vary. It is likely that Tier 1 providers will be prohibited from passing down more PbR risk than is held by the principal contract. We expect to see something which prohibits this in the standardised contracts and subcontracts.

We would expect that at Tier 3, there would be no PbR element (i.e. the contract is paid on a fee-for-service basis), and that any PbR element at Tier 2 level would be minimal. You are advised to consider contracts that include a PbR element very carefully. Remember that if the prime does not achieve the targets for PbR payments, this could impact on the payment the subcontractor receives regardless of whether they have achieved their targets and

despite the fact that they may not have been able to influence all factors involved in achieving the wider outcomes.

It is important for all organisations to understand and model how much of the service they can realistically deliver on a PbR basis and be clear about this when in negotiations with Tier 1 providers. We also caution against small organisations scaling up their work in anticipation of being part of a TR supply chain. Organisations would do best to focus on what they can realistically offer currently, and take this offer to Tier 1 providers.

**Q: Will Social Impact Bonds (SIBs) play a part in TR?**

SIBs and other forms of social investment may have a role to play in supporting organisations to bid for and deliver TR contracts. However, we do not expect that it will be utilised in every prime contract, nor in every supply chain. In many cases, other forms of capital may be cheaper and less complex to secure and manage.

**Q: The MOJ have signalled that there will be some grant funding available within supply chains—is this likely to be the case?**

It is not clear whether Tier 1s will provide grant funding. There may be fee for service contracts which fund services upfront, but this will be conditional on delivering the contract. Alternatively, some Tier 1s may use grants to test and scale up more innovative models, but it is unlikely that there will be a large number of these grants available.

**6. Considerations for potential subcontractors:**

**Q: Should voluntary sector organisations be getting involved? Will there be compromises to be made in terms of organisational values or mission?**

It is important for each organisation to evaluate whether being involved in TR fits with their values and strategy. It might be that involvement in the supply chain will benefit the service users and charitable aims of the organisation (although financial risk considerations should not be overlooked.)

However, there may also be ethnical, cultural or values conflicts for Tier 2/3 voluntary sector providers. For example, organisations within TR will have to report any breaches of compliance by service users.

NCVO has guidance on [good contractual relationships and negotiation](#) and on [assessing the suitability of subcontracts](#).

**Q: What protection will be in place to safeguard the intellectual property (IP) of SMEs?**

One of the MOJ's Market Stewardship principles is that '*recognition of good performance should be shared across the chain and this should include the sharing of good practice.*' This is aimed at ensuring improvement in service quality as well as transparency. However, there are understandably concerns around intellectual property for smaller organisations.

Organisations are advised to consider carefully how much information about the delivery model is shared at the early stages, and to take standard safeguards against this risk, such as signing non-disclosure agreements with Tier 1s.

**Q: How is the MOJ tackling the use of voluntary sector organisations as 'bid candy'?**

The MOJ have set out their Market Stewardship principles which provide a range of standards and expectations they will monitor across all Tier 1 bidders. Potential providers also have a responsibility to report any unsatisfactory negotiating or contracting practices that they experience with the Tier 1s to the MOJ e.g. requests for exclusivity with MOJ registered providers, which has been prohibited.

**Q: When does the MOJ's registration process for potential Tier 2/3 providers close?**

The MOJ are running a registration portal for all potential Tier 2 and 3 providers. It will close on 14 November 2013. By registering, you are protected by measures including: Tier 1 providers must adhere to MOJ's Market Stewardship Principles when contracting with anyone registered via this process and, importantly, must use the industry standard subcontracts (referred to as Industry Standard Partnering Agreement). Therefore we strongly recommend that all providers who expect to work at Tier 2/3 level complete this registration process via the [MOJ Transforming Rehabilitation site](#).

**Q: Will Tier 1s already have certain organisations in mind for their supply chains? It is worth approaching potential Tier 1 providers, or should Tier 2/3 organisations wait to be contacted?**

Some strategic and operational relationships will already exist or will be in the process of being formed by providers. However, there are still opportunities for new contracting relationships to be formed. It is important that Tier 2/3 organisations make sure they have the information and evidence which demonstrates their impact and makes this visible to Tier 1 organisations through the registrations process.

Supply chains are unlikely to be finalised before the detailed specification has been released.

**Q: What should organisations do if they have been asked to sign up to an exclusivity agreement with a potential Tier 1 provider?**

The MOJ wish to prohibit exclusivity deals, and you should not sign up to these. Any potential Tier 1 provider demanding an exclusivity agreement for Tier 2 and 3 providers registered with MOJ are in breach of the MOJ's Principles of Competition. We recommend that you report these incidents to the MOJ. The exception to this is any partnerships in which you are involved in the co-design of the prime's delivery model. Even in these circumstances, make sure you consider this decision closely and be clear on what you stand to gain in return.

**7. [Sustainability of funding and other services](#)**

**Q: What is going to happen to contracts currently with Probation Trusts?**



Probation Trusts should not be cancelling contracts which are already in place, however we may find that contracts coming to an end are not renewed. We would expect that contracts scheduled to continue beyond the start date of the TR contracts to novate to the CRC.

**Q: What is likely to happen to funding from grant making bodies—will this cease?**

It is important to keep grant making bodies informed about what is happening to your funding, and what the TR contracts will and won't fund. Keep communicating with them and informing them that their investment and community-based support will still be required and the Tier 1 providers are unlikely to have the funds to invest in services which sit outside the scope of the contract.

