

A Detailed Handbook on **TENDER EVALUATION**

White collar, professional and manual services

- *CCT in Local Authorities*
- *Competitive tendering in Health Services*
- *Market Testing in the Civil Service*
 - *Putting quality into bids*
 - *Assessing quality of service*
 - *Technical appraisal*
 - *Financial analysis of bids*
 - *Evaluating TUPE based tenders*
 - *Complying with European law*
 - *Checklists and matrices*
 - *Contract decision models*
 - *The role of tenant/user reps and trade unions*
 - *Organising and planning the evaluation process*
 - *Assessing equal opportunities and environmental issues*

PUBLIC SERVICE PRACTICE 1

A Detailed Handbook **TENDER EVALUATION**

*White collar, professional and manual services for
CCT in Local Authorities*

Competitive Tendering in Health Services

Market Testing in the Civil Service

PRICE: £18.00 to local authorities and other public bodies

£10.00 to trade unions and community organisations

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Public Service Practice is a series of reports analysing policies and drawing together best practice based on public sector and trade union principles.

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Part 1

Preparing for Tender Evaluation

Introduction

Tender evaluation is a crucial stage in the competitive tendering and market testing process. It is the stage where the preparation of comprehensive specifications and the adoption of a rigorous approach to the tendering process come to fruition. In addition, well prepared specifications, contract conditions and monitoring systems will be undermined if authorities are poorly prepared and/or are not prepared to thoroughly and systematically evaluate tenders.

The original Tender Evaluation report launched our series on Public Service Practice in 1989 and sold out after reprinting. It was highly influential in helping local authorities and other public sector organisations to prepare for and to carry out the evaluation of tenders.

This new and expanded edition draws on the lessons learnt since 1989 and develops the evaluation process to take into account new Government regulations, TUPE, European Union rules, the increased emphasis on the assessment of quality and the market testing programme in the civil service.

The report covers the evaluation of tenders in a wide range of services including manual, professional & technical, support services, and administrative and clerical tasks in local government, the health service, the civil service and other public sector organisations. It covers the extension of tendering to white collar services and the retendering of manual services.

The tendering process is broadly similar across the public sector although there are some differences in the approach and rules. For example, market testing in the civil service is not subject to the legal framework imposed on local government although the performance of civil service managers is based in part on the extent to which they meet tendering targets. The process of market testing also has a feasibility stage in which it is sometimes possible to delay or make changes in services being subject to tendering. No such flexibility exists in local government. There are currently some differences in the rules between manual, white collar and housing management services under CCT.

We have provided a framework for a best practice approach for the evaluation of tenders which is appropriate for all services. Authorities may, however, have to make some adjustments to take current Government statutory guidance into account in some services.

All public bodies in Britain must now carry out the tendering process within European Union Directives as well as specific UK laws such as those for Compulsory Competitive Tendering (CCT) in local government. The Government has tightened CCT regulations since 1988 particularly those relating to the costs which local authorities can take into account in evaluating tenders. It has also introduced different methods of assessing the financial aspects of tenders for different parts of the public sector.

Developing a corporate strategy

Authorities should ensure they have a corporate strategy for competitive tendering and market testing and tender evaluation in particular. A best practice methodology should be adopted corporately allowing different departments to adapt certain elements to suit their particular service. This is very important because authorities could quickly end up having a fragmented and perhaps contradictory approach. This could lead to a loss of direction, organisational problems, poor quality services, and declining staff and user morale. In this situation contracts will inevitably be lost to private contractors.

It is also vitally important for the authority to have a corporate policy and strategy for improving the quality of service. A commitment to implementing quality improvement programmes, quality initiatives and better targeting of services to users can provide important supporting evidence in the justification of tender evaluation policies. For example, stressing the role of technical and quality criteria in the evaluation and awarding contracts to other than the lowest tender.

With the extension of CCT across a wider range of local government services a false distinction is sometimes made between manual and white collar services in local government. Some officers and professional bodies in white collar services seem to be claiming that CCT applies to them in a distinctly different way than for other services. These differences are often overstated.

We have prepared this Public Service Practice on the basis that it is applicable for all services. The application of evaluation criteria will naturally vary depending on the service being tendered.

No legal obligation to accept the lowest tender

There is no legal requirement to accept the lowest tender. The overall cost, not just the tender price, is important, particularly when public sector organisations are facing increasing financial pressures.

Quality is equally important for all services. Irrespective of Government intentions on the differential treatment of manual and white collar services the European Union Directives impose a common framework in which quality and other evaluation criteria can be fully considered. The European Directives now apply in the UK under the Public Services Contracts Regulations, 1993. The Directives allow a contract to be awarded under two alternative criteria:

1. the lowest price only – the contract is awarded solely on the basis of price.
2. the most economically advantageous bid – the authority can take technical, quality and other criteria it has designated into account.

The authority must decide at the start of the tendering process which criteria it will use. If authorities award contracts based on the most economically advantageous tender then the tender notice should state the broad criteria which will be used to assess tenders, if possible in order of priority. For example, technical merit, quality plan, capability, cost, and so on.

Authorities can consider additional information about a contractor at the tender evaluation stage. This stage of the tendering process is not simply concerned with evaluating tenders. This could include additional information about a contractor's financial position or performance which had become apparent since the invitation to tender.

Government advice on tender evaluation in civil service market testing states categorically that it should select the tender which represents the 'best long-term value for money'. This advice is the same as the EC's 'most economically advantageous' criteria. In these circumstances it is vital that tender evaluation covers the capability, technical ability, quality and financial assessment of bids.

The following Government statement on the treatment of quality in white collar tenders merely reflects the EC Directives:

'Authorities would have the flexibility to decide on the relative merits of tenders, and need not necessarily choose the lowest priced. But they would be expected to demonstrate that they had their own procedures for fair and even-handed evaluation of tenders on the grounds of quality as well as price.' (11 November 1993).

Authorities will be expected to be able to justify decisions not to award to the lowest tenderer. They should seek to establish a procedure for tender evaluation which applies to all contracts which is robust enough to withstand challenge.

DOE Circular 10/93 (applicable to manual services) advises local authorities that a decision not to award to the lowest tender in favour of a DSO will occur 'only in very limited circumstances' and authorities will have to 'have specific and well-founded reasons for such a decision.' The implication is that there are less restrictions on authorities awarding contracts other than to the lowest tenderer if it is a choice between tenderers from private contractors. The EC Directives will apply to the vast majority of contracts for manual services and the Government will be hard pressed to make a distinction in the treatment of quality and price for manual services.

The Market Testing Guidance for the NHS advises that 'contracts should be awarded to the lowest evaluated bid – unless there are compelling reasons endorsed by the Chief Executive or District General Manager.' (EL (93)55 Annex C) There is very limited advice on the evaluation of tenders (page 54-55 and Annex 6 page 119) and no reference to quality criteria. Most NHS contracts will fall within the scope of the EC regulations.

Tender evaluation should focus on the quality, the effectiveness and the competence of the bids and contractors. However, it is in the public interest that decisions to award a contract to other than the lowest bidder should be clearly justified. CCT regulations for local authorities require such decisions to be justified and may be scrutinised by the District Auditor and the DOE in the event of complaints from contractors, Members of authorities or trade organisations. A rigorous approach to tender evaluation should provide the necessary evidence.

Part 9 includes a section on justifying awarding a contract to other than the lowest tender.

Assessing quality and technical capability

Under European regulations each authority must decide which criteria it will use to evaluate the technical and qualitative aspects of tenders and how it will define or measure them. For example, it is up to authorities to define 'quality' and 'technical merit'. There is similar scope under the CCT regulations for local government. The government has imposed constraints but these are almost entirely concerned with financial matters. Local authorities are free to use and to define quality and technical matters as long as these are applied equally to all tenders.

Authorities can use any criteria to assess tenders provided they are:

- **notified in advance to tenderers**
- **appropriate and relevant to the service**
- **a legitimate client interest**
- **not 'non-commercial'**
- **not 'anti-competitive'**

The main legislation and guidance

NHS

- Market Testing in the NHS: Revised Guidance, NHS Management Executive, June 1993 and includes two NHS Management Executive Circulars EL (93)37 and EL(93)55.

It encourages all NHS units to market test a wider range of services but, unlike local government and the civil service, there is no new legislative or management requirement to do so.

This replaced previous guidance such as Health Circular (83)18 and EL (87)MB/1 covering competitive tendering of domestic, catering and laundry services although the '983 requirement to tender these particular services remains in force.

- Competing for Quality, Cm1730, 1991

Civil Service

- The Government's Guide to Market Testing, 1993: this updates and supersedes PCPU Guidance Note 34, Market Testing & Buying In, 1992

Local Authorities

- Local Government, Planning & Land Act 1980
- Local Government Acts 1988 and 1992
- DOE Circular 10/93 Competition in the Provision of Local Authority Services
- The Local Government (Direct Services Organisations) (Competition) Regulations 1993, SI 848 1993
- Environmental Protection Act 1990
- Leasehold Reform, Housing & Urban Development Act 1993

European

- Public Service Contract Regulations 1993 (SI 1993 No 3228), implementing the EC Acquired Rights Directive (77/197/EC)
- Transfer of Undertakings (Protection of Employment) Regulations 1981
- Public Works Contract Regulations 1991, SI 1991 NO 2680
- Public Supply Contract Regulations 1991, SI 1991 NO 2679

Services Being Tendered

NHS

Management requirement:

Catering
Domestic
Laundry and linen

Examples of other services – there is no requirement to market-test these services:

Audit and Accountability
Agency or Staff Recruitment
Building Services and Maintenance
Car Parks
Clerical and Secretarial
Creche provision
Computer hardware and software (the provision of and maintenance)
Engineering and Maintenance
Grounds, Gardening and farming
Legal Services
Medical Records
Management Consultancy
Personnel Records
Pest Control
Payroll
Portering
Reception/Switchboard
Residential Accommodation – Staff
Security
Sterile Supplies
Staff Training
Storage and Distribution
Transport Hire
Transport Maintenance
Non-Emergency – Patient Transport
Transport – Specify category
Window Cleaning
Waste Disposal

Local Government

Refuse Collection
Street Cleansing
Building Cleaning
Catering – school and welfare
Catering – civic and other
Vehicle Maintenance
Grounds Maintenance
Sports & Leisure Management

Transport Fleet Management
Car Parking
Legal Services
Financial Services
Housing Management
Personnel Services
Computing
Construction Related
Property Management
Architectural Services
Engineering
Corporate and administration
Other Services
Police Support Services
Waste Disposal
Maintenance of Fire Service vehicles
Home to School transport
Library Services
Printing
Security

Civil Service

(All Government Departments and Agencies)
Building cleaning
Catering
Building repair
Security
Facilities management
Clerical and Secretarial
Information technology
Audit

Wide range of white collar, professional and manual services

(see *The Citizen's Charter: First Report 1992* for examples of services)

Other areas subject to tendering

Prison service

The Chartered Institute of Public Finance and Accountancy (CIPFA) Code of Practice also refers to the need for authorities to assess the credibility of tenders, the suitability of contractors, and to make proper commercial judgments on any differences in the method, timing and perceived performance of tenders.

Public Service Practice

We strongly recommend that authorities adopt a best practice approach to tendering procedures, including the evaluation of tenders, based on Public Service Practice principles. This centres on a public service ethos as distinct from a business or commercial set of values. Public Service Practice is based on the following values and principles:

- democracy and accountability
- meeting public needs and demands
- effective and efficient use of resources
- sustainable planning (reliable and credible policies)
- quality of service and performance review
- quality of employment
- equal opportunities for women, minority groups, disabled both as users and staff
- maintaining confidentiality and probity and fiduciary duty
- social and economic auditing in policy making
- research and innovation

These values and principles should be embodied in the following operating practices:

- Corporate Strategy and Objectives
- Planning and Design
- Organisational Structure
- Quality and Standards
- Management Practice
- Processes and Procedures
- Performance Review
- Financial Systems
- Worker and User Involvement
- Employment Policy

(More fully discussed in *Public Service Practice Education Handbook*, Centre for Public Services for Public Services International, Geneva).

How the report is structured

The first part of this Public Service Practice report sets out why tender evaluation is an important part of the tendering process, draws on lessons learnt to date, and shows how tender evaluation should be organised. The second and subsequent parts focus on the six stages of the tendering process. Each part sets out a best practice approach together with worked examples. The final section outlines a best practice approach based on accounting for

all the costs and benefits associated with tendering, many of which cannot currently be taken into account because of Government regulations.

Terms used in this report

We have used the term 'authority' in reference to local authorities, health authorities, civil service departments and other public sector organisations. We have referred to these organisations specifically for particular legislation or other relevant matters. Reference to Members includes Councillors and elected or appointed members of health authorities and other public bodies.

The report refers generally to all private firms as contractors and this includes companies supplying professional and technical services who often believe they should not be treated as contractors but as consultants.

A full Glossary is included at the end of the report.

Current state of the art

Whilst the Government has regularly issued new rules and regulations particularly with regard to tender evaluation, there is still scope for departments and authorities to subject tenders to rigorous assessment. In abandoning the planned double envelope system of bidding for white collar services under CCT, the Government placed responsibility for assessing the quality of bids squarely on local authorities.

Best practice in local government, the NHS and the Civil Service should be transferred across different parts of the public sector. For example, the market testing guidelines for the Civil Service produced by the Treasury recommend that all contractors be required to produce a Quality Plan which is assessed during the evaluation of tenders. This excellent idea should be widely adopted by local authorities and health authorities.

A well organised and planned process for evaluating tenders will be very beneficial for authorities. A rigorous and systematic approach will give confidence to the evaluation team and to Members involved in awarding the contract. It will also be useful in countering any restrictive legal advice which is offered with regard to the authority's powers and the interpretation of Government regulations or advice.

Why tenders should be rigorously evaluated

Tender evaluation is too often treated as an end stage in the process and its importance is often understated. The time and resources needed to fully evaluate bids is sometimes under-estimated. Tender evaluation is not simply a number crunching exercise but requires the evaluation team to assess bids on their technical, professional and qualitative merits. It is a means of arriving at technical and professional judgments about contractor's abilities, pricing and proposals.

A thorough approach is needed because:

1. Some accidental arithmetic mistakes in large or complex tenders are often inevitable given the volume of prices and costs to be calculated. Simple but potentially costly mistakes can be made by putting the decimal point in the wrong place.

2. Some contractors costings may be based on a misunderstanding of the specification and contract conditions. Even large transnational companies sometimes make the wrong interpretation of contract documents and make mistakes in pricing the contract.

3. The actual cost of the work may vary considerably from the tender price bid once adjustments, inflation and other matters are taken into account in evaluation.

4. Tender evaluation is a process which helps to reach judgments and technical/professional opinions as to whether the contractor can deliver a service as laid down in the specification and contract conditions. Tender evaluation is in effect a means of trying to determine whether the contractor can translate what is on paper into practice at the price they have quoted. Contractors sometimes propose different working methods to those in the tender documents and may have priced their tender on the basis that these would be accepted. A contractor may tender for only part of the work although this may not be apparent at first sight.

5. It is essential to uncover accidental or deliberate mistakes which conceal gross under-estimation of costs and hence the required quality of work.

6. Tender evaluation should be able to identify very low or loss leader bids, deliberately low-priced bids in which the contractor has effectively decided to 'buy' the contract as part of a strategy to enter a new market or gain a larger market share. Some may see this as an opportunity to make or increase 'savings' but these rarely materialise over the length of the contract as contractors will attempt to claw back their losses later. They often result in protected negotiations and conflicts over contingencies, annual cost reviews, and monitoring of the contract.

A very low bid may also be based on the contractor misreading, or a lack of understanding of, the specification, particularly if the tender has been prepared by a consultant acting on behalf of the contractor.

7. It should provide the reasons for the acceptance or rejection of tenders. Local authorities, if required, have to provide contractors with a written statement setting out why their bid was rejected. This written evidence will also be important if the authority receives a Section 13 Notice under the Local Government Act 1988 requiring the authority to justify its action.

8. To ensure the fair comparison of all tenders. The Government and private contractors are obsessed with 'anti-competitive behaviour' yet it is often the in-house bid which is disadvantaged.

9. Contractors often use their own methods of work measurement and cost calculations. They may not have inspected all the sites and depots and the tender may reflect different understandings of what the contract involves.

Tender Evaluation in CCT and Market Testing Strategy

Tender evaluation has a key role in the CCT and market testing process. But tender evaluation is dependent on the preceding tendering stages such as the writing of specifications and contract conditions being carried out rigorously and thoroughly. It is essential that these stages are considered to be part of the planning process in preparing for tender evaluation. Whilst each stage of the tendering process involves discrete and specific tasks, these tasks are interrelated and the effectiveness of later stages such as tender evaluation, depend heavily on the effectiveness and quality of work carried out earlier. For example, the investigation of firms prior to the tender invitation stage should eliminate firms with a poor public service track record and/or inadequate financial backing.

Thorough tender evaluation also relies on having a comprehensive specification with performance criteria which can be used to assess contractors proposals. This is why it is so important to require contractors to produce a Quality Plan. Tender evaluation also relies on the contract documents requiring that all tenderers supply sufficient detailed information to enable the evaluation team to properly assess the tender.

Tender evaluation requires:

- **clear understanding of service and user requirements**
- **comprehensive specification**
- **technical and quality criteria clearly identified**
- **systematic and thorough evaluation**
- **reasonable and fair approach**
- **justify decisions**
- **audit trail of key decisions**

Issues for Members and Managers

Government statutory guidance has made the financial assessment of tenders more complex than necessary. It is vital that Councillors, Board Members and others participating in or responsible for awarding contracts understand the issues, seek clarification from officers, and if necessary, challenge what they believe may be conservative advice in the interpretation of Government guidance.

They should be aware that legal advice interpreting what the authority can or cannot do may be very restrictive. Some authorities have implemented changes in the tendering process when they are only at the consultative stage. Government advice is sometimes interpreted as a rule or duty. A very conservative approach is unnecessary, misplaced, and rarely in the public interest when it is applied in the tendering process. It has nothing to do with creating 'a level playing field'. The Government has clearly tried to create a climate of fear in which Members and officers defer to legal opinion irrespective of whether it is required, relevant, or in the public interest. This stifles innovation and prevents the debate of public issues in the name of imposing tendering procedures across all public services.

Although tender evaluation increasingly involves technical assessments there is a danger that those ultimately responsible for awarding contracts understand less and less about the issues and are involved in merely rubber stamping decisions made by officers. This process can result in the de-politicisation of important issues and increases the potential for corruption.

Awarding contracts is not merely a financial matter. It is not simply about prices and figures but equally concerns technical ability and quality of service. It also involves political decisions which must be taken in the public interest.

The authority cannot abrogate its responsibilities either as an employer

nor its role in the local economy. Local authorities, health authorities and Government departments are major employers in most towns and cities. Jobs, pay and conditions in the public sector have an important impact in the local labour market. The consequences of tendering can undermine policies and initiatives being implemented by other departments (*See Part 3*).

If the contract is won in-house then the direct employment relationship continues and all parts of the authority should adhere to its corporate employment and equal opportunities policies. If the contract is awarded to a private contractor under the TUPE regulations the authority must ensure that there is full consultation and negotiation with trade unions and the workforce.

Dealing with complaints from contractors

Complaints about tendering procedures and contract awards can be initiated in several ways. There are separate complaints mechanisms established for local government, the civil service and the NHS. If contracts are covered by the EC regulations, contractors may take legal action through the courts.

Complaints against local authorities: The Department of the Environment investigates complaints made by contractors, trade associations, Councillors and other persons. Under the Local Government Act 1988 the Secretary of State has the power to serve a Section 13 Notice on the authority if s/he considers the authority has:

- not complied with the proper tender invitation procedures or acted to 'restrict, distort or prevent competition';
- not complied with the six conditions for functional work (*Sections 6, 7 and 8*) covering the tender notice, specification of the work, invitation to tender, preparation of the in-house bid, tender evaluation and complying with the specification.
- failed to keep proper trading accounts;

- failed to meet the financial objectives;
- failed to produce an annual report.

The notice must inform the authority of the year in question, identify the work concerned and must state why the Secretary of State considers there has been a breach of the law. It must require the authority either to state that it has not acted in contravention of the legislation and provide supporting evidence, or to accept that it has acted in contravention of the legislation and give reasons why the Secretary of State should not exercise further sanctions. The Secretary of State has the power to serve different notices on an authority in the same year and relating to the same work. Section 13 gives the Secretary of State power to direct an authority to act in a particular way.

If the authority does not respond within the time limit set out in the Section 13 Notice or the Secretary of State is not convinced by the response of the authority s/he can issue a Section 14 Notice which can require the authority to:

- continue with the contract only if certain conditions are met;
- require the authority to retender the contract;
- take away the authority's power to carry out the work, in which case the work has to be retendered but an in-house cannot be submitted.

Similar powers are available to the Secretary of State for works contracts under the Local Government, Land & Planning Act 1980 (Section 19).

Rejected tenderers can also complain to the DOE if they believe that an authority has acted 'anti-competitively' in the application of the TUPE regulations. The DOE will require the authority to 'explain how it had arrived at its decision, and demonstrate that its approach had been thorough, specific and reasonable.' (*Issues Paper: Handling of TUPE Matters in Relation to CCT, 1994*)

Complaints under EC Directives

The EC Services Directive, transposed as the Public Service Contract

Regulations (*SI 1993 No 3228*), imposes an obligation on the contracting authority to comply with the regulations and with any enforceable Community obligation in relation to the award of a public service contract is a duty owed to service providers (*Part VII, para 32 of the Regulations and similarly applies to Works and Supplies contracts*). A breach of duty is not a criminal offence but requires contractors to take their case to the High Court in England, Wales and Northern Ireland and the Court of Sessions in Scotland.

Contractors must first inform the authority about the claimed breach of duty and the intention to take legal action which must be initiated within 3 months of the date when the breach of duty first arose (unless the Court believes there is 'good reason' for extending this time limit).

If the contract has not been agreed, the court can issue an interim order suspending the award of the contract and, if the authority is found to be in breach of its duty, set aside the award or require the authority to amend the contract documents. It can also award damages to the contractor who has suffered loss or damage suffered as a consequence of the breach of duty.

If the contract has been entered into, the court can only award damages to the contractor. It cannot terminate or suspend the contract (*para 32(6) of the Regulations*).

District Auditor

The District Auditor is responsible not only for ensuring that the authority accounts comply with statutory provisions but must also ensure that a local authority has made proper arrangements for securing economy, efficiency and effectiveness in the use of resources (*Section 15, Local Government Finance Act 1982*). The District Auditor could initiate, or council-taxpayers, Councillors and other persons could request, an investigation into the award of a contract.

Judicial Review

A contractor, trade association or individual with 'sufficient interest' could apply to the courts for a judicial

review if they consider the authority has taken non-commercial matters into consideration, asked non-commercial questions or has included non-commercial requirements in the tender documents (*Section 19, Local Government Act 1988*). Failure to comply is not a criminal offence. If the court found in favour of an aggrieved contractor they receive damages limited to 'expenditure reasonably incurred... for the purposes of submitting the tender'.

Complaints against NHS units

The Market Testing Guidance describes a two stage complaints process. Written complaints have to be submitted to the District General Manager of a District Managed Unit or the Chief Executive of an NHS Trust. They may, or if delegated to the Unit General Manager, arrange interviews, meetings and seek further advice before preparing a report. The complainant must then confirm acceptance or rejection and whether they intend to invoke stage 2.

The Chief Executive/District General Manager is responsible for stage 2 and can invite at least two independent experts who have the appropriate management, technical/professional and/or business skills to judge the complaint. A report should be produced. The Chief Executive/DGM can 'decide on the action to take in the light of the experts' report (*pages 64-66, Market Testing in the NHS*).

Complaints against Government departments

Contractors must first contact the head of market testing in the department or agency concerned. If they remain dissatisfied they must contact the Principal Finance officer, Permanent Secretary or Chief Executive of the department or agency (*para 9.24, The Government's Guide to Market Testing*).

General points

● Contractors are likely to complain, at least in the first instance, to the Department of the Environment, government department or Chief Executive of NHS units because:

- it does not involve them in any cost;
- it minimises the risk of failing and antagonising authorities which may affect the firms tendering strategy;
- the contractor, particularly with respect to white collar and professional services, may risk damage to their reputation if they claim a breach of duty on technical and quality matters;
- it involves the least amount of time.

Seeking legal redress in the Courts under the EC Regulations or judicial review under the 1988 Local Government Act requires the contractor to be reasonably sure of their case and to commit financial resources for legal action.

Remember

- It is vitally important that the tendering process, and tender evaluation in particular, is comprehensive in the assessment of technical, quality and financial issues and the process is equitable, auditable and transparent.
- There is no legal obligation to award the contract to the lowest tenderer. Please read the sections on this issue earlier in Part 1 and the section 'Justifying award to other than the lowest tenderer' at the end of Part 9.
- Contract decisions must take into account the interests of service users and the staff employed.
- Question officers' reports on the evaluation of tenders - don't simply accept what you are told - seek to understand the issues involved.
- Seek training sessions in tender evaluation to broaden your understanding.
- Despite the competitive tendering and market testing guidance there remains scope for being bold, rigorous, and imaginative in specifying services and standards and evaluating bids to select who can best provide the required service.
- Members can be involved in DSO committees as well as service committees responsible for client matters (for a full discussion see *CCT & Elected Members, Enforced Tendering Advice 7, National Coordinating Committee on Competitive Tendering, LGIU, 1994*).

Quality of the competitive tendering and market testing process

Quality of service and quality of employment depend on the quality of the competitive tendering process. It should be stressed that applying rigorous tender evaluation cannot make up for, or gloss over, inadequate specifications and contract conditions. It should be equally apparent that poorly organised and/or superficial tender evaluation can undermine a well-prepared specification.

A strategic approach to competitive tendering and market tendering should include;

1. Joint working/consultation with trade unions and tenants

Members, officers, trade unions and users organisations working through joint committees.

2. Service Profiles and Review

Building a clear picture of the existing service including staffing, use of resources and equipment, organisation and management, standards, and financial information.

3. Public Service or Business Plan

Drawing up a plan for the service for a 3-4 year period.

4. Sector Analysis and investigation of contractors

Analysis of trends, developments in each sector and market intelligence about the main interests and strategies of the key companies, housing associations or other organisations likely to bid for contracts.

5. Contract Packaging

Decisions on the content and form of the contract package.

6. Specifications & Quality Plan

Drawing up comprehensive specifications based on at least the current level, standard, and method of service together with a Quality Plan requiring the contractor to set out how quality of service will be achieved and sustained.

7. Contract Conditions

It is essential to ensure that services are delivered according to the specification and in the manner, time and standard required by the Department and users. Quality Plan made a condition of contract.

8. Monitoring systems

Ensuring a system of regularly checking and assessing performance with financial deductions for defaults.

9. In-house bid preparation

Ensuring submission of an effective and accurate bid. This is not only important for quality of service and employment reasons but also for obtaining value for money – tenders are often more highly priced when there is no in-house bid.

10. Tender Evaluation

A full assessment of each tender covering technical qualities and financial matters.

11. Evaluation and review of tendering strategy

Learning the lessons for later contracts and retendering.

Lessons Learned

This section draws on the main lessons which have been learned from evaluating tenders. It is vital that these lessons are applied, where relevant, to the organising and tender evaluation process in all public services.

Technical assessment of contractors

Some authorities have had the confidence to reject very low bids where these have been based on large and probably unsustainable productivity increases, particularly in refuse collection. Some tender evaluation teams have questioned the ability of contractors to deliver the required service with the planned resources. A few contractors have complained to the DOE but the Department has often rejected these complaints and supported the local authority's position following further investigation. In other words tender evaluation is not simply about price and the DOE will normally take managerial and technical arguments into consideration in the event of a contractor's complaint. The increasing emphasis on technical merit and quality matters in the award of contracts gives authorities more scope to take a broader range of criteria into account.

Focus on financial matters

Too many authorities still analyse tenders on the basis of financial criteria with insufficient attention paid to quality and technical issues. Whilst financial matters are very important, some authorities have accepted low priced bids without subjecting them to a full cost analysis or sufficiently rigorous technical assessment.

There is still a belief in some authorities that there is a legal requirement to accept the lowest tender, which is not the case. Whilst the Government now requires authorities to justify decisions not to accept the lowest tender this is not an onerous task. A well organised and thorough evaluation of tenders should readily provide the required justification.

Role of Members in local government

Increasing rules and regulations have led to the further marginalisation of Councillors in the CCT process in local government. 'The formalisation of the process of evaluation meant that little effective choice was left in the final decision. The involvement of elected members in tender evaluation has also reduced over time.' (*Competition & Service*, HMSO, 1993) Whilst it is true that the CCT regulations have imposed constraints, quite deliberately by the Government to technocratise the process and reduce the power of councillors, this must not be assumed to be best practice. Councillors still have a key decision-making role in tender evaluation, the award of the contract and in determining CCT strategy as a whole.

Loss leader bids not fully assessed

Several authorities received loss leader bids but did not subject these to stringent analysis. In some cases the tender documents did not require the contractor to supply detailed information, thus making detailed analysis difficult.

Acceptance of lowest bid for budgetary reasons

Financial pressures on local government expenditure have led some authorities to accept, sometimes reluctantly, low priced tenders because they ease the need to enforce cuts in other budgets. Tender evaluation teams are sometimes under indirect pressure not to subject low bids to too much scrutiny. Whilst such decisions may achieve a short term 'fix', such tenders are often not the lowest cost in the longer term.

Evaluation criteria not notified to contractors

The contract documents should state the main criteria to be used to assess tenders. It is essential that all contractors are informed of the main criteria by which their bid will be evaluated. It would normally be sufficient to summarise the headings in the six stages of evaluation and to indicate the main criteria to be used in the assessment of Quality Plans. It is not necessary to provide extensive details.

It should also be noted that where schedule of rates are used by local authorities and the estimated volume of work is stated in the tender documents, they are obliged to evaluate tenders on all of the work.

Tender evaluation is only as good as the specification and contract conditions?

Whilst this statement is somewhat generalised, there is a strong connection between the two. The ability of the evaluation team to assess the contractor's proposals will depend on the extent to which service standards are specified. The contract conditions and tender documentation should require the contractor to submit sufficiently detailed information and prices.

Evaluating in-house bid when sole bidder

Even when there are no other bids other than the in-house tender, it is still important to carry out an evaluation of the tender. There have been a number of cases where the later difficulties of in-house services could have been prevented by more stringent tender evaluation. It is far better that any perceived problems are ironed out at an early stage rather than several months into the contract when trading losses are mounting and/or client dissatisfaction is increasing.

Anti-competitive behaviour in tender evaluation

The CCT regulations for local government (*Local Government (DSO) Competition Regulations 1993, Statutory Instrument No 848*) specify that the following will be regarded as 'restricting, preventing or distorting competition':

- calculating the amount of any prospective costs after opening of the bid and contractor's tenders for the work;
- giving the DSO or in-house organisation an opportunity to explain or provide further information about their bid without giving the same opportunity to each contractor;
- taking into account any costs other than prospective costs irrespective of whether the authority would or could incur these costs as a result of accepting a tender;
- failure to announce the award of the contract within the 90 day period from the receipt of tenders;
- taking any action which will prevent the start of the contract within the 30-120 day period specified in Regulation No 3.

Factors considered in Evaluating Tender Bids

The following Table indicates the range of criteria which local authorities considered in the award of CCT contracts between 1989-93.

Factors	% of authorities using criteria
Overall contract price	100
Financial standing of contractor	80
Experience of contractor	78
Technical character of bid	78
Health and safety	72
Local management arrangements	63
Method of work	62
Prices of individual items in contract	58
Race relations	56
Redundancy costs	38
Local knowledge	37
Implications of authority being left with redundant capital equipment	16

Source: Table 6.1, *Competition and Service: The Impact of the Local Government Act 1988*, HMSO, London 1993

Evaluating TUPE and non-TUPE bids

The application of TUPE to tenders places even more responsibility and importance on tender evaluation. Some authorities are examining the implementation of TUPE during the evaluation of bids and others are treating it as a post-tender negotiation.

Selecting tenderers

Although the evaluation of tenders comes after the process of vetting and inviting contractors to submit a tender it is important to remember the criteria which can be used in this process. The thoroughness adopted at this stage will have a bearing on the quality of bids submitted and the work required by the tender evaluation team.

European Directives emphasise that the selection of tenderers should identify only those firms who have the ability and financial resources to carry out the work. Authorities must select contractors without discrimination on the grounds of nationality or the member states in which they are established.

The criteria which can be used in tender selection are summarised below:

The EC Directives permit authorities to exclude private contractors from tender invitation lists only on any one of the following grounds:

- bankruptcy
- insolvency or subject of a sequestration petition
- being in receivership or subject to a winding-up order
- have been convicted of a criminal offence relevant to the business or profession
- have failed to pay social security contributions in any EU Member state
- have failed to pay taxes
- are not registered or licensed to provide a service, not being a member of an organisation which is recognised to provide the service or not being on the appropriate professional or trade register (for UK-based tenderers these requirements are met by registration as a company or trading business)
- have seriously misrepresented the information required by authorities

- have committed acts of grave misconduct in the course of business or profession – this could include contravention of legislation on Race Relations or Sex Discrimination
- intends to subcontract the work to another supplier which is also ineligible under any of the preceding points.

Tenderers cannot be rejected because they are a consortia but where the authority awards a contract to a consortia it can require them to form a legal entity.

Financial assessment

A contractor's financial and economic standing can only be assessed using the following:

- a statement from the contractor's banker or evidence of relevant professional risk indemnity insurance
- a statement of accounts for the last three years
- a statement of annual turnover (for the organisation as a whole and for the service being tendered) for the previous three years.

The authority can also require a performance bond.

Technical assessment

The authority can assess a contractor's technical ability, in particular their skills, efficiency, experience and reliability, using the following:

- the educational and professional qualifications of those of who will be responsible for the work and managerial staff
- a list of the principal contracts, values and names of clients, carried out in the last three years. Importance of relevant experience
- a description of the contractor's measures for ensuring quality, and study and research facilities (the authority may inspect the measures)

- a statement of the average manpower for each of the last three years together with the number of managerial staff
- a statement of the equipment and plant available to the contractor for providing the service
- a statement of the technicians and technical services which would be available to the contractor in carrying out the work
- certification of quality management systems under BS 5750 or other standard conforming to EN 29000 series
- an indication of the proportion of the contract to be sub-contracted, where this is permitted.

Authorities can require documentation and certificates as evidence of the above.

Under CCT regulations if insufficient contractors respond to the advertisement the authority is obliged to invite all those who apply to submit tenders.

However, where a contractor has been invited to bid but does not meet the EC Directives or does not meet the required financial or technical standards the authority can consider these matters when it is evaluating tenders.

The European legislation known as the Acquired Rights Directive 77/187 was put into effect in Britain with the Transfer of Undertakings (Protection of Employment) Regulations 1981. Recent decisions from the European Court of Justice have widened the interpretation of the Directive. It applies to permanent, casual and temporary workers, trainees but not to the self-employed. All employed workers and all contracts of employment and employment relationships automatically transfer to the new employer at the date of transfer. TUPE covers:

Jobs: Retention of the existing workforce – a new contractor cannot pick and choose. All those employed at the time of transfer must be employed by the new contractor.

Pay and conditions: Existing terms and conditions (including holiday and sick leave) must remain the same including date of payment.

Pensions: Pensions are not transferable but the new employer must make alternative arrangements which are broadly comparable to those of the authority.

Length of service: Time spent with the authority counts towards length of service with new employer.

Unfair dismissal: Except on grounds of 'an economic, technical or organisational reason entailing changes in the workforce'.

Union recognition: All existing arrangements transfer to new employer.

Collective agreements: Including grievance and disciplinary procedures transfer to the new employer.

Consultation with the workforce: The employer has an obligation to inform and consult with recognised trade unions, to consider and reply to the union's views. The employer must explain why the transfer is happening, when it is likely to occur, what the implications are for the workforce, and how they will be affected by measures taken by the present and new employer.

Ideally, the authority should consult with the trade unions concerning the details of the transfer, then hold detailed discussions with tenderers over their proposals and guarantees concerning the transfer, followed by further consultation with the workforce and trade unions.

Any staff made redundant before transfer could claim unfair dismissal if their dismissal is deemed to be in connection with a planned transfer. Staffing changes could, however, be negotiated and agreed with trade unions prior to transfer. After transfer, the new employer assumes responsibility for redundancy entitlements including service under the previous employer. The new employer and trade unions can set new terms and conditions if both parties agree but these cannot affect continuity of employment for all transferred staff.

The implication of TUPE must be examined in Stage 5 of tender evaluation.

Where existing staff are transferring, the evaluation of the tender still needs to examine staffing levels, planned changes to working methods, training, and the contractor's ability to recruit and retain staff as some services have a relatively high turnover of staff.

The application of TUPE has a direct cost to the contractor. TUPE based tenders should be clearly priced on the basis of continuing employment of all the staff at current terms and conditions. The authority should require the contractor to specify a sum in the bid to comply with TUPE responsibilities under the contract. It should be possible to identify whether the contractor plans any cuts in jobs and terms and conditions by examining the allocations to TUPE together with a detailed analysis of staffing levels and labour costs.

Whilst the TUPE obligations are the legal responsibility of the new employer once a transfer has taken place the authority has at least a moral obligation to ensure that the contractor has allocated sufficient resources to meet its obligations (see Stage 3). It is in the authority's interest to assess the financing of TUPE because as client it will want to minimise the threat of industrial action and disruption to the service caused by poor industrial relations.

Further details on the analysis of TUPE bids are included in Part 8.

Organising for Evaluation

Timetable

The Local Government Act 1992 and EC Directives specify that tender evaluation must be completed and the contract award announced within **90 days** of the submission of tenders. This gives a maximum of 13 weeks or 65 working days to complete the evaluation process, interview contractors, prepare a report and for Members to meet to award the contract. The contractor is required to commence the contract not less than **30 days** and not more than **120 days** from the award announcement. Shorter limits can be adopted only when all parties agree in writing.

Responsibility

The Members of the authority and the client have responsibility for tender evaluation (see the authority's standing orders). Having drawn up the specification, contract conditions and contract monitoring arrangements, vetted and invited contractors to submit tenders, the client now has to examine and assess the bids to determine which bids meet the qualitative, technical and financial criteria and to recommend awarding the contract accordingly.

Legal requirements

We noted earlier some of different tendering rules although all public bodies have to operate within the European legislative framework.

Local authorities have specific requirements under the Local Government Act 1992 and subsequent Statutory Instrument 1993 No 848 and DOE Circular 10/93. Regulation 6 of the Statutory Instrument specifies that the local authority shall take the following into account in any evaluation:

'(a) the particulars of the bid referable to the amount which would be credited to the account of the direct service organisation for the performance of the work, and the particulars of each contractor's tender referable to the fees and expenses which would be payable to the contractor for the performance of the work.

(b) where the local authority requires the contractor to provide particulars of a bond or guarantee in relation to the performance of the work, the cost quoted by each contractor or providing a bond or guarantee which meets the requirements of the invitation to tender for the work;

(c) the present value of savings;

(d) the total amount of allowable costs included by the local authority in the bid;

(e) the total amount of prospective costs calculated or estimated by the local authority.'

They must also inform contractors at the tender invitation stage 'if they intend, where appropriate, to take account of any extraneous cost items in evaluating tenders, and of the cost items to be taken into account, although they need not inform them of the magnitude of these costs.' (DOE Circular 10/93 para 50)

Part 7 of this report examines calculations of savings, allowable and prospective costs in detail.

Skills required to evaluate bids

Tender evaluation is not simply about comparing the overall price of bids but involves carefully examining the technical and financial merits of each bid. This can only be achieved by having multi-disciplinary skills available such as the client technical officer, financial, legal, health and safety, personnel and so on.

Team or panel

It is essential that a carefully selected team of officers from the client side is set up to undertake the evaluation of tenders.

Competitive tendering regulations for local authorities (SI 1993 No 848 para 4) requires that no individual with day-to-day responsibility on the contractor side is involved in the evaluation of bids, except for the chief executive, the chief officer of the service and 'any persons who are employed by the local authority to provide legal, financial or other professional advice in relation to the business of the local authority.' (para 4)

The evaluation team should be accountable and report to the relevant committee. It should be set up well in advance

of the receipt of tenders, preferably before the tender invitation stage so that members of the team are involved throughout the selection and evaluation process. The team should work collectively. It should not include those directly involved in preparing the in-house tender but it must include officers who have the technical/professional experience and knowledge of the specification. It could include:

- Chief Executive
- Chief Officers or their deputies
- Client department (professional, technical and clinical) officers closely involved in preparing the specification and contract requirements plus officers from:
- Finance (analysis of company accounts, accountancy and auditing skills)
- Health and Safety
- Legal services
- Personnel/Management Services
- Equal Opportunities
- Economic Development
- Information Technology
- Purchasing and Supplies
- CCT or Market Testing team member
- others, such as Environmental Health Officer, Dietician or other specialists.

Additional resources may be required to fully assess:

- firms with little or no public service experience
- very low bids

Legal and accounting staff who have worked on the in-house bid can participate in tender evaluation as long as they are not the authors of the bid.

The NHS market testing guidance stresses the need for team members to be selected for their competence and expertise in the relevant field and to be independent of the in-house tender team. Team members could be selected from the Authority or another Authority, professional bodies, market testing specialists from NHS Supplies or other NHS agencies and consultants, or from the provider unit.

Officers who are responsible for the management of the DSO or in-house service or involved in the preparation of the in-house bid must not be involved in receiving, opening or evaluating tenders. The only exception is for chief officers (or their deputies) and legal or accounting staff who are not directly responsible for the in-house bid.

Team preparation

The evaluation team will need background information before they start. This should cover the following:

- the authority's corporate policy
- the policies for and background to the service being tendered

- the tendering timetable
- contract documentation
- copies of minutes and letters resulting from meetings and visits
- copies of the authority's standing orders.

Developing an evaluation model

The evaluation team or panel should draw up an evaluation model specifically for the service being tendered based on the five stages in this report by selecting the appropriate criteria by which bids will be assessed.

Minimum bids

It is perfectly reasonable for authorities to draw up a minimum resources bid below which it would be impossible to deliver the service at the required standards. This minimum bid can be used as the basis for rejecting very low bids once tenders are opened. Authorities will have to justify the rejection of very low and under-resourced bids and the construction of a minimum bid is a means of achieving this objective.

Training

Where the department or authority has limited experience in evaluating tenders for a particular service it is advisable that the evaluation team receive training. This could take one of several forms:

- having a dry run evaluation process to test out the kinds of issues to be addressed
- examining tender evaluation reports from other authorities to draw on their experience
- training by officers from other authorities

The use of management consultants for evaluation training purposes should be avoided – see page 18.

Equal opportunities

The criteria used in the six stages of tender evaluation have been drawn up on the basis that an examination of a contractor's equal opportunities employment policies and practices has been carried out prior to tender invitation. Services will have to meet the needs of communities; therefore equal opportunities must be an integral part of assessing the contractor's ability to deliver the required service.

Role of users and tenants in the evaluation process

Detailed guidance is awaited from the Government with respect to the level of involvement of tenants' representatives in the tender evaluation process for housing management. Tenants' representatives should be involved in the selection of contractors at the tender invitation stage. Developing the effective participation of tenants' representatives in the evaluation of tenders is difficult but feasible

and will only be effective if they are full, genuine members of the evaluation team. This will require appropriate training and awareness of the process of tender evaluation for those tenants involved.

The role of trade unions and tenants organisations is discussed in the next chapter of this report.

Evaluation process and criteria

The team will need to agree precisely how tenders will be evaluated and the criteria to be used in assessing them. Most authorities have adopted the five stage process set out in this report in one form or another. Some have divided the criteria into more groups or stages. This must include the main criteria to be included in Quality Plans which contractors will be required to submit to be assessed by the evaluation team.

This is a vital first stage in the process because the main tender evaluation criteria will have to be included in the contract documents sent out to those invited to tender.