**Q: Where do European Social Funds (ESF) programmes fit in the TR agenda?**

The current competition for TR contracts is separate from ESF. Current ESF funding runs until the end of 2014. In the [Strategy for Reform](#) MOJ stated that they will align the next round of competition for ESF with the services for reducing reoffending delivered by providers within TR. This funding will be targeted at the hardest to reach groups and will also complement the aims of the Work Programme. Although these references to ESF from MOJ are vague, we expect TR to benefit from ESF co-finance money. MOJ have not stated how much funding will be available, or who it will be available to.

**Q: Will local authority strategies for providing services still exist?**

Local authority strategies for providing services will still remain. Their services may reduce in size or change in priority, but many of these local services will continue to underpin resettlement activities.

**Q: How will drug and alcohol services be funded?**

Funding for these services will continue to come from the Department of Health (DH) and Local Authorities. However, MOJ have also indicated that they will be testing a pilot 'through the gate' drug treatment programme for offenders, to be delivered with DH. There is an expectation that Tier 1 providers should develop partnerships with commissioners of these services. Drug rehabilitation can be part of Community Orders and Suspended Sentence Orders and providers of TR will support offenders to access these services.

**Q: How will employment services be funded?**

MOJ has planned that it will be mandatory that offenders who claim Jobseekers Allowance access the Work Programme immediately after release. As these services are funded by an existing programme, it is highly unlikely that Tier 1 providers will invest in these services, but they may fund additional support for those hardest to help, or for those not eligible for Work Programme provision.

**Q: Will the Integrated Offender Management (IOM) service continue?**

The IOM is a framework within which local partners, including police and probation, work together to manage the most prolific offenders. Each IOM approach differs locally. The

[Target Operating Model](#) designed by MOJ states that '*Bidders will need to evidence how they will engage with local partnerships, for example existing IOM arrangements.*'

**Q: What is being done to consider the needs of Black Asian Minority Ethnic (BAME) groups?**

During the TR consultation process MOJ posed two specific questions on groups with complex needs and protected characteristics. They are currently engaging with a number of organisations on issues relevant to minority groups of offenders including BAME groups. The responses and discussions will be published on MOJ's website.

[Clinks](#) have also done a lot of work on the needs of BAME groups, including working with BTEG (the Black Training and Enterprise Group) and Baroness Lola Young of Hornsey to convene a task-group looking at improving outcomes for young Black, Asian and Minority Ethnic men between the ages of 18 and 25 in the Criminal Justice System, and to take the issue forward at government level. The interim report is likely to be published in January.

**8. [Demonstrating impact](#)**

**Q: How will services be funded where impact is not easily demonstrated?**

It is important to remember that Tier 1 providers will want to see robust evidence of the value that a particular service brings to reducing reoffending. As far as possible, organisations should collate information about the proven impact of their services on reducing reoffending, or on intermediate outcomes which themselves have a robust link to recidivism.

**Q: How does the Justice Data Lab (JDL) work, and how is it accessed?**

Organisations submit the required data (programme and cohort information) to the [Justice Data Lab](#) and the JDL will then supply the one-year proven re-offending rate for that group, and that of a matched control group of similar offenders. Clinks and NPC have produced a guide to the data lab which can be found [here](#). Organisations which have gone through the process so far are named in MOJ's publication '[Justice Data Lab Statistics April to October 2013](#)'.

**Q: Will Tier 1s be using evidence from the Justice Data Lab to assess potential supply chain partners?**

This is one source of evidence, but Tier 1 providers won't necessarily access or take account of this. MOJ have reported that so far only seven providers have completed the JDL process, so it seems likely that many potential supply chain partners will need to use other impact evaluation and assessment methods.

**Q: Some of the information from the Data Lab which has been released so far has shown negative impacts—is this a misleading picture?**

The Justice Data Lab measures impact on reoffending rates using a purely binary measure, which does not demonstrate reductions in to the frequency or severity of reoffending which

may have been achieved. Therefore the picture may be more nuanced than the JDL data illustrates.

## **9. Probation staff and TUPE**

### **Q: What will the pension liabilities for this be?**

All existing terms and conditions of employment, including pensions, transfer across to the CRC. Pension schemes offered to these staff must match that offered by the Local Government Pension Scheme (LGPS) and the Principal Civil Service Pension Scheme (PCSPS). Equivalent schemes will need to be put in place for staff that join the CRC after the ownership is transferred to the Tier 1.

### **Q: How much time will there be for TUPE negotiations - experience from the Work Programme was that this often occurred at the last minute?**

Tier 1 providers will define how their models will work at an early stage in the competition and should therefore have an idea of whether they think TUPE will apply or not. However, no set time has been cited for TUPE negotiations at this stage.

### **Q: Will TUPE liabilities apply to Tier 2 providers?**

Ultimately, TUPE is a matter of law and is not for us to confirm/deny. Whether or not TUPE may apply will depend on Tier 1 delivery models and whether their proposed supply chain will be fulfilling roles previously undertaken within another organisation. However, it is possible that other solutions will be sought to address this, such as staff being 'seconded' from the CRC.

## **10. Future events and support**

We will be running **networking events** in each of the 21 CPAs for potential Tier 2 and 3 providers to meet the shortlisted Tier 1 providers. There will then be 10 regional workshops on **impact measurement** and **negotiation skills** and 6 pan-regional sessions on **TUPE and pensions**. The full programme list of the events is available [here](#).

Attendees of our events are included on our mailing list and will receive updates when the registration opens for future events. If you would like to be added to our mailing list, please email [TRQuestions@acevo.org.uk](mailto:TRQuestions@acevo.org.uk) and include 'Mailing List' in the subject line of your email.