Guidelines for receipt of bids

The tendering process involves setting a time and date when bids must be received by the authority. It is important to refer to the authority's standing orders. The general rule is that if the authority receives a bid after this deadline, it is not legally bound to accept the tender. However, there have been examples where late bids from private contractors have been accepted (contractors usually blame the delay on private delivery companies). In setting a time and date the authority must decide whether it is to enforce the rule or not in order to avoid confusion amongst tenderers and to safeguard the public interest. Any tender which arrives after the appointed time and date should be treated as an invalid tender.

Tenders should also be disqualified if they fail to provide the required information within the timescale established by officers. A tender can be disqualified if new financial information, for example (the firm's latest accounts) shows that the company has fewer financial assets than originally stated or is in serious financial difficulties.

Procedure for rectifying arithmetic errors

The authority will need to agree its policy on whether it rectifies arithmetic errors in tenders or allows them to stand. The policy must apply to all contractors and the usual practice is for authorities to correct errors. The contractor has to agree the result of the error correction and failure to agree results in the tender being set aside. Leaving errors to stand, more often than not, disadvantages the in-house bid and it is not in the authority's interest to let inflated prices stand. Errors which favour the authority but disadvantage the contractor are likely to be shortlived because the contractor is likely to try to recoup them if awarded the contract.

Ensuring contractors provide detailed information

Authorities should ensure that the tender documents require all tenderers to supply sufficient detailed information, including schedules of rates, to enable the evaluation team to carry out a thorough technical and financial analysis. Tenderers should be required to supply all or most of the following information depending on the nature of the contract. It should be required in a series of separate schedules:

- Prices, expenditure and income broken down by type of activity, facility, area, cost centre on a weekly, monthly or annual basis
- Equipment, materials and other non-labour costs
- Quality plan
- Proposed staffing, supervision and management structure for the contract
- Input hours, costs and, where relevant, rosters, by individual work areas for non-supervisory, management and supervisory staff
- Qualifications and experience of staff with wage differentials
- Pay rates and conditions of service (NHS contracts)
- Proposed method of working
- Rates and costs for additional and non-contractual work
- How and where the service will be carried out.
- Training and staff development proposals

- Equal opportunity objectives of specification
- Assets, equipment and materials profile
- Health and safety proposals for the contract
- Compliance with the authority's occupational health policy
- Control of infection (NHS contracts)
- Provision of staff workwear and personnel identification
- Proposals for maintaining security and confidentiality
- Environmental policy for the contract
- Details of experience of similar work including existing clients and type of work carried out
- Indication of any plans to sub-contract work
- Contingency plans in the event of an industrial dispute
- Proposals for handling disputes, grievances and discipline

Details of the company, its trading history, the last three years accounts, guarantee from parent company and other organisational and financial information should have previously been supplied as part of the tender selection process.

NHS tenderers must also submit a Certificate as to Collusive Tendering (certifying that contractors have not made any agreement or arrangement on prices) and a Certificate as to Canvassing (soliciting of any member or employee of the authority).

(Annex 5, Market Testing in the NHS)

Recording evaluation, assessment and calculations

The evaluation team should ensure that the identification of priorities, detailed calculations and analyses of tenders, the reasoning and justification of technical and financial decisions and conclusions are all recorded to enable the team to:

- report fully to committee
- provide evidence if the Government questions the evaluation process
- provide and defend a case for the rejection of particular tenders.

Further investigation of contractors

This should include performance on recently awarded contracts and any updated information on other contracts which will be useful in reaching a judgment about the contractor's abilities. Updated financial information should also be obtained on contractors if any queries were raised at the time of tender invitation.

Requesting further information from tenderers

Written questions can be put to any tenderer after tenders are opened in order to deal with ambiguities or arithmetical errors, provided questions and answers are made in writing and provided the same opportunities are given to all tenderers whose tenders are in other respects acceptable.

Interviewing contractors

A decision about whether contractors will be interviewed should be taken early in planning the tender evaluation process. Interviews must be seen to be even-handed between contractors and the procedure should both protect council officers and the public interest. Interviews need to be well planned and systematic. The adoption of an aggressive or confrontational stance by the evaluation team is not recommended. The Evaluation Team should draw up a list of key questions for the interviews as the evaluation work proceeds.

The advantages of interviewing are:

1. to assess the contractor's understanding of the nature and scope of the work

2. to answer technical and financial queries which have arisen in the evaluation of tenders

3. to better assess their technical ability

4. to assess their implementation of company health and safety policies

5. to assess their current workload and contracts gained elsewhere since they submitted the tender.

Interviews are generally held after bids have been technically assessed (*Stage 2*) and should be a means of confirming judgments already made on the basis of the bid and the accompanying schedules. Only the most competitive tenderers should be invited for interview. It is pointless interviewing other contractors whose bids are significantly higher.

Presentations by tenderers

The presentation of contractor's proposals will be more common in certain white collar services such as tenders for design and publicity work where tenderers will be required to present their proposals for dealing with the authority's work or where tenderers propose different methods of delivering the service. Presentations should be organised with all the thoroughness and safeguards required for interviews. Presentations should be assessed using the agreed quality criteria (*see Stage 2*).

Westminster City Council retendered its housing estate cleaning contract in 1992 and received six bids, two of which were eliminated at stage one. The 4 remaining tenderers were required to make presentations to tenants' representatives. Tenants had been consulted when the specification was drawn up and the presentations were regarded by the Council as 'a critical test for contractors'. Two contractors were quickly eliminated due to their apparent lack of experience of large scale estate cleaning. Both firms also admitted to having carried out only limited site surveys. The tenants representatives involved supported the contract being awarded to the existing contractor.

Preparing evaluation report and Committee report

This also needs planning in advance particularly to meet committee deadlines within the 90 day evaluation timetable. Reports should contain sufficient detail and information to facilitate understanding of all the main issues and be presented clearly. The reasoning behind recommending the award of the contract should also be clearly stated.

Market testing procedures require a report to senior line management to include:

- a summary of the competition
- details of the competing bids including the in-house tender
- the technical and financial reasons for awarding the con-

tract or retaining the work in-house

- if contracting out, the implications to the existing organisation of employing an outside employer
- if awarding the work in-house the implications for the existing organisation of managing the work through the Service Level Agreement and to the bid price.

Keeping records and preparing reports

Decisions and assessments should be noted and recorded as the evaluation process proceeds. The emphasis should be on justifying decisions during the evaluation, not simply at the end.

Once a tender evaluation report has been compiled it should be made available to the trade unions and tenants/users representatives for comment prior to formal consideration by the relevant committee or board (*see consultation agreement in part 2*).

Authorities are required by EC Works and Services Regulations to keep a record of each contract it awards indicating:

- the name and address of the authority
- the service to be provided and the value of the contract
- names of the contractors whose tenders were evaluated and, if the restricted or negotiated procedures were used, the reasons for selecting these contractors
- names of contractors who were rejected on the grounds of their ineligibility, economic, financial or technical standing
- the name of the successful contractor and the reasons for the award
- if it is known, the amount of work which will be subcontracted
- if the negotiated procedure was used, which of the circumstances provided for in the Regulations were the actual grounds for using this procedure.

EC Regulations also require authorities to send a report every two years to the Treasury providing details of contracts awarded.

Local authorities will need no reminding that the District Auditor has powers to obtain all written material and files in the investigation of contract decisions.

Disclosure

Authorities must immediately inform tenderers if they have not accepted their tender. Contractors can request the reasons for rejection of their bid if they apply within 15 days of notification of its rejection. The authority must reply in writing within 15 days.

Local authorities must supply, to anyone who requests them, written statements of all sums tendered and:

- for 1980 Act work, the name of the successful tenderer;
- for 1988 Act work, which tender is the DSOs.

Health bodies are required by the Market Testing Guidance to notify contractors within seven days of the award decision to issue the Contract Award Notice and inform all tenderers in writing of the results. Unsuccessful tenderers should be offered a debriefing to explain the reasons for failure. NHS units should also supply brief details of the contract award, using Pro-Forma 1/2 in the Market Testing in the NHS Guidance, to the NHS Management Executive, Third Floor, Eileen House, 80-94 Newington Causeway, London SE1 6EF. All NHS units must also produce an annual report outlining their plans and progress on market testing. The NHSME is monitoring NHS market testing and operating a database of contract awards.

Where the EC Directives apply the authority must also:

1. give unsuccessful contractors the name of the successful tenderer
2. send a notice to the Official Journal of the European Union within 48 days of the award stating:
 - the name of the successful contractor
 - the number of tenders received
 - the amounts of the highest and lowest tenders
 - the proportion of the work likely to be subcontracted.

If the authority uses the lowest price criteria (as distinct from the most economically advantageous) for a contract where the EC Directives apply but rejects the lowest priced tender because they do not consider it a credible bid, they must report the reasons to HMTreasury.

Local authorities, NHS units and government departments are also encouraged to send contract information to the Public Services Privatisation Research Unit, 20 Grand Depot Road, London SE18 6SF.

Use of management consultants

Members and officers in some authorities believe that engaging consultants will help to legitimise decisions to award the contract in-house and thus reduce the threat of complaints by contractors to the DOE. They sometimes wish to use consultants when they anticipate awarding the contract to a private contractor and hope that this will defuse local opposition and avoid having to take sole responsibility for the decision.

The lack of appropriate resources and expertise is a real concern in many smaller authorities and organisations. However, consultants often do not have the detailed experience of the service and the specification. Nor can they identify all the financial consequences of tenders and the costs to the authority without the full involvement of senior officers. The 'independence' and 'neutrality' claimed by most management consultants is a myth. The vast majority of management consultants are ideologically and economically an integral part of the business world. Their 'public sector divisions' exist for commercial reasons, not because they are committed to public provision although some con-

sultants may do so personally. Most of the larger firms are part of multinational accountancy firms who are also the auditors for the contracting firms. An alternative is to use consultants who are committed to public service such as Competition Advice (*see Appendix 1, Sources of Advice*).

The NHS Supplies Central Headquarters and its six Operating Divisions can give NHS units advice and assistance on market testing issues including the evaluation of tenders.

The National Audit Office has published a useful guide on the Selection and Use of Management Consultants (*see Appendix 3*).

Retendering

The authority could decide not to award a contract and seek to retender the work. However, local authorities 'must have sound reasons for such action' (*para 39, DOE Circular 10/93*). All the original tenderers must be given an opportunity to retender.

Contract monitoring

The evaluation of tenders should also be identifying areas or parts of the contract which the contract monitoring officer will need to focus attention, at least in the early stages of the contract. Tender evaluation should be able to pinpoint concerns to enable monitoring staff to target their resources accordingly. It also reinforces the case for a strategic and integrated approach to the tendering process.

Tender Evaluation Organising Checklist

- | | | |
|---|--|---|
| <input type="checkbox"/> Timetable agreed | <input type="checkbox"/> Training and/or dry run practice | <input type="checkbox"/> Further investigation of contractors |
| <input type="checkbox"/> Treatment of TUPE and non-TUPE tenders | <input type="checkbox"/> Evaluation process and criteria | <input type="checkbox"/> Interviewing contractors |
| <input type="checkbox"/> Skills required for evaluation | <input type="checkbox"/> Role of users/tenants agreed | <input type="checkbox"/> Presentation needed from bidders |
| <input type="checkbox"/> Membership of evaluation team | <input type="checkbox"/> Ensuring contractors provide detailed information | <input type="checkbox"/> Preparing evaluation report and Committee report |
| <input type="checkbox"/> Team preparation | <input type="checkbox"/> Guidelines for receipt of bids | <input type="checkbox"/> Keeping records |
| | <input type="checkbox"/> Procedure for rectifying arithmetic errors | <input type="checkbox"/> Use of Consultants |
| | <input type="checkbox"/> Recording evaluation, assessment and calculations | <input type="checkbox"/> Information to trade unions |

Services covered by EU Services Directive

(92/50/EEC) transposed in UK as Public Services Contracts Regulations 1993

Part A services contracts

All provisions apply to the following services

1. Maintenance and repair services
2. Land transport services
3. Air transport services
4. Transport of mail
5. Telecommunications services
6. Financial services
7. Computer and related services
8. R &D services
9. Accounting, auditing and book-keeping services
10. Market research and public opinion polling services
11. management consultant services and related services
12. Architectural services, engineering services and integrated engineering services, urban planning and landscape architecture services, related scientific and technical consulting services, technical testing and analysis services.
13. Advertising services
14. Building cleaning services and property management services
15. Publishing and printing services
16. Sewage and refuse disposal services, sanitation and similar services

18. Rail transport services
19. Water transport services
20. Supporting and auxiliary transport services
21. Legal services
22. Personnel placement and supply services
23. Investigation and security services
24. Education and vocational education services
25. Health and social services
26. Recreational, cultural and sporting services
27. Other services

Contracts which combine services from both categories should be treated according to whichever is the largest proportion by value.

Part B services contracts

Provisions apply only to notices and specifications, but the intention is to transfer these services to Part A services. A best practice approach should treat all services as Part A services with immediate effect.

17. Hotel and restaurant services

The Tender Evaluation Process

for Local Government, the Civil Service, NHS and other Public Bodies

European and Government regulations and guidance for CCT in local government and market testing in the civil service and NHS specify certain aspects of evaluation but do not provide an overall framework. This is left to individual authorities to design. The following 6 stage tender evaluation process provides authorities with a comprehensive evaluation procedure and criteria for assessing tenders.

Stage 1: Compliance with Specification and Contract Conditions

1. Tenders correctly received and opened
2. Confirmation of TUPE and non-TUPE bids
3. Provision of all required schedules
4. Arithmetic check
5. Specifications met in full
6. Compliance with tender conditions and working methods
7. Compliance with contract conditions
8. Adequate health and safety arrangements
9. Adequate staffing levels and working hours
10. Adequate management and organisation
11. Approval of financial references

12. Understanding of the contract
- High priced bids and qualified tenders should be rejected at this point.

Stage 2: Technical and Quality Analysis

1. Technical ability and resources
2. Ability to recruit and retain staff
3. Qualifications of the workforce
4. Previous experience
5. Health and safety implications
6. Quality plan assessment
7. Equal opportunities/fair employment
8. Reliability and compatibility of contractor's equipment
9. Specific criteria relating to service
10. Contract start-up
11. Risk assessment
12. Interviews of contractors
13. Presentation and tenants/user views

Stage 3: Environmental assessment

The extent to which tenders will need to be assessed for their adherence to environmental policies will obviously vary from service to service. It is an important stage for Waste Disposal Authorities (WDAs) who must assess waste disposal contracts under the Environmental Protection Act 1990. Some of the following criteria will apply to all public service contracts.

1. Minimising pollution: air pollution standards, safeguards in the treatment, transport and storage of waste.
2. Recycling of materials and use of recycled goods
3. Use of environmentally compatible materials and fuel.

4. Training of staff on environmental issues
5. The organisation's overall environmental policy

Stage 4: Financial assessment

1. Comparison of total tender costs

CCT tenders

2. Special employment costs (Allowable costs)
3. Calculation of contracting out or extraneous costs (Prospective costs)
4. Charging for assets
5. Differential monitoring costs
6. Qualifying tenders
7. The present value of savings
8. Compare value of savings and prospective costs

Market Testing in Civil Service

Market Testing in NHS

Assessing viability of Management Buy Outs

Analysis of low bids

Stage 5: TUPE

1. Decision on application of TUPE
2. Technical assessment
3. Financial provision for TUPE

Stage 6: Contract Decision

1. Post-tender negotiations (if required)
2. Assessment of technical and financial issues in contract award model
3. Preparation of report and recommendations
4. Notification of contract award
5. Issues for contract monitoring.

Part 2

Trade Union and User role in Tender Evaluation

It is very important for trade unions and tenant/user organisations to be able to influence the evaluation of tenders by ensuring the process is well organised and planned around a comprehensive set of criteria.

Tenants, users and trade unions cannot afford to wait until bids have been submitted if they wish to influence the tender evaluation process. By this stage it is too late to influence the preparation and organisation of the evaluation process. The criteria by which bids will be evaluated will also have been determined, although if sufficiently strong political pressure is applied, it may have some influence on the relative weighting of the criteria. This reinforces the need for trade unions and tenant/user organisations to be fully involved at the earliest possible stage of the tendering process (*see Part 1*).

It is essential that tenant, user and trade union organisations fully understand the tendering process, develop appropriate strategies, and state their views and demands at different stages of the tendering process before decisions are made or procedures are completed. The checklist on page 24 shows the key stages in the tendering timetable and the appropriate action required at each stage with respect to tender evaluation.

Important tasks in evaluation

Tenants, users and trade union representatives have a number of important tasks directly relevant to tender evaluation:

Firstly, they should press for both Members and client officers to be committed to maintaining in-house provision and emphasise its advantages. This means that the in-house bid must be properly prepared and submitted with all the relevant documentation. Trade unions may have to:

- Remind or inform Members, through a report or leaflet, of the tendering rules concerning the award of contracts and the case which can be made for awarding the contract to the in-house service on the basis that it is technically, qualitatively and financially competitive with other bids;
- Arrange for a seminar and training session for Members and officers to examine the policies and regulations defining the evaluation process.

Trade unions will often wish to set certain parameters for the preparation of the in-house bid such as maintaining

nationally agreed terms and conditions. It is also vitally important that the in-house bid meets all the requirements of the contract, supplies all the required documentation and effectively promotes the in-house service. The in-house bid cannot afford to assume that the evaluation team is 'familiar' with its policies just because it is the in-house service.

Secondly, they should ensure the authority has a TUPE policy and has decided how it will apply so that the treatment of both TUPE and non-TUPE bids in tender evaluation can be planned.

Thirdly, they should try to ensure that the authority is fully committed to a rigorous analysis of tenders including a full technical and quality appraisal. They should also demand that the in-house tender is fully and fairly evaluated.

Fourthly, they should demand that the evaluation process is properly organised, that the evaluation criteria are clearly set out in the contract documents, and that the evaluation team has the necessary skills and training, and that interviews of contractors are properly planned.

Fifthly, they should use the trade union's Public Service Privatisation Research Unit to obtain the latest information on tenderers' contract performance and financial circumstances (*see Appendix 1*). The Unit and trade unions can also supply information which will help to ensure the authority has a fair balance of referees when it is seeking to assess tenderers' contract performance.

Finally, they should try to ensure that any information supplied to and contact with contractors during the tendering process is consistent and fairly administered.

Code of Practice

Trade unions and tenants/user organisations should try to negotiate a Code of Practice or consultation agreement with the department or authority which sets out the consultation procedures and ensures access to information for each stage of the tendering process. This would clearly establish both to tenants/user organisations, trade unions and to management the type and level of involvement and the method by which tenants/users views will be considered.

The Institution of Professionals, Managers & Specialists (IPMS) negotiators' guide to Market Testing and Contracting Out includes a consultation checklist with

the following trade union input demanded for tender evaluation:

1. Trade Union Side (TUS) should comment/check on the vetting criteria for contractors and be informed of interested contractors, site visits and interview arrangements. Unions should be consulted on the other aspects of strategy – size of contracts etc to assess feasibility.

2. TUS to be provided with a draft of the specification for comment and a further opportunity to comment before the specification is finalised and published.

3. TUS to be fully consulted on all preparatory stages of an in-house bid.

4. TUS to be informed of the identity and relevant experience of evaluation team. TUS to comment on the provisional evaluation report. Ensure the report takes account of the PCPU guidance on quality plans, the TUPE regulations and fairly evaluates all relevant costings.

5. TUS to be informed of management's proposed course of action and the proposed arrangements for implementing the in-house bid or, if unsuccessful, the contractor's bid.

TUPE consultation rights

The authority has an obligation, where TUPE applies, to inform and consult with the recognised trade unions that a transfer may take place. This should be done early in the tendering process and be followed up once a decision on TUPE has been taken during the evaluation of tenders. The authority must state:

- why the transfer is happening
- when it is likely to occur
- what the implications are for employees
- how the employees will be affected by measures taken by the present and new employer.

The authority must give serious consideration to the union's views. If the authority fails to inform or consult in a meaningful manner the union can make a complaint to an Industrial Tribunal under Section 11 of the TUPE regulations. Compensation of up to four weeks pay for each employee can be awarded against the authority for failing to inform and consult.

Trade union role in evaluation

Trade union representatives are not normally directly involved as members of tender evaluation teams as this would be considered 'anti-competitive' by the Government. However, an officer who is a member of the evaluation team may also be a trade union representative although not attending in that capacity. Trade union reps can, however, influence the tender evaluation process at several key stages. They should not sit back and wait to see what emerges.

Trade unions also have certain other important tasks. They should try to:

● Establish which firms have submitted tenders and ensure the evaluation team are made aware of any new information about a contractor's track record which has become available since they were invited to tender. This can be obtained from the Public Services Privatisation Research Unit.

● Encourage the authority to reject any late or qualified bids. This requires having clear rules for dealing with errors in tenders and qualified tenders which are applied rigorously and consistently. The authority is legally entitled to reject late and qualified bids.

● Obtain a copy of the tender evaluation report or Committee paper to check that tenders have been fully evaluated and that the assessment has covered all the technical, quality and financial aspects. Try to make access to this report part of an Information Agreement made between trade unions and the authority. Use the Evaluation Matrix to assess whether the full range of quality criteria have been used in the assessment of the tenders. It may also be useful to highlight issues which are excluded from tender evaluation such as employment conditions, industrial relations and the costs of tendering. If necessary prepare a counter report and take any necessary action including local/regional publicity, making representations to the relevant committee or board.

● Ensure that all the allowable costs associated with each tender have been fully taken into account.

● Determine how the technical and qualitative issues have been weighed up together with the financial issues in the final contract decision.

● Make sure that the issues which are excluded from, or not fully accounted for in tender evaluation because of Government restrictions, are kept on the political agenda. (See also Part 10) These include:

– terms and conditions of employment: compare contractor's terms and conditions with the authority's and highlight the differences

– social and economic impact on the local economy: assess the impact of job losses and reduced income (and hence spending) in shops and services

– the full public costs of tendering: compare claimed savings with the estimated cost of the tendering process and costs not accounted for in tender evaluation

– equal opportunities: highlight the probable erosion of policies

– trade union recognition and organisation: emphasise longer term impact of weaker local trade unions

– casualisation of the labour force: focus on the impact of increasing use of temporary staff, loss of job security and loss of conditions of service

– training and career development: ascertain if there will be fewer and more limited opportunities.

Commercial confidentiality

Maintaining confidentiality is important in the tendering process. But there is a need to differentiate between different types of confidentiality:

1. maintaining confidentiality of the DSO or in-house costs, staffing levels, detailed working methods and its public service or business plan both before and after the tendering process.
2. maintaining confidentiality of other contractor's tenders prices
3. maintaining confidentiality of tendering information.

Commercial confidentiality is sometimes used by client officers to deny information to the in-

house service, trade unions and tenants organisations. However, if tenant/user organisations are to fully participate in the tendering process, and particularly tender evaluation, then information about both overall prices and their prices for particular types of work will have to be shared, in confidence, with tenant/user representatives.

The names of contractors who have expressed an interest in tendering for a contract and the names of those invited to bid should not be considered confidential. Whilst the authority must conduct the tendering process with due regard to its legal obligations the competitive tendering and market testing process is not designed to be on a level playing field, hence a strict and rigid interpretation of confidentiality will place the in-house service at an even greater disadvantage.

Accidental or deliberate leakage of information is just as likely to occur as a result of officers and councillors attending training courses, professional or trade meetings and conferences as it is from trade unionists or tenants attending similar types of events or accidentally leaving information in public places. Senior officers are more likely to leave the authority and gain employment with contractors prior or during the tendering process than other staff, active trade unionists or tenant/user representatives. This was certainly the case in the first four years of CCT and is likely to be more frequent in white collar services.

Tenants and Users role in evaluation

Legal framework

The Housing Act 1985, as amended by the Leasehold Reform, Housing and Urban Development Act 1993, requires local authorities to consult with tenants and consider their views before entering into a management agreement. A DOE Consultation Paper, *Tenant Involvement in Contractor Selection*, was issued in late 1993. The Government will be issuing guidance to local authorities but the detailed arrangements for tenant consultation rest with individual local authorities. These arrangements could include tenants' panels, tenant representation on council committees and presentations by contractors. Contractors' method statements should be available to tenants representatives and they should be able to seek clarification and further information from contractors about their proposals.

Demanding involvement

The Local Government Information Unit identified the following general principles for incorporating tenants/users views in the tender evaluation process:

- Tenant representatives should be able to have a panel of their own, properly facilitated by officers, in order to have the bids explained, to discuss them, and to develop their views
- Tenants' representatives should receive adequate training to understand the tenders
- Tenants' representatives should be a party to interviews with tenderers together with officers and Members
- Tenants' representatives views should not be constrained by legislation. Such factors can be taken account of when decisions are made by committees
- Tenants' representatives should have access to, and be

able to participate in any panels established for Members and officers to look at bids

- Authorities should offer assistance to tenants representatives in seeking the views of tenants that they represent
- The views that are expressed should be formally incorporated into the tender evaluation process
- Their views should be adequately weighted in the formula to reflect their interests as users of the service.
- Tenants should also have the right to express their views at the committee meeting at which a decision on a contract award is made.

Presentation by contractors

The importance of presentations by contractors was noted in Part 1. Tenants and user organisations should ensure that bidders for housing management contracts are required to present their bids to a representative group of tenants. The representatives should be given sufficient information about each bid, have the opportunity to question contractors, and be able to present their views to the authority.

If the Client refuses to require contractors to make a presentation to users/tenants, contact Members to seek their support and make the case for a presentation:

- tenants have the right to be fully involved
- tenants representatives can ask questions and assess the relative merits of contractors from a different aspect from officers
- requiring contractors to explain the merits of their tender to tenants is another important test in assessing the contractor's overall ability
- presentations are an integral part of the evaluation process and the authority is not being effective or efficient in evaluating tenders by excluding them from the process.

Questions in Presentations

Use the Evaluation Matrix as a checklist. Try to focus on the main issues and do not get drawn into minute detail. The key issues should include:

- Understanding of the contract and scope of site visits
- Technical merit (*see stage 2*)
- Method statement
- Staffing resources
- Quality of service
- Tenant consultation during the contract

The advice stated in Parts 1 and 5 for interviewing contractors and requiring presentations for design work applies equally to presentations by contractors to tenants. Tenants must take time beforehand to prepare and agree the line of questioning and to follow up presentations and interviews with an assessment of contractor responses.

Consultation with internal users

Internal users, such as other departments in the authority, should be consulted if tenderers propose changes to procedures or working methods or if the award of a contract will materially affect their specified use of the service.

Post-tender negotiations

Tenants/user representatives must ensure that they are kept fully informed of any post-tender negotiations which may take place and are consulted again before the contract

award decision is made. The authority cannot make any substantial changes to the specification at this stage but could negotiate changes in working methods and the organisation of the contract which are clearly matters for consultation with tenants.

Links between trade unions and tenants/user organisations

Developing a close working relationship between the authority's trade unions and tenant/user organisations will be beneficial for a number of reasons.

Firstly, a joint approach making the same demands concerning the organisation of tender evaluation, the selection of technical and quality criteria and the weighting of these criteria is likely to be more effective. Combining the relative strengths of each organisation is more likely to result in the adoption of a rigorous tender evaluation process.

Secondly, trade unions have access, through the Public Services Privatisation Research Unit, to important information on contractors performance.

Thirdly, tenants/user organisations and trade unions have different opportunities at different stages of the tendering process to influence tendering strategies and to obtain information which, when shared, can enhance the respective organisations influence in the tender evaluation process.

Tender Evaluation Organising Checklist

- | | |
|--|--|
| <input type="checkbox"/> Training for tenants and user representatives | <input type="checkbox"/> Commercial confidentiality |
| <input type="checkbox"/> Organisation and preparation for evaluation | <input type="checkbox"/> Evaluation criteria and weighting |
| <input type="checkbox"/> Supply of information by client | <input type="checkbox"/> Tenants/user views |
| <input type="checkbox"/> TUPE policy | <input type="checkbox"/> Latest information on contractors |
| | <input type="checkbox"/> Presentation by contractors |

CHECKLIST FOR TRADE UNION AND TENANT/USER ORGANISATIONS**Tendering Timetable****Evaluation action required
by trade unions and tenant/user organisations**

Government timetable or voluntary decision to tender	Prepare action timetable and negotiate code of practice or consultation agreement
Service Profile and Review	Demand clear commitment to rigorous tender evaluation
Packaging of contract	Check organisational preparation for tender evaluation (checklist on page 24)
Specification, contract conditions and monitoring agreed, (including monitoring systems and criteria to be used in tender evaluation)	Check quality standards and performance levels in specification performance levels in specification Check technical and quality criteria and their weighting with price in evaluation
Preliminary decision on TUPE	Trade union demands on TUPE: Seek clarification from contractors
Advertising of contract (minimum of 1 trade and 1 local newspaper)	Check reference to evaluation criteria and TUPE in advert
Contractors express interest	Names of contractors supplied to tenants and trade unions
Contractors vetted	Obtain information on contractor's performance from Public Services Privatisation Research Unit
Invitation to tender (3 plus in-house, or all if less than 4 express interest)	Ensure tenants/users views taken into account in selection of contractors
Contractors and In-house prepare tenders	Training of evaluation team Refining evaluation criteria and cost analysis
Tender evaluation	Obtain latest information about contractors
Decision on TUPE	Check legal opinion on application of TUPE Presentation by contractors Ensure tenants/users views taken into account Wider issues on costs, local social and economic impact highlighted Further consultation if post-tender negotiations have taken place
Contract award decision	Obtain copy of evaluation or Committee report. If necessary prepare critique and demands.
Preparation for contract	Take necessary action including lobbying of authority Members

Contract starts

Part 3

Balancing quality and price: Scoring and weighting evaluation criteria

The evaluation of tenders is not simply a technical exercise. The contract decision must not be considered as a purely technical process in which Members merely rubber stamp the evaluative conclusions of officers. Government and European regulations provide the basic framework for assessing tenders but following these rules is not a value-free procedure.

Authorities are not obliged to adopt any scoring or weighting method. They can assess the technical ability of tenderers and quality issues and consider these together with contract prices as described in Part 9. For example, there are distinct advantages for keeping the assessment relatively simple and straightforward by judging bids as being acceptable, partially acceptable, or unacceptable.

Authorities will want to develop the most appropriate means of finding value for money. This can only be achieved by balancing both price and quality. Assuming that authorities choose the 'most economically advantageous' basis for awarding the contract under the EU Directives, they are responsible for selecting the quality, technical, financial and other criteria for assessing tenders. The responsibility rests solely with the authority. The double-envelope system, where contractors submit two separate bids on quality and price, has been abandoned by the Government.

This section examines the scoring and weighting evaluation criteria. The choice of technical and quality criteria are fully discussed in Part 5 together with an evaluation matrix.

The limits of scoring criteria

It is vitally important to understand that any system of scoring and weighting can be manipulated to achieve all kinds of desired winners and losers. For example:

- Tenders can be scored using a set of quality criteria but the resulting total scores could vary depending on the group of officers carrying out the assessment.
- The weighting of technical ability, quality, price and tenants/users views can be varied with completely different results.
- Scoring and weighting can result in certain loss of flexibility in tender evaluation. For example, if the authority decides to allocate 85% of the score to price and only 15% to

technical and quality issues and the in-house bid is the second lowest tender, although it may be technically and qualitatively superior to the other bids, this may not be reflected in the overall score. Alternatively, the in-house bid could be the lowest bid by a small margin but if price makes up say 60% of the score and a private contractor scores better on technical ability and quality it is possible for the private contractor to score better than the cheaper in-house bid.

There is always a danger that evaluation focuses on tangible scores and weights, yet the fundamental issue is the method of assessment and evaluation of intangible factors (*ie* the means by which the scores are arrived at and not the scores themselves).

Will the politics be taken out of contract decisions?

Increasing regulation of the CCT and market testing process is making it more technical and complex, giving managers and officers greater scope to control the process.

Authorities must avoid regarding the use of matrices to present technical and qualitative assessments as irrefutable 'evidence'. Matrices must be considered as nothing more than a means of compiling and presenting the results.

The selection of weightings for evaluation criteria involves political decisions which cannot be presented as mere technical matters. For example, the relative importance given to tenants/user views is a political judgment.

A range of views of officers, Members and tenants/user organisations could be taken into account in setting weights and scoring evaluation criteria. The technical guide to Economic Appraisal in Central Government makes the following points

- ensure that the weightings are explicit
- look out for any tendency of the weightings to bias, for example, towards 'producers' or service providers, and away from consumers
- ensure that the method does not give too much emphasis to the total scores, as opposed to how they are made up
- use sensitivity analysis to test the robustness of the ranking of options to alternative weightings.'

The scoring and weighting system for each service being tendered should be approved by the relevant committee before it is applied in the evaluation of tenders.

Options for scoring technical and quality criteria

Option 1: No scoring or weighting

Evaluate tenders for their technical ability and qualitative merits and assess these findings together with the financial costs of each tender. The advantages and disadvantages of each tender are summarised under the main headings (see Stage 5). There is no scoring or weighting of criteria.

Option 2: Scoring of criteria

Technical and quality criteria are assessed using a scoring method. Each tender is given a score out of five or ten for each criteria and the tender with the highest score is judged to be the best on technical and/or quality merit. Scoring should be based on the following steps:

Step A

Identify the criteria which cannot be valued in money terms

Step B

Define the scoring scales, for example 0–5 (0,1,2,3,4,5) or 0–10 on the following basis:

	Score
Meets all the requirements of the contract in a comprehensive manner	5 points
A satisfactory response which meets the basic requirements	4 points
A satisfactory response but doubts expressed on several aspects	3 points
Indications that the tenderer will meet only some requirements of the contract in a satisfactory manner	2 points
Only a small part of the tender is satisfactory	1 point
An unsatisfactory response which suggests the tenderer will have serious difficulties with the contract or no information is provided	0 points

Step C

Apply this scoring of each criteria to all the tenders. For example, a tenderer's quality plan could be assessed as follows:

Points Scored

Quality Plan

	Points Scored	Points Available
understanding of standards	5	5
ability to deal with failures	5	4
method statement for quality	5	4
contractors quality control and monitoring	5	3
quality of staff	5	3
user complaints	5	4
tenant/user consultation	5	2
commitment to quality	5	4
	40	29

The score for all the criteria is totalled and shown as a percentage of the maximum number of points available.

For example, if there are eight criteria then the total score is $8 \times 5 = 40$. If a tenderer scores 29 this should be expressed as a percentage, ie 72.5%.

Option 3: Scoring and weighting

It is not essential to proceed to weight the different criteria. However, if it is decided to do so, then Step D indicates one approach:

Step D

Decide the relative importance of each criteria in the technical and quality matrix. For example, some criteria could be considered more important than others and given different weights:

	Value
Quality Plan	
understanding of standards	10
ability to deal with failures	10
method statement for quality	20
contractors quality control and monitoring	15
quality of staff	10
user complaints	5
tenant/user consultation	10
commitment to quality	15

Another example of weighting is provided by the Association of Consulting Engineers who suggest the following quality criteria for engineering consultancy contracts. The weightings must total 100%.

Quality Criterion	Suggested weighting range
Reputation and experience	15–30
Special competence	0–20
Technical skills of staff and CVs	15–30
Special techniques or equipment	0–5
Sub-consultants and third parties	0–20
Organisation and management skills	5–10
Financial stability	0–10
Quality Assurance, liability insurance	0–10
Approach & meeting client needs	15–30
Environmental considerations	0–10
Programme of work	5–20
	100%

In this example, reputation and experience, technical skills of staff and the approach to meeting client needs are given priority over other criteria. These criteria are very broad and Part 5 examines how more detailed criteria can be used to evaluate bids.

Step E

Combine the weights and scores to give an overall score for each tender. Each score is multiplied by the relevant weight. The weighted scores are then summed for each tender and the tender with the highest score will be the most advantageous tender based on technical and qualitative criteria.

	Score	Weight	Score
Quality Plan			
understanding of standards	5	10	50
ability to deal with failures	4	10	40
method statement for quality	4	25	100
contractors quality control and monitoring	3	15	45
quality of staff	3	10	30
user complaints	4	5	20
tenant/user consultation	2	10	20
commitment to quality	4	15	60
	100		345

When the weightings are applied, the final score in the example above is 345 out of a possible 500, and can be expressed as a percentage *ie* 69%.

Option 4: Scoring and weighting quality and price

Technical and quality criteria are scored and weighted together with price and the views of tenants/users.

There is no single method for determining the weighting between different elements of a contract. The weighting of the criteria will be the responsibility of the tender evaluation team. The four main criteria are quality, technical ability, price and tenants/user views. However, there is nothing to prevent an authority having another category or it could combine quality and technical ability into one category to be contrasted with price. The authority could also vary the weighting depending on the service being tendered.

There is no prescribed weighting. For example, an authority may decide that price should be 50% of the score or lower, at say 40%. It could decide that price was more important than technical ability and quality and allocate it say 65% of the points. The authority must decide the weighting for each contract. Here are three examples:

Technical ability	25%	40%	20%
Quality	15%	15%	25%
Price	50%	40%	50%
Tenants/user views	10%	5%	5%
	100	100	100

Using the example above, where technical ability was awarded 345 out of a possible 500 points the score would be out of 25 if technical ability was given a weighting of 25% which in this instance would give a score of 17.25.

The Association of Consulting Engineers (ACE) recommends the following approach in balancing quality and price.

Type of work	Summation of criteria	Price
Feasibility studies and investigations	not less than 85%	up to 15%
Multidisciplinary complex projects	not less than 80%	up to 20%
Complex single projects	not less than 70%	up to 30%
Design detail and other routine tasks	not less than 50%	up to 50%

It should be noted that the ACE recommends that price is never greater than 50% of the weighting.

Converting prices to points

It is important to emphasise that there is no obligation to convert prices to points. Technical and quality criteria can be scored (and weighted if desired) and compared with the results of the financial assessment without converting prices to points.

However, if the evaluation team wishes to convert prices to points, the following procedure is outlined in the CIPFA

Example:

Price is 50% of the weighting. Following No 2 above, the mean is awarded 25 points and the points for the bids are allocated depending on the extent to which they are above or below this mean.

Tenders	Mean	Points	Score
A. £1,590,000 (discard)			(Mean 25)
B. £1,200,000		18% above mean = -18 pts	7
C. £1,000,000	£1,020,000	2% below mean = +2 pts	27
D. £950,000		7% below mean = +7 pts	32
E. £930,000		9% below mean = +9 pts	34

Code of Practice for Compulsory Competition:

The points allocated to prices will be based on the weighting noted above. For example if price is 50% of the weighting then the following calculation of points for price must be scored out of 50.

1. tenders which are too low to be credible and those too high to be acceptable are discarded.

2. calculate the mean of the remaining tender prices (total the value of all remaining tenders and divide by the number of tenders)

3. give half the maximum points for the mean price. For example, if 50 points are awarded for price the mean price would be awarded 25 points.

4. for prices below the mean, add 2% of the total points for each 1% below the mean

5. for prices above the mean deduct the same number of points for each 1% above the mean

The same methodology has also been proposed by the

Association of Consulting Engineers, although they propose adding 1 point for every 5% or 0.1 point for every 0.5% below the mean and deducting points similarly for bids above the mean.

Value assessment

The different scores awarded for technical ability, quality, price and tenants/user views can now be combined. Based on the example:

Tender	%	B	C	D	E
Technical ability	25%	17.25	18	19	15
Quality	15%	12	13	12	9
Price	50%	16	24	28.5	29.5
Tenants/user views	10%	6	7	8	5
	100%	51.25	62	67.5	58.5

In this particular example Tender D scores the highest points.

Part 4

Stage 1: Compliance with specification and contract conditions

The purpose of this stage is to identify the tenders which will be subject to detailed analysis.

If a substantial number of tenders have been submitted it will be necessary to decide a cut-off point because it is usually not necessary, and a misuse of resources, to carry out a detailed assessment of tenders which are:

- priced well above other tenders
- based only on part of the work and/or fail to meet important parts of the specification and contract conditions and are therefore qualified tenders.

However, no tender should be summarily rejected – all tenders should be assessed at least through Stage 1 of the evaluation process.

If there is no competition

If there is no external competition and the in-house bid is the only bid which has been submitted then it should still be assessed. The evaluation team may decide to assess the bid against the client's constructed base bid.

Stage 1: Compliance

1. Tenders correctly received and opened
2. Confirmation of TUPE and non-TUPE bids
3. Provision of all required schedules
4. Arithmetic check
5. Specifications met in full
6. Compliance with tender conditions and working methods
7. Compliance with contract conditions
8. Adequate health and safety arrangements
9. Adequate staffing levels and working hours
10. Adequate management and organisation
11. Approval of financial references
12. Understanding of the contract

1 Tenders correctly received and opened

Tenders should have been received before the specified deadline and opened in accordance with the authority's standing orders. The authority is legally entitled to reject bids which arrive late, irrespective of the circumstances.

2 Confirmation of TUPE and non-TUPE bids

Contractors should be required to confirm in writing which are TUPE based bids and which are not.

3 Provision of all required schedules

Each tenderer should have supplied all the required schedules and certificates (*see Part 1 for full list*).

4 Arithmetic check:

Each tender should be checked for arithmetic errors. The preparation of tenders for large or multi-activity contracts may involve a lot of pricing of work and in these circumstances mistakes are often made. If some prices have been wrongly calculated the authority has two choices. It can hold the bidder to the figures given or allow them to be adjusted and the revised figures taken into account at the cost comparison stage. Holding the tender to the wrong figures may make it non-viable. Whilst it may be tempting to hold contractors to low prices it is normally in the authority's longer term interest to adjust the figures. Tenders with many errors can only signal future problems for the authority. The authority must decide one particular policy and rigorously apply it.

The authority can write to tenderers to seek further clarification of prices and to deal with ambiguities. Tenderers must be notified in writing of any changes to tender prices as a result of correcting arithmetical errors.

5 Specifications met in full and completion of all schedules

Some contractors may exclude areas of work in error or because they do not want to undertake certain parts of the contract. This qualifies a bid. If a contractor has not fully inspected the facilities or fully understood the contract they may submit wholly inadequate prices or propose inappropriate working methods or use of equipment.

6 Compliance with specifications and working methods.

Tenders should be checked to ensure that they have complied with the specification and the working methods required by the contract. Each tenderer should have sup-

plied a method statement. Some contractors may propose different working arrangements from those in the specifications. These may be unsuitable for the particular service and may conflict with the operation of other services.

7 Compliance with contract conditions.

Tenders should be checked to confirm that they have conformed to the contract conditions. Some contractors may propose different working methods from those in the tender documents. These may be inappropriate for the particular service and may conflict with the operation of other services.

8 Adequate health and safety arrangements

Adequate arrangements are essential to protect employees, the authority's own workforce, users and the public and to ensure safe and proper use of specialist equipment and dangerous materials. Contractors should have supplied a health and safety policy prior to being invited to tender. The Health and Safety at Work Act 1974 requires organisations to have a 'safe system . . . for each part of the operation' and the tender documents should require the contractor to submit proposals for a 'safe system of working'. This should be assessed by the authority's safety officer against the specification and contract conditions and should determine:

- a genuine commitment to health and safety
- the contractors organisation and internal safety arrangements
- safe working arrangements for each element of the service

It is in the client's interest to make sure that each tender has adequately considered health and safety issues for the contractor's staff, the authority's own staff, users of the service, and the general public.

Responsibility for complying with health and safety rests with the contractor. The only effective way of determining a tenderer's ability and commitment to health and safety is to place responsibility squarely with the contractor and to carry out the assessment noted above (and further evaluation in Stage 2). Authorities should avoid supplying tenderers with existing health and safety policies and codes and enquiring whether they have equivalent documentation.

9 Adequate staffing levels and working hours

Do the methods of work specified, materials, equipment and labour hours suggest the contractor is able to do the work required to the specified standards? Are sufficient resources provided to meet peak demands and/or emergencies? A fuller assessment will be carried out in Stage 2.

10 Adequate management and organisation

This will be a brief check of the contractor's proposed management structure and resources applied to the organisation of the contract.

A fuller assessment will be carried out in Stage 2.

11 Approval of financial references

References will be required from the bank, insurance cover, performance bond and any guarantees required from parent company. References from other public service contracts should be summarised as follows:

Presenting information from References				
Company	Organisation supplying reference	Duration of contract	Annual value of contract	Summary of main points
A				
B				
C				
D				

12. Understanding of the contract

Has the contractor visited a good representative sample of the facilities, offices, sites and depots (this should cover all facilities on a small contract) and developed a reasonable understanding of what the contract involves?

Assessment after Stage 1

Each tender should be judged to have complied or failed to comply with the above criteria. At this stage excessively high tenders should be excluded from more detailed examination. Very low tenders are sometimes a result of a misinterpretation of the specification and/or working methods. A tender may have a low price because the contractor has deliberately submitted a loss leader bid. (see Parts 4 and 7.)

'An authority may decide to disallow a bid entirely if the tender has a high level of errors or if the tenderer is not prepared to stand by the tender submitted When bids are much lower than the client side anticipated, officers should explain why. Many local authorities have discovered that tenderers fail to price part of the specification, and have been concerned that private contractors have misunderstood the specification.' (Realising the Benefits of Competition, Audit Commission, 1993).

Qualified bids

Bids which are not fully priced, or have not bid for certain parts of the work, or have failed to supply the required information such as a method statement can be deemed to be qualified bids and rejected at this stage (Westminster rejected four bids from building contractors for a housing repairs contract in 1993 because they failed to supply a method statement). If a contractor submits a tender which requires the authority to change the specification or contract conditions it can also be deemed a qualified tender.

If a tenderer supplies insufficient information, the authority could reject the bid on the basis that they must evaluate all bids equally and must, therefore, deem the bid with insufficient information as an invalid bid.

High bids

In a situation where there are a number of bids it is acceptable to eliminate those tenders which are substantially higher than the norm. For example, it is possible to take the four lowest tenders out of say seven submitted and carry out a more detailed analysis of these bids.

Tenders with unsolicited offers of capital expenditure

In all contracts to which the EC Directives apply, the authority can reject such tenders because they do not comply with the advertised specification.

Where the the EC Directives do not apply the CIPFA Code of Practice suggests local authorities should not dismiss such proposals without first:

- asking tenderers to state the amounts of alternative tenders (complying and not complying)
- basing tender evaluation initially on complying tenders
- making additional enquiries about the ability of tenderers to carry out the work in accordance with non-complying tenders, and to judge whether offers of capital expenditure are serious and are backed with the necessary funds
- making their own assessments of the value (to themselves) of the proposed specifications, and make the final tender evaluation accordingly
- amending contracts to make clear who will own any assets in the event of premature termination, and with what cash adjustment.

Part 5

Stage 2: Technical and Quality Assessment

The technical analysis of bids should have four main objectives:

1. to establish whether the tenders meet the detailed requirements of the specification and the needs of users
2. to assess whether the bidders have applied sufficient resources, including staffing, skills, experience, management and support systems, in their tender to deliver the required service
3. to assess any proposed changes to working methods proposed by contractors
4. to assess whether bidders can meet and sustain the required quality standards throughout the contract

There are 13 important elements to a technical and qualitative analysis.

Stage 2 Technical and Quality Assessment

1. Technical ability and resources
2. Ability to recruit and retain staff
3. Qualifications of the workforce
4. Previous experience
5. Health and safety implications
6. Quality plan assessment
7. Equal opportunities/fair employment
8. Reliability and compatibility of contractor's equipment
9. Specific criteria relating to the service
10. Contract start-up
11. Risk assessment
12. Interviews of contractors
13. Presentations and tenants/user views

It is crucial to require that tenderers supply all the information necessary for a thorough technical evaluation (*see Part 1 for the list and breakdown of information which tenderers should be required to supply*). This stage also needs to examine unit costs in detail which will assist the evaluation team in assessing how the contractor has allocated resources within the contract.

A few authorities have used weighted gradings or scores in assessing contractor's performance. Whilst weighting

can reflect different levels of importance attached to different criteria, we believe that weightings are open to criticism and to challenge by contractors. The application of all the criteria in the five stage evaluation process detailed in this report should provide ample scope for assessing bids and differentiating between contractors without resorting to the weighting of criteria.

Work will be priced based on the three main types of contract available:

- lump sum supported by bills of quantities
- schedule of rates
- lump sums supported by specifications

This is not the place to discuss the relative merits and appropriateness of the different contracts. It is important to stress the need for authorities to require tenderers to provide detailed prices, rates and income to enable tenders to be fully evaluated.

1 Technical ability and resources

Ability to undertake the work as specified for the duration of the contract and should include the contractor's:

- managerial and supervision abilities
- adequacy of staffing levels
 - are there sufficient staff to meet the operational needs of the service (based on work study or experience of the service)?
 - are there sufficient numbers of permanent/core staff deployed at different locations and for different shifts?
 - if temporary staff are used where are they from, and will they be used on other contracts?
 - is there adequate cover for sickness, holidays and absence?
 - is there adequate cover to meet contractor's proposed training policies?
- technical assessment of any proposed changes to working methods
- organisational arrangements including:
 - clerical, administrative and financial service support for the contract

- ability to use IT system
- on site office support

– head office support for the contract and senior management supervision.

The specification must form the basis of this assessment. It is also vital that the tender documents require contractors to break down the use of labour for each aspect of the work.

All tenderers should be fully assessed with particular attention paid to small firms, management buy-outs, and firms without a local office or depot. The assessment should determine whether the arrangements are:

- already in place
- whether they are operational
- if not in place, what are the plans and timescale (*see also contract start-up below*)

Subcontracting

The extent of any permitted subcontracting should also be examined including the tenderers planned use of subcontractors, the management and coordination of subcontracting, and their technical competence.

Selection of construction-related professional services

The Construction Industry Council recommend that the following criteria are used in any pre-qualification process but these are also valid criteria in the assessment of tenders:

- Conceptual approach
- Technical ability and resources
- Experience with equivalent or related projects
- Appreciation of the client's requirements

- Managerial and administrative skills
- Personal qualities of Principals and senior staff

Analysis of working hours

For some services the planned number of working hours is an important element of the contract and is a direct indication of the resources which the contractor will apply to the contract. The total planned number of working hours for each of the main tasks in the contract should be assessed. It is also important that the number of hours allocated for carrying out the work and for supervision are stated separately

	Tender A	Tender B	Tender C	Tender D
Area 1 or part of the service				
Operatives				
Supervision				
Support Staff				
Area 2 or part of the service				
Operatives				
Supervision				
Support Staff				
Area 3 or part of the service				
Operatives				
Supervision				
Support staff				

Assessment of labour resources

This should include an analysis of the adequacy of staffing levels for the contract.

Total labour resources for the contract

	Tender A		Tender B		Tender C		
	Full-time	PT	Full-time	PT	Full-time	PT	
Management							
No of hours/week							
Professional/technical							
No of days							
Admin/clerical and Supervisors							
No of hours/week							
Staffing for each activity							
Mobile staff or specialist staff							
Allowance for holiday & sickness							
Total							

Another method of assessing whether tenders are based on sufficient resources to complete the required work and meet the required performance standards is to analyse the costing of the tender. This is carried out by disaggregating the costs as follows although not all those identified below will apply to every contract:

- Labour costs
 - Wages
 - Sickness
 - Holidays
 - Pension
- TUPE provision
- Transport/vehicles
- Maintenance
- Materials/supplies
- Equipment
- Promotion/publicity
- Management fee
- Overheads
- Profit
- Capital expenditure
- Other costs

Cleaning contracts

Contractors should be required to:

1. submit costs for daily, weekly, monthly, 3-monthly, 6-monthly and annual operations at each location.
2. supply the number of operative hours to be allocated to each type of cleaning operation for each location.

The British Institute of Cleaning (BIC) advise that contract prices should comprise:

- 61% labour
- 4% materials
- 5% equipment
- 30% other costs

The BIC also recommend a cleaning rate of 2,000 - 2,500 square feet per week for good performance, 3,500 square feet per hour is considered doubtful, and 4,500 square feet impossible. School cleaning rates are usually about 2,250 sq ft per week.

Assessing Cleaning costs

1. Analysis of tender prices against Industry recommendations – see Part 3.
2. Annual cost of cleaning per square metre for each different element of the contract ie offices, libraries, schools, housing, depots.
3. Annual cost of periodic cleaning schedule per square metre for each type of building or specification.

4. Annual hours of cleaning per square metre for each type of building or specification.

The following format can be used for assessing hourly costs and productivity levels.

Company	Total operative hours per annum	Cost per hour	Area in Square feet per operative hour
A			
B			
C			

It should be possible to determine the relationship between the prices quoted by a contractor for different tasks and the time allocated to perform them and to assess whether they can be achieved and with what impact on the quality of service.

Look for consistency across all areas. If the number of hours and/or prices are erratic then this could lead to the contract requirements not being met because the contractor has misunderstood the contract or not carried out proper site investigation of the contract.

Catering contract

	Tender A		Tender B		Tender C	
	Hours	Staff	Hours	Staff	Hours	Staff
Management.						
Cooking						
Serving & kitchen duties						

This analysis should prompt some key questions.

- Is the balance between contract management, cooking, serving and, where relevant, cash till operation, appropriate for the contract?
- What questions should be asked if a contractor has fewer hours for contract management and hours for serving and other duties?
- What percentage of the total hours is allocated to operating cash tills and what bearing does this have the resources allocated for cooking?

NHS Contracts

The NHS market testing guidance suggests the following information be requested from tenderers:

Summary of Annual Costs	% of annual price	Annual price ex VAT
Basic labour		
Supervision		
Management - on site		
Annual leave and sickness allowances		
Management - off site		
Equipment		
Materials/ Provisions		
Equipment maintenance		
Training		
Staff Uniform and laundry		
Transport		
Overheads		
Profit		
Other – specify		
Total annual price ex VAT		

Assessing income generation

Some contracts, particularly sport and leisure management and catering contracts, require the tenderer to submit proposals for generating and sustaining additional income. Assessing the contractors ability to implement income generation proposals is an important part of tender evaluation. It should cover:

- Promotion and marketing of services
- Special promotions and target groups
- Increasing range of activities
- Proposals for secondary sales and services:
 - catering
 - bars
 - shops
 - vending machines
 - other events such as sports clinics, fitness sessions
- Assessment of ability to meet financial performance targets

(see also specific criteria later in this Stage)

Information needs

It is essential that the tender documents require the contractor to supply the information to carry out such an analysis. For example, a local authority grounds maintenance contract required the contractor to state:

- Operation (referring to clause in the specification)
- Total quantity aggregate of all sites
- Unit of measurement
- Unit price *ie* price per unit of measurement
- Price per visit *ie* total quantity divided by unit of measurement x unit price
- Annual price *ie* visit price x frequency.

Another authority used prices in the Bills of Quantities and an hourly rate for each type of operative to determine a series of times the tenderer estimated each major task would take. The unit rate was divided by the hourly rate and compared with those provided by databases in the horticultural industry. The time values – minutes per year – include all stoppages, travel between sites, breakdown time and other 'non-productive' time.

The time/cost were categorised into:

- impossible to achieve
- achievement improbable
- possible to achieve, but will result in a poor standard, below the specification
- satisfactory

Evaluation Point	Tender A	Tender B	Tender C	Tender D
1. Tendered price per annum				
2. Tendered price per week				
3. Basic worked hours per week				
4. Supervisory worked hours per week				
5. Management worked hours per week				
6. Allowances for annual leave and sickness				
7. Other pay additions eg London weighting Bonus Performance pay				
8. Equipment costs				
9. Material/provisions costs				
10. Other non-pay costs eg Uniform Overheads Equipment maintenance				
11. Unscheduled work costs eg per hour or per occasion				

The specification defines the service to be delivered, the required standards and performance, and the procedures to be adopted. Authorities must decide for each service being tendered how prescriptive they wish to be in setting out the methods and procedures. Detailing all the working methods is most likely to be the only way to ensure the contractor delivers the required service to the standards specified. This is particularly important where working methods have been developed with other departments and agreed in consultation with tenants and users. However, over-prescription will enable contractors to readily produce statements which conform but make the evaluation of the quality of tenders more difficult. It will also over-expose the operation of the in-house service to private contractors and ease their task in preparing tenders. Over-prescription could also hinder innovation and development of the service.

The Government has attempted to marginalise the importance of method statements in both CCT and market testing. DOE Circular 10/93 states that local authorities set out the required standards of performance but "not prescribe the methods of work to be employed except in general terms". It goes on to state that local authorities should "be prepared to consider" alternative working methods from contractors but accepts that for some services "it may be necessary to specify the nature of the work in terms of the process to be followed or the type of professional or technical input which a contractor would be expected to offer, provided such requirements are set out in general terms." It also states that "contractors may be asked to provide general descriptions of the methods of work to be employed, or evidence to support proposed resource levels."

A somewhat different approach is being adopted for white collar services. The draft DOE Circular for White Collar Services allows local authorities to specify the processes which must be followed or the required professional inputs.

Despite attempts to limit the use of

Method statements

method statements they remain of vital importance for the authority in assessing a contractor's capabilities.

There is no advantage to contractors in producing vague and general method statements. The authority can legitimately claim that they do not reassure the authority about the contractor's abilities and capacity to fulfil the requirements of the contract. A work programme should also be included to check how it matches up with the staffing levels and the time/pricing of particular tasks. Method statements can also be required for particular parts of the contract to determine the willingness and ability of the contractor to implement policies and procedures. For example:

- *the staffing, training and procedures for implementing equal opportunities policies in the specification and CRE code of practice*
- *the required consultation with tenants/users during the course of the contract*
- *important elements of a service such as dealing with rent arrears and eviction, personal interviews, security etc*
- *the achievement of quality standards.*

A method statement should require contractors to detail the resources and procedures they would use to achieve the requirements of particular sections of the specification and should cover:

- the resources to be used and how these resources will be allocated
- what equipment will be used
- how they will achieve the specific performance targets
- how they will ensure quality of service
- what procedures they will use and how these procedures will interface with other services
- how they will deal with failures and complaints.

Contractor's proposed changes to working methods

Contracts awarded under the EC

Directive 'economically most advantageous tender' authorities 'may take account of variants which are submitted by a tenderer and meet the minimum specifications required'. The minimum requirements must be stated in the contract documents and 'any specific requirements for their presentation. They shall indicate in the contract notice if variants are not authorised.' (Article 24, 92/50/EEC)

The Civil Service market testing guidance states that bidders should be 'encouraged to offer innovative proposals' (para 6.28) but any changes to current working methods should be assessed for their 'realism' and 'whether they provide an acceptable, cost-effective approach or whether there is doubt about the bidder's ability to meet the users' needs' (para 9.2).

If changes to working methods are proposed the following questions are relevant:

- will different procedures or methods affect standards?
- will they affect the timing and frequency of service?
- will the coordination of services be affected?
- how will they affect service users?
- will it affect the cost of support services?
- will it affect the availability of service and financial information?

The importance of method statements is described by one authority in assessing tenders for a council housing repairs and maintenance contract: 'Tenderers were required to submit method statements with their tenders explaining their method of carrying out the works including their organisations, staff numbers, managers' names, local representation, storage facilities etc, that would be put in place to deliver the service to the residents and officers. This is an essential part of the tender submission and is a good indicator as to the care taken in pricing as well as likely performance on site. It also demonstrates the level of interest in the contract.' Four contractors failed to submit method statements and 'were accordingly eliminated'.

A chart was compiled indicating:

Task	Category of maintenance	£/per square metre per year	Minutes allocated per square metre	Achievement per annum
1				
2				
3				

This type of analysis will help to determine:

1. The contractor's system of pricing: has a standard price been used throughout – *ie* little or no allowance has been made for different sites and may indicate the contractor has not visited all the sites and/or does not fully understand the contract.

2. Whether the contractor can provide the required service for the prices stated in the tender.

3. Estimation of the likely costs (losses) to the contractor if they supplied sufficient labour at their own cost to meet the specification.

4. Impact on the authority if the contractor defaults – if the tender is based on very low prices any defaults, based on the Bills of Quantities, will not reflect the true cost to the authority.

5. Further questions to be asked of contractors at interview and/or presentation stage.

2 Ability to recruit and retain labour

Wages rates and other terms and conditions of employment are considered 'non-commercial' under the Local Government Act 1988 and can not be taken into account in awarding contracts in local government. However, it is prudent to examine the contractors proposed terms and conditions with respect to:

1. Assessing whether the prices quoted by tenderers are viable.

2. Determining whether the contractor will be able to recruit and retain staff to meet the specification and conditions of the contract. There is extensive evidence to show that low wages generally lead to high turnover rates and staff shortages. The authority will need to make a judgment about whether a contractor will be able to recruit and retain enough suitable staff to provide the specified service.

3. The contractor's ability to supply services or switch labour priorities at short notice to meet emergencies or changed circumstances should also be assessed. The contractor's ability to call on reserves of labour to meet contractual obligations, or their ability to arrange for such provision, is also a material factor.

NHS units can specify pay and conditions for catering, domestic and laundry services and for other services being market tested. Circular EL(93)55 Annex D cancels the

October 1984 letter to RHAs which prevented DHAs from specifying pay and conditions. Bids should be checked to determine whether contractors have complied with any specified pay rates. It will also be important in assessing a tenderers ability to recruit and retain staff to prepare a table comparing contractors pay and conditions of service.

The contractor's ability to recruit and retain staff will also be affected by the following factors which should be taken into account in any assessment:

- The arrangements for maintaining the appropriate level of qualified and experienced staff over the length of the contract
- Recruitment planning
- Induction process for new staff
- Training resources
- Performance incentives
- Facilities for staff.

It is also important to require each tenderer to explain how they intend to recruit staff. This should be compared with the authority's own information on current wages levels and the availability of trained staff in the local labour market.

3 Qualifications of the workforce

Tenderers can be asked for information about :

- contractor's pay differentials, in order to establish the status of supervisors, and the adequacy of their managerial structures, provided the purpose of such enquiries is made clear.
- the qualifications of staff and that particular kinds of work are carried out by people holding appropriate qualifications. Authorities can specify specific numbers or percentages of staff only where this is essential in the performance of the work. However, they can take into account the possession of qualifications as a measure of the contractor's competence with respect to other services and areas of work where qualifications are not essential.
- comparison of the relative seniority of staff engaged on specific aspects of the contract
- their suitability to carry out sensitive work, for example, work with children or in premises with high security classification.

Training and development proposals

A tenderer's training arrangements are classified as a 'non-commercial' matter under the Local Government Act 1988. However, the commitment to and the quality of a contractor's training proposals is relevant to the qualifications of their staff and their ability to recruit and retain labour. It is also an indication of the quality of the contractor's manage-

ment and the motivation of their staff. Training has been taken as a client cost in some authorities and is not a tender evaluation matter in these circumstances.

Where TUPE applies the contractor will be taking over staff who will be on various education and training schemes, particularly in the professional services. The contractor's attitude to maintaining these arrangements is a relevant issue for the authority. To do otherwise could lead to disruption to the service as a result of industrial action and problems in retaining and recruiting staff during the contract.

The following are important questions which can be phrased in terms of the qualifications of staff, customer care, quality programmes or similar terms to avoid contractors claims of the authority acting 'anti-competitively'. Contractor's committed to best practice should be only too willing to voluntarily supply this information:

- opportunities for unqualified staff
- career development
- customer care training
- training to promote quality
- health and safety training (*see No 5 below*)
- cover arrangements for those on training schemes – the contractor should indicate how staffing levels will be organised to allow for training without affecting the standard of service
- comparison with industry norms
- personal education, the adoption of best practice by the contractor to encourage their staff to undertake education and training not directly connected with their work.

Tenderers for civil service and NHS contracts can require all of the above information and details of the contractor's training programme and provisions including the type of training (qualification or on-the-job) and the number of training days over the contract period.

Assessing Management and Supervision Checklist

- What is the management structure, responsibilities and reporting arrangements for the contract as a whole and for each area or part of the contract:
 - chart of the management structure for the contract
 - duties and responsibilities/job description
 - percentage of time on contract
 - cover arrangements
 - communications
- Supervision ratios for each area or activity for:
 - normal working hours
 - outside normal working hours
 - emergencies

- Implications for management and supervision of the contract taking into consideration the recent award of contracts by other authorities since the invitation to tender was made.

Assessment should determine whether the arrangements are:

- already in place
- operational
- if not in place, how and when will they be implemented.

4 Previous experience

The contractor's experience and references from previous contracts should cover the quality of work, standards achieved, the level of complaints and defaults, the authority's experience in monitoring the contract, and termination of any contracts.

References should be carefully assessed:

- compare similarly sized contracts and comparable type and level of service
- compare with information on contract performance in company profiles prepared by the authority and/or trade unions
- identify evasive or indirect replies which could form the basis for a request for more information from the referee or which could be taken up with the contractor at the time of interview.

Local authorities should 'take reasonable steps to ensure that those invited to tender have the necessary experience and skills to undertake the work specified' but should not exclude contractors from bidding 'on the grounds that they have no experience of providing municipal services or carrying out public works in the United Kingdom.' (*Para 53 and 54, DOE Circular 10/93*)

Trade unions have access to the Public Services Privatisation Research Unit's database which has information on contractor performance.

The authority should seek references from the referees supplied by the contractor but should also seek references from other public bodies particularly if the contractor has supplied only private sector references. References from user organisations such as tenants associations should also be obtained. Local authorities should inform contractors where they are seeking references and 'ensure the choice of additional referees is such as to ensure a fair and balanced view of the work of the contractor.' (*para 55, DOE Circular 10/93*)

5 Health and safety

Information about previous health & safety performance, health & safety policies, and arrangements for keeping staff informed should have been assessed at tender invitation

stage. Safe working arrangements should have been assessed at the vetting stage prior to the invitation to tender and checked again at Stage 1 above. This stage should assess the health and safety implications of planned changes in productivity and working methods. It should cover:

1. Productivity implications for health and safety resulting from changes or increases in work rate and allowances for safe working. For example, allowance for breaks in the use of VDUs.

- Have sufficient resources been allocated to implement health and safety policies?
- What is the availability of safety equipment and facilities?

2. Are the proposed working methods compatible with health and safety policies and contractors ability to implement safe working arrangements?

3. Does the planned rate of equipment usage accord with manufacturers recommendations?

There are also health and safety issues with respect of the premises where work will be carried out, particularly if contractors are to use council neighbourhood offices and civic offices.

- the contractor's willingness to adhere to the authority's health and safety policies for the premises
- office environment – maintenance of fire precautions, avoiding overcrowding of office space, noise levels.

6 Quality plan assessment:

Evaluating quality of service

The EC Directives and UK legislation and regulations enable authorities to specify the quality of service they require to be delivered under the contract and to assess tenders on the basis of predetermined quality criteria. These will be stated in the specification and contract documents. The authority can determine these requirements to be met through separate statements or they can be combined together into a quality plan.

A **Quality Plan** should be required from all contractors. It can be included as a condition of contract and all tenderers should be notified that it will be assessed in the evaluation of tenders. This plan should be required irrespective of whether the contractor has, or is seeking, accreditation for BS 5750 or the relevant EN29000 European standard..

The need for a Quality Plan was identified by the Treasury in their Central Unit Purchasing guidance, Market Testing and Buying In, and reaffirmed in the Government's Guide to Market Testing. It makes the case for Quality Plans very cogently:

'The standards to which the service should be provided must be defined accurately. An effective way of establishing the quality standards and the means by which they will be achieved is to

require the bidders to prepare a quality plan based on the information available to tenderers, which may well require refinement within a short defined period after contract commencement. The quality plan should identify all the critical quality aspects of the work (such as qualifications, training, experience, capability and organisation of staff in relation to quality assurance); and define mechanisms by which these will be introduced, achieved and checked. Approval of the quality plan can be a condition of the contract/service level agreement and, if necessary, additional requirements can be added by the department or Agency if the plan is considered inadequate. The quality plan can also be used to assess each bid. This has the advantage of forcing bidders to specify how they will confirm that the required standards of service are being provided.' (The Government's Guide to Market Testing)

The Government's guidance on Market Testing in the NHS, Schedule 17, states: 'In conjunction with Schedule 10 tenderers should be asked to produce a quality plan that identifies how quality standards are achieved and maintained.' Schedule 10 refers to contract management tasks to be undertaken by the provider unit and includes various aspects of quality.

The Quality Plan adopts a wider perspective on quality than that contained within BS5750. It should cover the following:

1. Identification and understanding of key quality standards. The required standards and performance measures will be identified in the specification and the contractor should be required to indicate their approach to meeting these standards and their understanding of the relative importance of the different aspects of quality.

2. The contractor's Quality Plan should contain their proposals detailing how they intend to meet maximum tolerances for failures and rectification:

- deviation from agreed service delivery levels and schedules
- failures identified by client monitoring – late/inaccurate returns of cost and performance data
- failure rates in equipment/materials provided or maintained by the contractor as part of the contract
- rectification of mistakes or low standard work

3. How the quality standards in the specification will be met (this should detail the method and organisation)

4. The contractor's proposals for the monitoring of service delivery and their quality control mechanisms (this is separate from the client's monitoring responsibilities)

5. The quality of materials and equipment to be used by the contractor.

6. Detail the quality of staff and their management (qualifications and experience) for different professional, technical and administrative tasks required under the contract. This can be used to encourage contractors to voluntarily reveal how they will staff, organise and manage

frontline services, particularly interviews and personal contact with tenants and users. Staffing of such services in many areas is as much about equal opportunities in employment as it is in terms of equal opportunities in service delivery.

7. The contractor's proposals for responding to user complaints and how users views will be assessed, for example, by surveys or audits, separate from client initiatives. This is particularly important for sports and leisure management and housing management contracts.

8. Quality of proposals to carry out consultation with tenants and users, particularly in housing management, sports and leisure management, and community care.

9. The contractors commitment to developing and improving the service in partnership with the client (see below).

Quality Assurance

Any requirement for quality accreditation must apply to all tenderers including the in-house service. Authorities should not reject a bid solely on the grounds that the tenderer does not have BS 5750 or its equivalent. The EC Directives adopt the same position because accreditation does not exist or is not readily available in some member countries. Making quality assurance a requirement of the contract is likely to be considered 'anti-competitive' and authorities should:

- allow tenderers to show that they are in the process of accreditation or have firm plans for doing so
- allow tenderers to demonstrate that they operate 'equivalent management systems based on the principles of BS 5750.'

'The judgment should be made on the ability to perform the work to the specified standards based on all the available evidence.' (para 34, DOE Circular 10/93)

Where BS5750 is an industry-wide standard and competing firms have accreditation making it a requirement of the contract is unlikely to be judged to be 'anti-competitive'.

Assessing quality

The Specification should include a set of **performance standards or targets** required for each part of the service. For example, a Property Services specification contained targets for:

- Capital valuation of dwellings and garages
- Capital and asset rental valuations of operational and investment properties
- Fire insurance valuations
- Lease renewals
- Lettings
- Planning Applications

- Post-acquisitions or post-disposal work
- Proofs of evidence for Lands Tribunals
- Rating
- Rent reviews
- Right-to-Buy redetermination
- Right-to-Buy and other valuations
- Sale to Commercial tenant
- Other activities

Each tender should be assessed in terms of the contractor's ability and resources to meet these targets. This is not an exclusive list of targets but indicative of the types of requirements identified by authorities.

The Specification also included **quality standards** for:

- Civility
- Correspondence
- Identity Cards
- Office cover
- Reliability
- Security
- Staff presentation
- Telephone and fax service

The Public Service Quality Framework should be used to identify the key factors which will be used in the assessment of quality.

Assessing Tenders from Voluntary Organisations

Authorities will need to focus on the following issues in addition to those identified in the six stages of evaluation:

- the planned use of volunteers in service delivery
- the organisations financial and accounting systems
- separation of contract funding from other activities
- support in the community
- management structure and experience
- monitoring of activities and services
- ability to evaluate and learn lessons from innovative projects
- contract experience
- security of other funding and viability of partnerships
- organisational or business plan

A Public Service Quality Framework

This was developed by the Centre for Public Services following an investigation of a range of quality initiatives in local government funded by Manchester City Council (A Strategy for Quality, Public Service Practice No 4). It identified six interrelated elements which encompass the quality of service and the process by which quality is achieved and sustained.

This framework can be used to assess the qualitative aspects of tenders. Not all the criteria will apply to all contracts. Some criteria will be more important than others depending on the service being tendered.

■ The core service

- intrinsic quality of the service or product
- the accuracy of the end product
- the accuracy of assessments (for benefits)
- the accuracy of factual data
- completion within time targets
- management and organisation of service delivery
- project management
- internal management systems
- quality assurance procedures and accreditation
- adequate staffing levels to meet the specification and conditions of contract
- number and type of recorded complaints
- contractors own system for quality control
- quality of monitoring information
- production of monitoring and quality control reports

■ Access to the service

- speed of response
- waiting times or queues for phone calls, letters, access to facilities
- dealing with backlogs
- turnaround time, time taken to deal with a case or claim
- accessibility of users to the service
- cost of using the service
- frequency and reliability of service and opening hours

- facilities opened/closed at correct times
- information about the service available in plain English and community languages

■ The service environment

- cleanliness of the buildings and equipment
- availability of additional supporting facilities such as catering
- health and safety
- security

■ The service relationship

- social relations between workers and users
- lack of tension or conflict between different groups of users
- response times in dealing with complaints, errors or failures to deliver

■ Quality of employment

- equality of employment
- qualifications and experience of staff
- staff training and development programme
- safe working conditions
- pay and conditions of service
- industrial relations framework
- trade union recognition and negotiation
- involvement of and consultation with staff

■ Accountability and democratic control of the service

- consultation with users
- service monitoring and quality review
- ability for users and potential users to influence decisions
- user/worker ideas for improvement and development

Will also be important to assess the contractor's willingness and ability to organise and implement procedures to achieve the quality objectives. The following checklist can be used for this purpose:

Organising for Quality Checklist

The following points can be used to assess the contractor's organisational ability to implement quality initiatives and to meet quality standards:

- ☛ implementing a quality improvement programme
- ☛ obtained or is working towards BS5750

- ☛ any working experience of quality assurance?
- ☛ a Quality Policy statement?
- ☛ evidence of quality manuals in use by the contractor?
- ☛ adopted quality assurance principles regarding documentation and recording of jobs, orders, materials and supplies etc?
- ☛ a designated officer or team responsible for quality initiatives - do they have the backing and access to senior management?
- ☛ the resources to develop a quality system?
- ☛ a training programme for staff in quality matters?
- ☛ does the job descriptions of key staff indicate responsibility and commitment to quality?

Tenderers should also be assessed with respect to:

Innovation

- ☛ Ability to provide new ideas and solutions to problems
- ☛ Ability to respond to changes in user needs and service development
- ☛ Ability to work with the authority to improve service delivery
- ☛ Ability to harness information technology and new equipment to improve service delivery
- ☛ Ability to initiate, respond to and investigate ideas from the workforce

Quality of Information for service development

- ☛ management information systems
- ☛ planned feedback from users and frontline staff
- ☛ contractors understanding of client's performance targets and indicators

Quality of financial information

- ☛ arrangements for monitoring financial performance, particularly income generated by the service, for example, school meals, leisure centres.
- ☛ degree of disaggregation of financial information for different activities or parts of the service.

Assessing longer term costs

Authorities can take into account the full life-time or consequential costs of design related and other professional services. The longer term maintenance costs associated with construction-related services can be significant when compared to short term savings.

"Cheapness is seldom synonymous with value for money; it may appear to show an early saving but it usually leads to higher costs in construction, operation and maintenance. A reduced quality of service is often a consequence of competition based on fees alone..." (Competing for Quality Policy Statement, Construction Industry Council, 1993)

Authorities should identify the relevant short and longer term costs and benefits and determine the overall value for money.

For example, the Department of Transport awarded its first contract in 1993 under a 'whole life costing scheme' computer model which takes expected maintenance costs and traffic delays into account for different bids using various road surfaces.

Civil Service

Telephone Services Contract example

The main areas to be considered in evaluating the proposal will be:

Comprehensiveness:

ability to provide the range of services required.

Quality:

the nature of the service provided, people and procedure, supplier quality policy.

Costs:

pricing mechanisms, approach and attitudes to change

Reliability:

ability to maintain a satisfactory service at all times.

Track record:

experience in public sector, reference from current customers

Viability:

company pedigree, past activities, future plans, financial status.

Company Ethics:

personnel policies, staff turnover, ability to relate to DFE.

Responsiveness:

ability to react to changing requirements with minimum disruption

Management:

approach to problem solving, reporting and reviews.

Quality Performance Assessment: Cleaning contract

Communications & mobility

Supervision

Training

Quality control

Customer care

Equipment & Materials

Contract administration

Reserve labour

Recruitment & retention

In this example a local authority awarded each contractor points based on their position relative to other bids, *ie* 1 point for best, 2 points for second best and so on and the contractor with the lowest points deemed to have the better quality assessment. However, this merely compares one bid with another, it does not assess the contractors against the authority's own contract requirements. A contractor could be 'best' but still not fully meet the required standards or needs of users.

7 Equal opportunities/fair employment

There are two aspects to equal opportunities with respect to tender evaluation. Firstly, equal opportunities provisions in the specification and the ability of the contractor to fulfil them. Authorities have substantial scope to include equal opportunity provisions in the specification of the service. Secondly, the contractor's equal opportunities policies in relation to employment can only be assessed on a very limited basis by authorities as a result of Government legislation and/or regulations.

Specifications and equal opportunities

There are no restrictions to assessing the tenderer's ability to fulfil the equal opportunities provisions in the specification with regard to the quality of service. Equal opportunities is a key component of quality of service. The EC Directives give authorities scope to decide the range of quality criteria by which they will evaluate tenders. These could include:

- Implementation of clauses in specification
- Understanding of authority's equal opportunities policies and provisions in the specification
- Commitment to equal opportunities
- Identification of needs in public service or business plan
- Training for staff to implement specifications
- Monitoring take-up of services

- Consultation with users and potential users
- Complaints procedures
- Availability of information in community languages
- Ability to change/redirect services
- Outreach and development work to increase access

Authorities may also require tenderers to submit a method statement setting out the procedures, resources, training and other means by which they will meet the equal opportunity objectives.

Contractor's employment policies

Government legislation severely restricts local authority's vetting of contractor's employment equal opportunities policies. The situation with regard to market testing in the civil service and NHS is more ambiguous. However, all employers operating in Britain must comply with the Sex Discrimination Act 1975, the Equal Pay Act 1970, and the Race Relations Act 1976. Whilst the Government is exempt from the Disabled Persons (Employment) Act 1944, private contractors are not. All employers should be expected to comply with the Equal Opportunities Commission and Commission for Racial Equality Codes of Practice in Employment.

The Government's guide to market testing makes it clear that in-house bids must adhere to Departmental equal opportunities policies but private contractors will not be required to do so.

'The Government and the Civil Service are committed to a policy of equality of opportunity both because it is right and also because it makes good business sense. An effective equal opportunities policy enables an organisation to make best use of its workforce, so that people are recruited and developed on the basis of merit and objective job-related criteria. In-house bids will be expected to comply with the Department's or Agency's equal opportunities programmes and commitments. Where services are contracted out to private companies, the Government do not intend to require particular employment policies and practices.'

Reference is made to non-commercial matters and EC restrictions.

However, the advice goes on to state that 'Department's and Agencies may wish to give prospective contractors the opportunity to provide information on their employment policies and practices, including equal opportunities, that such contractors may believe is relevant to their ability to fulfil the contract for which they are bidding' (para 6.8, The Government's Guide to Market Testing). The Guide also states that 'requirements beyond the legal minimum on equal opportunities should not be imposed unless for operational reasons relevant to the contracted work.'

In terms of evaluating tenders the guide is quite explicit: 'any organisation that does not operate good employer policies and practices is unlikely to provide an efficient service,

particularly over the longer term. Full regard should therefore be paid to the quality of a potential contractor's personnel policies, including equal opportunities, in evaluating tenders' (para 9.2).

Local authorities are restricted under the Local Government Act 1988 and DOE Circular 8/88 in assessing contractors equal opportunities employment policies.

There are 6 approved questions in relation to the Race Relations Act 1976 but other issues of race, disability and gender are deemed 'non-commercial matters'.

The evaluation of contractor's employment equal opportunities policies should be in two stages.

Firstly, the tender invitation stage should question the following:

1. Does the written evidence submitted by contractors fully answer all the questions?
2. Does the contractor's written policy indicate:
 - an understanding of equal opportunities?
 - working knowledge and experience of implementing equal opportunities?
 - responsibility for equal opportunities in the management structure?
3. Does the policy cover both employment and service delivery?

Secondly, during tender evaluation the following issues should be assessed:

- How will equal opportunities policies be implemented and monitored for their effectiveness
- What provision is made for improving awareness in equal opportunities and what targets will be set. It is often useful to use terms like 'customer care' rather than 'training' in order to prevent contractors claiming that non-commercial questions are being asked.

8 Reliability and compatibility of contractors' equipment

Evidence of the contractor's proven reliability operating in similar conditions to those anticipated under the contract will be needed. Unreliable and/or incompatible equipment could lead to additional unforeseen costs to the authority or disruption of the service. It could also cause major problems in monitoring the contract.

Equipment analysis

- Number of each type of vehicle
- Hours/mileage weekly use
- Proposed capacity/usage
- Manufacturers recommended capacity/usage
- Breakdown allowance
- Back-up/spare equipment
- Maintenance schedule

It is essential to ensure compatibility of information systems between the authority and the contractor. This will be critical on some contracts such as housing management. Unless there are other compelling reasons it is the contractor's responsibility to ensure that their equipment is compatible with the authority's. The evaluation team will need to:

- have confirmation of the compatibility of information systems
- have confirmation of the accuracy and validity of contractor's invoicing system (where works orders are transmitted through computer systems)
- the contractor's method statement should indicate how the systems will be integrated at the contract start-up period (*see section 11 below on Contract Start-up*)
- assess new systems or software proposed by the contractor

9 Service Specific Criteria

There are inevitably some criteria which are specific to the service being tendered. For example, the evaluation of catering contracts will usually need to cover sample menus and the nutritional value of meals.

Service specific criteria could cover the following:

- ability to undertake marketing and promotion in cooperation with the authority and users
- responsiveness to user needs
- consultation with users

These are applicable to many of the services noted below.

Administrative and clerical services

- Confidentiality procedures
- Data protection
- Policy for VDU operations

Architectural and design services

- Assessment of previous design assignments
- Experience of managing projects of similar type and complexity
- Experience of design team

Building cleaning

- Number of service hours split between cleaners and supervisors
- Sufficient hours to achieve the specification as determined by the client
- Consistency of area by area analysis of service hours (understanding of the Specification and based on site surveys)
- Service hours expressed as a percentage of the tendered sum

Different treatments for different floor coverings.

Building repairs

- Use and approval of subcontractors
- Ability to operate appointments system
- 'Customer care' and liaison with tenants
- Understanding of working for tenant/householder with disabilities under social services grants
- Membership of CORGI and NICEIC for gas and electrical work
- Requirements to attend all tenants consultation meetings

Catering

- Analysis of sample menus
- Frequency of changes in menus
- Nutritional value of meals
- Medical screening compliance

Community care

Adopting the same approach and rigorous methodology is essential in evaluating care plans and assessing private and voluntary organisations bids for community care services. One authority adopted the following criteria in evaluating tenders for a mental health community support and rehabilitation services contract:

Organisational and Financial Viability

- Structure and experience of the current/proposed management team
- Current/proposed organisation infrastructure (including management information collection) for supporting services
- Current/proposed approach to quality assurance of service standards (tenderers had to submit a 'quality system' or plan)
- Organisational and management policies
- Training and development policy and programmes
- User complaints policy and procedures
- Current financial position of the company and viability to take over the contract
- Experience/ability to run a viable, stable financial enterprise

Ability to Provide a Quality Service/Meet the Council's Specification

- Relevant experience of managing the particular service
- Service specific policies, procedures and standards
- Proposals for meeting the Council's service requirements
- Proposals for staffing the service
- Proposals for using/providing accommodation (other current or alternative accommodation)
- Proposals for managing the transition from current ser-

vice providers, and securing continuity of care

Proposals for securing coordination between services (both other tendered services and wider services for people with mental health problems)

Tenderers were also required to submit schedules detailing how they planned to:

- develop and improve the range and quality of service within the contract fee and provide preliminary proposals for a Service Development Plan
- engage with service users who are often unmotivated
- manage the flexibility required in adjusting Care Plans in response to service users' needs
- collect the rent/fees from service users.

Other criteria could include:

- Practical support for carers
- Meeting needs of ethnic communities
- Coordination of services with voluntary projects
- Use of surveys of satisfaction.

Computing services

Quality criteria

Accuracy: ability to deliver a service free from errors.

Auditability: ability of the customer to audit the service or system as required.

Availability: ability to deliver a service to users within the agreed service times.

Capacity: ability to handle the required workload or volumes.

Completeness: extent to which the service or system meets the stated requirements.

Conformance with standards: demonstration of conformance with standards as required by the customer.

Flexibility: ability of the service or system to accommodate changes in requirements and circumstances.

Portability: ability to transfer the service or system to a different environment.

Reliability: ability to provide a service with required functionality which is available as needed.

Responsiveness: ability to react to a single event in time

Security: ability to resist security threats and maintain security and confidentiality

Timeliness: degree of success in meeting deadlines or milestones

Usability: ability of users to exploit the facilities of the service easily and productively

User satisfaction: extent to which customers are satisfied with the service they receive.

(Performance Measurement for IS/IT Services, HMSO, 1993)

Facilities management experience

Disaster back-up capability

Maintenance of hardware

Testing and installation of software

Systems and applications access and security

Physical security of computer facilities

Updating software

Management of network

Storage of archived data

Support and development to users

Ability – and commitment – to comply with client information system strategy

Demonstrated familiarity and understanding with client operating systems, hardware, software policies

Fleet management

Track record in leasing and procuring vehicles

Understanding insurance requirements

Understanding of obtaining and maintaining operator's licence

Grounds maintenance

Understanding of methods for use of pesticides, fungicides and herbicides

Sources and quality control for plants and materials

Sample work programmes for activities on special/central sites

Qualifications and training of staff

Housing management

Information, advice, enquiries and complaints

Consultation with tenants organisations

Support for tenants groups

Liaison with other departments and agencies

Confidentiality and data protection

Access to personal files

Operation of estate and local offices

Lettings service

Advice on Housing Benefit and Council Tax Benefit

Understanding of rent and service charge collection policies

Welfare advice and debt counselling

Control and security of empty properties

Inspection and management of repairs to empty properties

Dealing with unauthorised occupancy and squatting

Repairs and maintenance procedures

Meeting repairs targets

Emergency repairs arrangements

Dealing with tenants complaints

- Post inspection and monitoring
- Control of repairs budgets
- Procurement of maintenance services
- Pest control
- Liaison with maintenance contractors
- Monitoring and reporting performance of other contractors
- Assessing repairs and compensation claims
- Dealing with rent arrears
- Possession orders and eviction procedures
- Dealing with neighbour disputes
- Harassment and domestic violence
- Assessment of tenant satisfaction
- Management of caretaking and cleaning

Highway repairs and maintenance

- Relevant national vocational qualifications
- Understanding of health and safety legislation and practice concerning working in traffic
- Legal knowledge of contractor, client and statutory undertakers responsibilities

Legal services

- Suitably qualified staff
- Achieving set timescales
- Receipt of instructions
- Provision of advice & information
- Named case manager
- Accessibility of staff
- Emergency contact arrangements
- Appraisal of progress
- Quality of documentation
- Performance reports
- Case closure reports
- Satisfaction surveys of client officers
- Invoicing arrangements

NHS contracts

Domestic services

- Period of cover for wards
- Rota arrangements for particular wards and sections of the service and comparison with workload peaks
- Analysis of shifts
- Comparison of total hours and those allocated in rotas
- Allocation of times for particular duties and tasks – cleaning, specialist maintenance, meals, beverages and other non-cleaning duties
- Management and supervision allocation and deployment

- Relief for sickness and holidays
- Suitability of cleaning machinery for floors
- High risk clinical areas

Hospital Catering

- Liaison with dietician
- Flexibility and response to emergencies
- Ordering of patient meals
- Meal delivery
- Health, hygiene and safety
- Ward meals service
- Catering quality standards
- Staff catering arrangements

Laundry service

- Segregation and sorting
- Packaging
- Transport and delivery
- Sewing/maintenance
- Upkeep of laundry environment
- Laundry operations
- Processing – soiled articles and foul/infected articles
- Finishing
- Stock maintenance
- Testing and quality control
- Supplies and purchasing

Personnel Services

An authority which tendered its recruitment advertising invited several agencies to make a presentation of their work. Each agency were also required to prepare an advertisement for two job descriptions and to present their results and recommendations as part of their tender submission. These were assessed by the evaluation team.

- Clarification of rates, discounts, surcharges and production charges
- Analysis of rates for advertising in a range of publications
- Understanding of the council's corporate identity
- Suitability of the advertisement in meeting the council's requirements
- Creativity expressed
- Administration systems and invoicing procedures

Printing

- Accuracy
- Achievement of delivery dates
- Quality of image, registration and colour
- Quality of paper, colour, weight

Meeting corporate style
Quality of finishing
Packaging and delivery
Availability of photocopying service
Provision of quotes
Actual cost in relation to quotes
Finishing service
User complaints and reprinting
Advice service
Ordering and invoice data
Compliance with printing Codes of Practice
Maintenance of equipment
Back-up support for emergencies

Property management

See list earlier in this section

Refuse collection

Implied number of lifts and tonnage per employee
Meeting requirements for specialist waste
Assessment and understanding of trade refuse market
Waste disposal site availability and distance
Special arrangements for elderly & disabled

Street cleansing

Litter and EPA requirements
Autumn leaf collection
Dealing with non-highway areas
Gully cleansing
Special areas such as markets

Street Parking

Ability to meet ticketing targets
Suitability of computer systems
Administration of resident parking
Ticket processing

Sports and Leisure management

Proposals for generating and sustaining additional income
Marketing and promotion proposals
Demonstrate compliance with policy, price and programming objectives of the authority
Programming and booking
Facility operation
Financial records and recording other information
Plans for secondary sales and services
Liaison and consultation with users and community

organisations
Use of market research
Uniforms and protective clothing
Qualifications and experience of specialist staff
Ability to maintain opening hours
Commitment and ability to implement equal opportunities provisions in specification
Ability to monitor take-up of concessionary access
Meeting environmental conditions, water, air and cleaning

10 Contract start-up

Evaluation should assess the ability of the contractor to start the contract on time on a sound footing, irrespective of whether TUPE applies. This is particularly important for large contracts or where the contract requires the introduction of new technology, substantial changes to working methods and/or service delivery.

It should evaluate the following:

- the contractor's start-up plan including new schedules, routes and so on.
- recruitment of contract management
- recruitment of staff (particularly if there are changes to pay and conditions of service). Even when TUPE applies the contract may involve the implementation of new staffing schedules and the contractor may be faced with mobilising other contracts in other authorities at the same time.
- cost of contract start-up included in the tender price
- integration of information systems and possible introduction of new computers or other equipment
- implementing changes to service delivery

11 Risk assessment

There are three types of risk failure for authorities.

Firstly, the risk of non-completion of the contract either because the contractor suffers financial difficulties or the contract is terminated because they consistently fail to achieve the required standard of service. This could lead to the authority being in breach of statutory duties.

Secondly, failure to achieve the anticipated financial savings.

Thirdly, the risk of higher costs through variation orders and disputes with the contractor because they are unable to provide the service at the tender price or are seeking to recoup losses as a result of a low bid.

The likelihood of a particular outcome has a probability which can be expressed as say 20% or a one in five chance. Risk analysis should try to estimate the likelihood or degree of uncertainty and to take this into account in the award of

a contract. Risk assessment should cover:

- The likelihood of the contractor failing to deliver the specified service
 - The risk of non-performance in relation to statutory duties
 - The risk that the anticipated savings will not be achieved
 - The risk that planned income from sales and income generation being substantially lower than expected (for example catering contracts and sports and leisure management contracts)
 - The risk of the contractor withdrawing from the contract.
- Local authorities 'may properly require performance

Assessing management consultants

Some authorities may operate an approved list from which a short list of consultants will be drawn depending on the nature of the work involved. Some also have a policy and procedural agreement with trade unions on the use of management consultants. Authorities should ensure that any proposed use of consultants is planned well in advance to allow time for full and proper consultation and selection (*see also Part 1*).

1. Consultants should be subjected to the same rigorous selection procedures as contractors.
2. Consultants should be expected to provide public sector references which should be taken up and include their competence, completion of the brief, confidentiality, expertise, specialist knowledge, attitude, relevance and effectiveness of final recommendations.
3. Insist on using consultants committed to working with the authority's staff.
4. Require consultants to specify clearly who will be carrying out the work (together with their relevant experience and qualifications) and the level of management and supervision by senior staff. Consultancy contracts are often negotiated by partners and the actual work is carried out by more junior staff.

The capabilities of the consultants should cover:

- the extent to which the consultant shows a clear understanding of the problem/issue and what is required.
- the consultants' understanding of any organisational and cultural issues relevant to the assignment
- the approach and methodology to be used
- the proposed milestones and completion dates
- the consultants' resources and previous performance on similar work
- experience, qualifications, skills and availability of key personnel.

(*See also Selection and Use of Management Consultants, National Audit Office, 1989*)

bonds or guarantees from contractors where there is perceived to be an element of risk entailed in awarding work to a contractor' (*para 28, DOE Circular 10/93*) but the civil service and NHS market testing guidance states that they should not be used. The value of the bond should be 'related to the extra costs which would be incurred by an authority in remedying defects and procuring the service from another contractor' (*para 29*). The lowest cost of obtaining a bond must be added to the in-house bid (*see Part 6*).

If bonds are not used it is even more important that the tender evaluation process is thorough and the risks associated with each tender fully examined.

Information on whether a contractor has withdrawn from a public service contract (as distinct from contract terminations) and any track record of seeking large additional payments during a contract would assist risk analysis.

The *Technical Guide to Economic Appraisal in Central Government* explains risk assessment and sensitivity analysis in more detail but it is geared to government investment decisions rather a contracting out of services which involves a risk element for both client and contractor. The guide suggests the following procedure for identifying risk:

- identify main areas of risk, and important uncertainties affecting main costs and benefits
- make at least broad quantitative judgments about ranges and probabilities of the important factors determining the outturn.
- quantify any likely effects of optimism, where possible on the basis of evidence from similar projects in the past.

The lack of information at present means that risk assessment will have to be based on broad categories of risk, for example high, medium or low. The termination of contracts usually only occurs after a lot of problems and frequent or substantial failure to perform the service. Data from the LGMB CCT Information Service indicates that the current rate of contract terminations ranges from 2.5% for building cleaning, other catering, grounds maintenance and sport and leisure management to 3.3% for refuse collection and vehicle maintenance. A much higher proportion of contracts have suffered problems in service delivery. A Government funded study found that 78% of local government contracts suffered a 'noticeable failure to perform'. (*Competition & Service: The Impact of the Local Government Act 1988*, HMSO 1993)

12 Interviewing of contractors

This can be an important formal opportunity for the client to obtain clarification about a contractor's proposals, costs, and to further assess their ability to implement the requirements of the contract. The organisation framework for conducting interviews was discussed in Part 1. It is important that all tenderers are treated equally. The client can ques-

Evaluation Matrix

TECHNICAL MERIT

Tender A	Tender B	Tender C	Tender D	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Staffing levels
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Cover arrangements
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Working hours
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Emergencies and out-of-hours service
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Supervision
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Method statements
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Assessment of different methods
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Organisational issues
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Management structure
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Head office & admin support
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Recruitment & retention
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Terms & conditions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Training
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Induction for new staff
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Customer care
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Performance incentives
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Facilities for staff
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Qualification of staff
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sensitive work
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Security
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Contract administration
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Previous experience
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	References
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Company ethics
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Health and safety:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	–working arrangements
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	–productivity implications
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Reliability of equipment
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	IT compatibility
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Service and financial information
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Communications between client and contractor
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Monitoring other contractors
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ability to generate income
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marketing and promotion
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Contract start-up
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Risk assessment
				Total

SERVICE SPECIFIC CRITERIA

Total

QUALITY

Tender A	Tender B	Tender C	Tender D	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality Plan
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	understanding of standards
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ability to deal with failures
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	method statement for quality
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	contractors quality control and monitoring
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	quality of staff
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	user complaints
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	tenant/user consultation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	commitment to quality
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality standards
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	reliability
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	responsiveness
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	appearance
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	cleanliness
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	comfort
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	access
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	security
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	liaison and communications
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	customer care
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	–after-sales service
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	–design and aesthetic appearance
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality assurance or equivalent
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality improvement programme
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ability to innovate
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Advice on research and development
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Service development
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality of employment
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	qualifications of workforce
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	training opportunities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	equal opportunity policies
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	consultation with staff
				Total

EQUAL OPPORTUNITIES

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Implementation of clauses in specification
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Commitment to equal opportunities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Identification of needs in public
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	service/business plan
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Training for staff
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Monitoring take-up of services
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Consultation with users
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Availability of information in
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	community languages
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	CRE Code of Practice
				Total

Tender A
Tender B
Tender C
Tender D

ENVIRONMENTAL ISSUES

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Minimising pollution
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Recycling provisions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Meeting environmental conditions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Compatible materials
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Staff training
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Environmental policy
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Track record
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Use of chemicals
Total				

TENANT/USER VIEWS

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Understanding of contract
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Staffing & resources
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical merit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Method statement
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tenant consultation
Total				

TUPE

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical assessment
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Financial provisions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Indemnity
Total				

FINANCIAL

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Costing of tender - unit/area
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Additional work costs
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Present value of savings less prospective costs
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Risk analysis
Total				

OVERALL ASSESSMENT

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical merit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Equal Opportunities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Environmental Issues
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tenant/User views
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TUPE
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Financial
Grand Total				

Criteria for selecting tenders for Legal Services

The Law Society Local Government Group have identified the following criteria:

- Standing of the firm (referees)
- Relevant public sector experience
- Knowledge and experience of any specialist area of law
- Organisation and management of the firm
 - who will be the contract partner responsible?
 - what level of supervision will take place?
 - what are the qualifications of the individuals involved?
 - how will the work tendered be managed?
 - how does the firm deal with such matters as training, information systems and complaints?
 - how is the office organised?
 - how does it approach the issue of quality of service?
 - does the firm comply with the Law Society's Practice Management Standards?
 - what procedure will there be for monitoring performance of the contract?
- Ability to ensure adequate proximity to client
- Availability and ability to cope with unplanned aspects of the contract including a mechanism for reviewing whether sufficient expertise exists
- Insurance cover
- How will the firm deal with conflict of interest issues
- Structure of charges
- Level of charges
- Other criteria where justified

Criteria to be used in evaluating tenders

- Code of Quality Management for Solicitors:
 - Commitment to quality
 - Responsibility for quality systems
 - Documentation of the quality system
 - Procedures for taking instructions
 - Planning the progress of a case
 - Procedures for document control
 - Document security
 - Policy for selection of subcontractors including barristers and technical experts
 - Case referencing and monitoring systems
 - Verification and audit
 - Complaints and remedial action
 - Updating legal reference material and staff training.
- See also service specific criteria*

District Auditor criticises superficial quality analysis

In March 1992 the Conservative controlled London Borough of Brent awarded a refuse and street cleansing contract for both the north and south of the borough to Onyx UK despite their bid being £624,000 higher than the DSO bid and £1.025m higher than Tylers. The District Auditor severely criticised the Council for:

- failing to inform tenderers in advance that factors other than price were to be taken into account in evaluating tenders.
- poor documentation of the quality assessment procedures
- not designing the assessment process properly before bids were received, which could lead to claims of bias.
- over reliance on talking to contractors
- relying on one person (a consultant from Capita Ltd) to do the assessments.

The report concluded that 'documentary evidence on the application of the quality threshold and the subsequent measurement of the results is sparse and in some cases non-exis-

tent.' The authority used the following criteria:

1. Less than base price of £6.5m
2. Service delivery proposals: –resource
–method
3. Quality of content of tender documents
understanding concepts
4. Site references
5. Interviews: –attitude to client
–attitude to contractor
6. Commitment to quality

These criteria were assessed using only the tender documents, notes from interviews of contractors, and references. Contractors were awarded a yes or no answer in this crude analysis. The report concluded that such flaws 'could have enabled corrupt practices in the awarding of contracts to have taken place.'

This is a clear example of crude and superficial quality criteria. Not only do quality criteria need to be clearly identified but they must also be properly assessed.

(Source: *London Borough of Brent, 1991/92 Audit, Refuse and Other Services Contract*, District Audit Service, London.)

tion tenderers on any aspect of their bid and can request that tenderers:

- redesign their proposals
- provide more detailed information
- clarify their working methods
- revise prices

Guidelines for interviews:

- Invite all the competitive tenderers for interview
- Always have at least two officers from the evaluation team present at all interviews
- Interviews should be formally structured
- Minute the meeting
- Limit the scope of the interview to the criteria being used in tender evaluation.
- Opportunities to revise or confirm tender prices should be afforded to all contractors.
- Request that the contractor's send their operational manager to attend the interviews, not their sales or marketing manager.
- Prepare the questions to be asked and matters to be raised in writing before the interview.
- Require letters from contractors confirming decisions and understandings agreed at interviews.

13 Presentations and tenant/user views

The evaluation of bids for design work and housing management contracts should require tenderers to make a presentation as noted in Part 1. Tenderers should be given equal opportunity to present their ideas and proposals and to be questioned by the evaluation team. Presentations should be a means of assessing:

- the scope of ideas and experience of design teams
- the tenderers commitment to quality
- an assessment of the contractors working methods
- an assessment of the overall technical competence of the tenderer

Contractors bidding for housing management contracts should be required to present their proposals to tenants representatives (*see Part 2*).

Using Matrices

The chart on pages 50 and 51 provides a comprehensive listing of criteria which can be used in tender evaluation. Authorities should select the appropriate criteria for the service being tendered and compile a similar chart or matrix. Authorities will also want to incorporate service specific criteria noted earlier in this section.

A matrix is useful because it provides a useful summary of the criteria which can be readily communicated with Members, trade unions and tenant/user representatives.

Part 6

Stage 3: Environmental Assessment

The extent to which tenders will need to be assessed for their adherence to environmental policies will obviously vary from service to service. It is an important stage for Waste Disposal Authorities (WDAs) who must assess waste disposal contracts under the Environmental Protection Act 1990.

Local authorities can 'specify appropriate classes or types of product or equipment' in order to 'comply with an authority's environmental policies' (*para 24, DOE Circular 10/93*). They must not, however, specify products or equipment of a specific make or source. An authority can include a requirement that tenderers comply with the authority's environmental policies and include an assessment of their ability and commitment to comply as part of the evaluation of tenders.

Authorities also can specify environmental criteria for contracts awarded under the EC regulations 'economically most advantageous tender'. The criteria must be identified in the contract documents or in the tender notice.

There are no limitations on including environmental assessment in the evaluation of tenders in civil service and NHS market testing. This could be included, where relevant, in the technical and quality criteria.

Stage 4

1. Minimising pollution
2. Recycling of materials and use of recycled goods.
3. Use of environmentally compatible materials and fuel
4. Training of staff on environmental issues
5. Organisations' environmental policy.

1 Minimising pollution

Waste Disposal Authorities can include terms and conditions in any waste contract (*para 19, Schedule 2, Environmental Protection Act 1990*) which are designed to:

'Minimise pollution of the environment or to harm health due to the disposal or treatment of the waste under the contract'. Tenders should therefore be assessed on the following criteria:

- contractor's proposals for meeting air pollution standards for incinerators

- planned safeguards in the treatment of particular types of waste, for example, hazardous wastes, clinical waste.
- the effectiveness of planned safeguards in the transport and storage of waste
- measures to prevent pollution of surface and ground waters from leachate or spillage of wastes or other materials, dust control etc. at landfills.
- contractors track record in environmental matters
- the use of chemicals in horticulture work
- the promotion of environmental concerns and issues

2 Maximising recycling

The Environmental Protection Act 1990 also allows WDAs to 'maximise the recycling of waste under the contract' and tenders should be assessed for the following:

- Assessment of the contractor's recycling proposals
- Materials to be reclaimed
- Collection and separation methods
- Processing facilities and equipment
- Marketing arrangements for recycling schemes
- Organisation and management of recycling
- Promotion of recycling schemes and education on recycling matters

3 Use of environmentally compatible materials and fuel

- environmentally compatible equipment and vehicles
- avoidance of pesticides (grounds maintenance contracts)

4 Training of staff on environmental issues

- training to support the implementation of environmental policies and procedures
- awareness training for staff

5 Organisations' overall environmental policy

- understanding of the authority's environmental policy
- cooperation with environmental audits planned by the authority.

Part 7

Stage 4: Financial assessment

Assessing tenders under different rules

This section is divided into three parts assessing tenders under CCT, civil service and NHS market testing.

Fiduciary duty and the public interest

There has traditionally been an obligation in the public sector to use public money effectively and efficiently in the public interest. However, the Government's tendering legislation, particularly those limiting the financial costs which can be taken into account, conflict with the traditional fiduciary duty imposed on Members and officers.

The Government requires authorities to meet their obligations under the tendering legislation first and then to take other financial matters into consideration. It is in effect claiming that achieving competition is meeting the fiduciary duty. There are many authorities who would dispute this.

The following financial assessment of tenders is based on taking the maximum permitted range of costs into account. The full range of tendering costs are examined in Part 10.

Calculating savings over 10 years

Both the CCT and market testing regulations require authorities to assess the present value of savings over a ten year period. This is essentially a financial calculation imposed in order to disadvantage in-house bids. There is no particular justification for 10 years, but more importantly, tender prices rarely reflect the real full cost of providing the service over the length of the contract. There are always variation orders for one reason or another.

It is completely false to take a tender price and calculate so called 'savings' over the contract period when there is a substantial body of evidence to show that savings are not sustained at the level first calculated.

Stage 3: Financial assessment

1. Comparison of total tender costs

CCT tenders

2. Special employment costs (Allowable costs)
3. Calculation of contracting out or extraneous costs (Prospective costs)
4. Charging for assets
5. Differential monitoring costs
6. Performance bonds
7. Qualifying tenders
8. The present value of savings
9. Compare value of savings and prospective costs

Market Testing in Civil Service

Market Testing in NHS

Assessing viability of Management Buy Outs

Analysis of low bids.

1 Comparison of total tender costs

The first task is the comparison of total tender costs to ensure that all the tenders are compared on a similar basis. This applies equally to competitive tendering and market testing. The following should be taken into account:

- differences in contractors' rates for additional work and emergency call-outs
- assumptions about the level of user charges and who retains them
- assumptions about income generated from new or improved services and better promotion of the service

Authorities should carry out a **sensitivity analysis** which simply involves asking a series of 'what if' questions to test the effects of different assumptions or changes in circumstances on the total cost of tenders (see *Annex C, Economic Appraisal in Central Government*). This is particularly useful if there are likely to be variations in the level of work in later years of the contract and there are differences in the prices quoted by contractors for additional work.

The following questions must be addressed:

- how much will the service really cost?
- what will be the effect of changes in the take-up or demand for the service on the total cost of tenders?
- are the additional costs common to all tenders?
- what will be the effect of increases and decreases in the workload?

Calculating the full cost of professional services

Tenders for some professional services are likely to be based on separate fees and rates for different components of the work. For example, a tender could be based on a fixed annual fee for management of the service with separate charges or rates for different elements of the work, the total cost of which will vary with the volume of work under particular circumstances. Fees may be based on a fixed percentage of the value of work completed.

It is essential that the authority develops a financial

model to assess the full cost of tenders under these different circumstances in order to assess the actual potential cost of each tender. The percentages used below can obviously be varied depending on the service and potential future changes. The model below examines the impact of potential changes in the level of work ranging from an increase or decrease of up to 30% in bands of ten percent.

Vehicle maintenance contracts

Local authorities tendering vehicle maintenance contracts can take into account any differences in the distances and cost of collecting and delivering vehicles where the client is responsible for these costs.

Treatment of VAT

Services purchased by public agencies are normally eligible for a VAT refund and it should therefore be excluded from cost comparisons.

Item	Estimated Outturn Fee			
	Tender A	Tender B	Tender C	Tender D
Management Fee				
1. Based on current cost of service				
2. Based on + 10%				
3. + 20%				
4. + 30%				
5. Based on - 10%				
6. - 20%				
7. - 30%				
Fees and charges for different components of the work				
8. Component A @ current level and plus or minus different percentages as above				
9. Component B @ ditto				
10. Component C @ ditto				
11. Component D @ ditto				
Changes in rents and charges				
12. Component A rents % charges increased in line with inflation plus or minus percentages				
13. Component B ditto				
14. Component C ditto				
15. Component D ditto				

Financial Assessment of CCT tenders

The following guidance for the financial assessment of tenders is based on the Public Service Contract Regulations 1993, DOE Circular 10/93, CIPFA Code of Practice for Compulsory Competition 1993, Statutory Instrument 1993 No 848, the Draft DOE Circular for White Collar Services and the Draft Guidance on the Assessment of Quality in the Application of CCT to White Collar and Professional Services.

2 Calculation of Contracting Out or Extraneous Costs (Prospective Costs)

Account must be taken of non-recurring charges which will be incurred if the work is not awarded to the in-house service. These costs can only be taken into account for contracts over one year in duration or £0.1m in value. The following are allowable costs where TUPE does not apply. Tenderers must be told in advance of the type of prospective costs which will be taken into account but do not have to specify the amount of these costs at that stage (*see Part 1*). However, prospective costs must be calculated before tenders are opened (*para. 5, SI 1993 No 848*).

● Redundancy payments

Limited to staff who would otherwise continue to be employed by the in-house service but staff in support services who are directly affected can be included. Costs are assumed to fall in the first year regardless of the method of financing.

● Added year enhancements

The cost of discretionary added years enhancement of reckonable service for those 50 and over, with at least five years reckonable service, can be taken into account if it has been the previous practice of the authority to make such payments. This is limited to those who would continue to be employed by the in-house service if it won the contract. These are ongoing costs and for the purposes of tender evaluation the present annual costs should be multiplied by 15 to arrive at an assumed single sum falling due in the first year of the contract.

● Payments in lieu of notice

If a contract starts less than three months after it has been awarded to a private contractor the local authority can take into account the cost under its obligation to pay employees in lieu of notice for any period not worked out up to three months after the issue of redundancy notices. Only the cost of the period not worked can be taken into account.

● Cost of terminating leases

The authority can take into account (as prospective costs) the cost of early termination of leases or contracts which would be necessary if they awarded a contract to another contractor (*para 14, SI 1993 No 848*). Costs can cover the following:

- the lease or maintenance of any land or building
- the hire or maintenance of any plant, equipment or other items
- the purchase of goods and materials

● Cost of TUPE indemnity

If an authority agrees to an indemnity requested by a contractor (against costs which may arise if the contract is started on the basis that TUPE does not apply but is later found to apply), the costs of obtaining the indemnity can be added to the contractor's bid as a prospective cost (*Issues Paper: Handling of TUPE Matters in Relation to CCT, DOE, 1994*)

The following costs **cannot** be taken into account

- **Frozen holiday entitlement.** Suspended entitlements credited to an employee on leaving local authority employment. The Government does not regard these as additional costs arising from contracting out nor does it consider the extra cost of early payment to be 'sufficiently significant' to be taken into account.
- **Immediate benefit and pension payments.** Immediate payment of accrued superannuation benefits or pension increases for employees aged over 50 who would be made redundant if the work is contracted out cannot be taken into account. The Government states that these costs would have to be met irrespective of who wins the contract and would be paid from the superannuation fund.
- **Central overheads.** The cost of accommodation, storage or central administration which are not immediately saved if the work is contracted out cannot be included in tender evaluation. They are assumed to be within the authority's control and will be saved or redeployed in due course
- **Retention payments to staff.** Any payments made to staff to retain them for the period between the award and the start of the contract by a private contractor cannot be included in the evaluation of tenders.
- **Profit ie statutory requirement to make 5% return of capital.** The practice of deducting the perceived 'profit' (covering the statutory requirement to make a 5% return on capital employed or profit generally) element from the in-house bid is no longer be permitted by the Government.

Assessing the cost of closure of a DSO or in-house service

The regulations currently permit only some of the costs incurred in closing down a DSO to be taken into account if the award of a contract to a private contractor would leave the authority with no option but to close the DSO. These are

- Redundancy
- Payment in lieu of notice
- Cancellation of leases for vehicles and equipment

Other costs such as transitional staffing to oversee the close down of the DSO, rent/service charges, rates/services, security costs and the loss on the sale of stock of materials cannot be included.

3 Special Employment Costs (Allowable Costs)

This covers the cost of employing disabled persons, apprentices and trainees.

Disabled workers. The additional costs of employing disabled workers can be subtracted from the in-house bid:

- it applies to those eligible for registering as defined in Section 1 of the Disabled Persons (Employment) Act 1944 which includes both registered and non-registered disabled (*see SI 1993 No 848 para 9*).
- allowable costs are those which are additional to the employment of able-bodied workers 'which would not be incurred if such persons were not disabled persons'. This can include the cost of extra supervision, adaptations to premises and equipment, and lower levels of productivity.
- costs must be relevant to the completion of the contract.
- less any grant aid from the Department of Employment

The additional cost of initiatives taken across the entire workforce or historic costs incurred in making provision for disabled workers must be excluded. The different costs will have to be itemised as written evidence may be required by the Secretary of State.

It is essential that authorities carry out any necessary workforce surveys or audits to identify disabled workers before tenders are evaluated so that the full costs of employing them can be taken into account.

Apprentices and trainees. The additional cost of employing apprentices and trainees on Government and Council sponsored training schemes can be deducted from the in-house tender price. This includes Youth Training, Employment Training, and Employment Action and a local authority's own training schemes. There is no restriction on the number employed but they must be 'appropriate to the contract'.

The costs must be limited to those connected with the contract and should be net of any payments made by Training & Enterprise Councils (TECs) or LECs in

Scotland in connection with these trainees.

Relevant costs which can be taken into account include:

- management costs including staff, advertising and recruitment of trainees and apprentices, setting up projects and placing trainees and apprentices.
- all necessary overhead costs including the provision of premises and equipment and loan charges.
- costs of instruction including costs of registering for qualifications
- trainee support and allowance costs for government sponsored schemes which employers are required to pay by TECs and LECs.
- less any costs which would have been incurred if the work had been done by staff who are not trainees.
- less grant aid

(*SI 1993 No 848 para 10*)

Authorities should keep details of how these costs are identified because written evidence may be required by the Secretary of State.

4 Charging for assets

Availability of assets. If a contractor does not wish to make use of the authority's assets such as premises or equipment, the asset could be 'released for other purposes'. The contractor's tender should be credited with an amount reflecting the commercial rental of the asset. All tenderers should be informed at the tender invitation stage of the amount of any credit which will be subtracted from external tenders where the tenderer does not wish to use the asset offered.

Where redevelopment of a site is planned and has received planning permission, the authority can make a charge reflecting the true cost of tying up the land for operational use. The alternative use value can be reflected in the commercial rental charged to a contractor and in the in-house or DSO account. Alternatively the land may be offered at no charge to both DSO and contractor.

Retained assets. Assets retained to enable the authority to retender for work at a later stage should be made available at a commercial rental free of restrictions.

Income from sale or disposal of premises and equipment. It is essential to ensure that estimates of income from the sale of equipment are realistic. Many authorities have included sums in tender evaluation but later either received much smaller sums or retained ownership because either they couldn't be sold for a reasonable price or an alternative use was found for them.

Losses from the sale of assets. If a contractor does not wish to use council assets and these are expected to be sold at a loss, this cannot be taken into account in tender evaluation.

5 Differential monitoring and management costs

The CIPFA Code of Practice states that a local authority can take into account 'the cost of additional supervision and management which they have good reason to believe would be necessary for any tenderer' (para 6.03f) where:

- a contractor makes different arrangements for quality assurance. For example, where a DSO has BS5750 or equivalent certification and a contractor does not, then additional monitoring costs can be added to the contractor's bid.
- a contractor uses methods of paying for their workforce which make payment wholly dependent on approval of the work by the clerk of works
- different packages are assessed such as a number of smaller tenders are compared to a large tender.

However, DOE Circular 10/93 and SI 1993 No 848 make no reference to differential monitoring costs. The latter states that taking into account any costs other than prospective costs will be regarded as anti-competitive (para 5 iv). And additional monitoring costs are not defined as a prospective costs (para 11). If, after taking legal advice, authorities decide to use additional supervisory and management costs it is very important that they can be justified with a well reasoned case. Clearly there will be instances where authorities consider that additional monitoring costs will be required to ensure the contractor meets the standards and requirements of the contract. Further details in *Monitoring Public Services* (Public Service Practice No 3).

6 Performance bonds

The Government's statutory guidance on CCT states that local authorities which require contractors to obtain performance bonds to take the cost of the lowest premium for obtaining a bond into account in evaluating tenders. This is usually done by adding the cost to the in-house tender. Where the in-house tender is being compared with a combination of smaller tenders from private contractors the lowest premium is the sum of the lowest premiums quoted to contractors for each smaller contract.

The cost of obtaining the bond is described in the regulations as the notional premium although in practice it will be a specific amount calculated as an amount per annum. For example if the cost of the bond is £10,000 for a £1m contract over 4 years the premium to be added to the in-house tender is £2,500.

7 Qualifying tenders

Local authorities are required to determine whether the net cost of a private contractor's tender is lower than the in-house bid (para 7, SI 1993 No 848)

£ DSO or in-house bid	£ Contractor's tender
less	
£ allowable costs	
plus	
£ cost of lowest performance bond	
Totals: £	£

If the DSO or in-house bid is the lowest then no further financial calculations are necessary if the tender meets the requirements of the contract and is at least comparable to other bids on technical and qualitative criteria.

If a contractor's tender is lower than the DSO or in-house on the above calculation then it is deemed to be a qualifying tender (para 7, SI 1993 No 848).

It is at this point, if it hasn't already done so, that the authority must reach a decision on the application of TUPE (see Part 8).

8 Calculating the present value of savings

Where one or more tenders are deemed to be qualifying tenders the authority must proceed to calculate the present value of savings. This is done by taking inflation and prospective costs into account over the contract period. The authority must make a reasonable forecast of the increase in the Retail Price Index over the contract period.

We have used an example to describe the various calculations. In the worked example: The in-house bid is £1.00m per annum compared to a private contractor's bid of £925,000. Prospective costs (redundancy, added year enhancements, the cost of terminating leases and payments in lieu of notice) are £150,000 on the basis that TUPE does not apply to the contract. If TUPE did apply the prospective costs would be £10,000.

Step 1: Calculating the cost of the in-house bid

Authorities must calculate the full cost of the in-house over the contract period. This is done by making a reasonable forecast of the increase in the Retail Price Index and any changes in the amount of work. In the example, the annual increase in the Retail Price Index is assumed to be 3% per annum over the 4 year contract period. It is assumed that the amount of work required remains the same throughout the contract.

The in-house bid is £1.00m less allowable costs (cost of employing disabled workers and trainees and apprentices) of £50,000. The first year cost is therefore £950,000.

Year

- 1 £950,000
- 2 $£950,000 \times 3\% \text{ inflation } (950,000 \times 1.03) = £978,500$
- 3 $£978,500 \times 3\% \text{ inflation } (978,500 \times 1.03) = £1,007,855$
- 4 $£1,007,855 \times 3\% \text{ inflation } (1,007,855 \times 1.03) = £1,038,090$

So the actual payments which would be made to the DSO over the contract period would range from £950,000 in year one to £1,038,090 in year four.

Step 2: Calculating the cost of private contractor's bid (the qualifying tender)

The same calculation is made for the private contractor's bid although there are, of course, no allowable costs to be taken into account.

Year

- 1 £925,000
- 2 $£925,000 \times 3\% \text{ inflation } (925,000 \times 1.03) = £952,750$
- 3 $£952,750 \times 3\% \text{ inflation } (952,750 \times 1.03) = £981,332$
- 4 $£981,332 \times 3\% \text{ inflation } (981,332 \times 1.03) = £1,010,772$

So the actual payments which would be made to the contractor over the contract period would range from £925,000 in year one to £1,010,772 in year four.

Step 3: Taking account of the cost of a performance bond

Local authorities must now determine the difference between the cost of a DSO's bid (less allowable costs) plus a notional premium reflecting the cost of obtaining the lowest performance bond and a contractor's tender for each year of the contract (*para 2 of Schedule, SI 1993 No 848*). If a performance bond is not a requirement of the contract then no such costs (or notional premium) will be added to the in-house bid.

The cost of the in-house bid, plus the lowest cost of obtaining a performance bond, and private contractors bid are shown in the following table:

The difference is shown as a saving for each year. In year one the difference is £27,500 rising to £29,818 in year four. Some years could show a lower overall cost for the in-house bid and this would be shown as a negative sum. (If the cost of a private contractor's bid is higher than the DSO, including the cost of the performance bond, this should appear as a negative sum in the 'difference or excess' column.

Step 4: Calculating the average annual savings

The next stage is to calculate the present value of the annual savings over a ten year period. There are two stages in this process. The first uses the formula $1 + (i \text{ divided by } 100)$ for each year of the contract (*para 3 of Schedule, SI 1992 No 848*). when i is the figure in table 2 of Economic Trends, HMSO as the most recent percentage change, quarter on corresponding quarter of previous year of the implied gross domestic product deflator at factor cost. In the example i is assumed to be 4.5.

Year	Difference or 'excess' divide by	Adjustment: difference	Saving or
1	27,500	1.000	27,500
2	28,250	1.045	27,033
3	29,023	1.092	26,578
4	29,818	1.141	26,133
Total			£107,244

This shows there is a saving of £107,244 expressed in year one prices.

Step 5: Calculating the present value of savings over 10 years

The next stage of the calculation should calculate the average annual saving by dividing the savings by the contract period. In the example this means dividing £107,244 by 4 =

Year	Cost of in-house tender (£)	Cost of performance bond (£)	Total (£)	Cost of private contractor tender (£)	Difference or 'excess' (£)
1	950,000	2,500	952,500	925,000	+27,500
2	978,500	2,500	981,000	952,750	+28,250
3	1,007,855	2,500	1,010,355	981,332	+29,023
4	1,038,090	2,500	1,040,590	1,010,772	+29,818

£26,811 average annual saving. This average saving is assumed to be obtained for 10 years. The present value of savings is calculated by discounting the value of projected future costs or benefits to their present day value.

This is done by using the current general discount rate prescribed by HM Treasury for the purpose of comparing public expenditure (para 4 of the Schedule, SI 1993 No 848). It is currently 6% which means multiplying the average annual saving of £26,811 x 7.80169 (see table) = £209,171.

Discount rates	Multiplier
1%	9.56602
2%	9.16224
3%	8.78611
4%	8.43533
5%	8.10782
6%	7.81169
7%	7.51523
8%	7.24689
9%	6.99525
10%	6.75902

9 Compare value of savings and prospective costs

The present value of savings over 10 years must now be compared with the total amount of prospective costs.

In the example, the present value of savings is £209,171 compared with prospective costs of £150,000, a difference of £59,171. In this situation the private contractor's tender is judged to be £59,171 less than the in-house bid on the basis that TUPE does not apply. If TUPE applies the prospective costs of £10,000 would give a difference of £199,171 in favour of the private contractor's bid.

Any differences in price will have to be weighed against the technical and quality assessment.

Assessment of costs for Civil Service Market Testing contracts

The first task is the comparison of total tender costs – see No 1 at the beginning of this section.

The Government's market testing guidance makes it clear that cost analysis must include not only taking

Local Authorities: Summary of additions and subtractions

Add to contractors bids

Add to inhouse bid

Subtract from inhouse bid

TUPE Tenders

Cost of TUPE indemnity

Lowest cost of
obtaining performance
bond

Allowable costs

- net cost of disabled workers
workers
- net cost of apprentices and
trainees

Prospective costs to be taken
into account
– cost of terminating leases

Non-TUPE Tenders

Credit for non-use of assets

Lowest cost of
obtaining performance
bond

Allowable costs

- net cost of disabled workers
- net cost of apprentices and trainees

Prospective costs to be taken
into account
– redundancy
– added year enhancements
– payments in lieu of notice
– cost of terminating leases

account of the tender costs but 'other costs which will accrue to the Department or Agency as a result of accepting (or not) a particular tender'.

Advice on which costs should be included or excluded from the in-house bid are detailed in the market testing guidance (*Section 7 and Annex A*) and the Treasury Costing Guide (*Annex C, Costing Guidance for Market Testing*, October 1992).

Additional costs

The additional costs to be added to an outside supplier's bid may include:

- the costs of redeploying existing staff or making them redundant less any relevant potential savings (for example, in recruitment costs).

Civil Service: Summary of additions and subtractions

Add to contractors bids	Add to in-house bid	Subtract from in-house bid
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TUPE Tenders

Cost of detriment payment for pensions	Cost of unrealisable savings on equipment or changes in terms	Cost of employing staff with disabilities
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Any significant costs incurred by the in-house provider which would not be saved if the function were contracted out.	Cost of unrealisable changes to terms and conditions	Indirect costs which Dept will pay irrespective of who is awarded the contract, for example, auditing of suppliers systems, cost of management time
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Estimated cost of loss of economies of scale

Cost of TUPE indemnity

Non-TUPE Tenders

Redundancy & redeployment costs	Cost of unrealisable savings on equipment or changes in terms & conditions	Cost of employing staff with disabilities
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Net costs of redeploying or making redundant support service staff if they would have been used by inhouse bidder	Cost of unrealisable changes to terms and conditions	
---	--	--

Any significant costs currently incurred by the inhouse provider which would not be saved if the work is contracted out	Indirect costs which Dept will pay irrespective of who is awarded the contract, for example, cost of auditing suppliers systems, cost of senior management time	
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Estimated cost of loss of economies of scale

Cost of additional monitoring

Cost of closure of in-house

- the cost of any detriment payment with regard to pensions. This is the cost of any detriment payment made in connection with compensation for reduced pension terms if pensions with a new contractor are not broadly comparable (paras 5.18 and 9.3).
- the cost of any significant losses of economies of scale. Only those additional costs borne by the department or agency carrying out the tendering can be taken into account.
- any significant costs currently incurred by the in-house provider which would not in fact be saved if the function were to be done by an outside supplier.
- if the in-house bidder would have used a centrally provided support service, the net costs of redeploying or making staff in these areas redundant.
- cost of unrealisable savings contained in the in-house compared to the current cost of providing the service. Some of these costs may not be realisable in the short or long term, for example, equipment may no longer be used but the department may not be able to make alternative use of it. The value of unrealisable savings should not be included in the cost of the in-house bid but treated as costs borne by the department centrally and taken into account at tender evaluation by being added to the cost of the in-house bid (para 7.13).
- additional monitoring costs (differential monitoring costs) may be taken into account if there was sufficient justification. The Government's market testing guidance states that the financial analysis 'should not generally include the costs of monitoring the contract since costs would be included whichever supplier won the contract' (para 9.3). This appears not rule out such costs being taken into account where there is a clear evidence that monitoring a low bid from a contractor would require additional monitoring resources compared to other bids.

Only costs which fall within the client department or agency can be taken into account. The value of any savings made in other departments must be ignored.

When contracts for more than two years tender evaluation must include an assessment of the effects of any proposed inflation formula over the life of the contract.

Cost of TUPE indemnity

If an department or agency agrees to an indemnity requested by a contractor (against costs which may arise if the contract is started on the basis that TUPE does not apply but is later found to apply), the costs of obtaining the indemnity can be added to the contractor's bid as a prospective cost.

Performance bonds

The Government's market testing guidance states that contractors 'should not normally be required to produce any

form of performance bond' except in 'rare' cases (para 9.11). If they are justified, and to avoid 'unduly disadvantaging' external contractors, guidance suggests that the in-house bid should be required to obtain a bond. Another alternative would be to adopt the approach required in local government where the lowest cost of obtaining a bond is added to the in-house bid.

Cost of employing staff with disabilities

The 'additional cost of employing staff with disabilities who work within the in-house team should be identified in the bid and can be excluded from the in-house bid during tender evaluation' (para 7.18). These cost are an overhead borne centrally by the department or agency.

Contractors use of equipment

The market testing guidance advises that departments and agencies should not agree to contractor requests to use existing premises and equipment when this is not part of the specification. If such a request is accepted, the full cost should be taken into account in the evaluation of tenders. This should include their residual value at the end of the contract.

Changes to in-house terms and conditions

If the in-house bid is based on changes to civil service terms and conditions tender evaluation must assess if these are achievable. In other words, will they be accepted by staff and is the bid realistic? If it is not, the amount involved should be added to the in-house bid.

It is at this point, if it hasn't already done so, that the department or agency must reach a decision on the application of TUPE (see Part 8).

A worked example

Assume the in-house bid is £1.0m and one private contractor submits a lower bid of £925,000 per annum for a four year contract. TUPE does not apply. Redundancy costs are £150,000 and there are additional costs totalling £65,000.

Calculation based on Present Value

The in-house and contractors bids are calculated over a ten year period irrespective of the actual length of the contract. They are calculated using a discount factor, currently 6% and are calculated to obtain their present value using the multiplier of 7.3601 (see Annex B, Market Testing guidance and Economic Appraisal in Central Government, Annex H, table 3).

In-house Contractor	Variance		
In-house bid			
£1.00m for 10 years			
£1.00m x 7.3601	£7.360m		
Contractor's bid			
£925,00 for 10 years			
£925,000 x 7.3601		£6.808m	
Full cost of resources used	£7.360m	£6.808m	£0.552m
Additional costs		£0.065m	
Redundancy costs		£0.150m	
Total financial costs	£7.360m	£7.023m	£0.337m

The example above assumes that the contract would be renewed at the current contract price within this period, and that transitional and redundancy costs are spread over ten years.

In the example above the difference between the in-house bid and the contractor is £337,000.

Calculation based on equivalent annual costs

An alternative way of comparing costs is using equivalent annual costs. Redundancy and other additional costs are assumed over ten years.

	In-house	Contractor	Variance
Full cost of resources used (in-house bid)	£1,000,000		
Contractor's bid		£925,000	
Additional costs			
Redundancy costs (1st year) (£150,000 ÷ 7.3601)		£20,380	
Other additional costs (1st year) (£65,000 ÷ 7.3601)		£8,831	
Total Exchequer cost	£1,000,000	£954,211	£45,789

The calculation of costs in TUPE based bids would exclude redundancy costs but include various other additional costs – see chart above.

Balancing quality and price

The same process of assessing technical ability, quality and price as described in Part 3 can be used in evaluating market testing bids.

Assessing the cost of closure of an in-house service

There are often additional the costs incurred in closing down an in-house service if the award of a contract to a private contractor would leave the authority with no option

but to close the in-house operations. These costs include:

- Redundancy
- Payment in lieu of notice
- Cancellation of leases for vehicles and equipment
- transitional staffing to oversee the close down of the in-house operation
- rent/service charges
- rates/services
- security costs
- the loss on the sale of stock of materials.

Assessing costs of NHS tenders

The first task is the comparison of total tender costs – see No 1 at the beginning of this section.

The market testing guidance for NHS units is very vague with respect to the assessment of financial costs. It makes reference only to redundancy, TUPE, VAT refunds and capital charging.

Redundancy

If TUPE does not apply, redundancy costs must be written off over 5 years for contract periods of 5 years or less, and no more than 10 years for contract periods over 5 years 'depending on the commercial context and the degree of certainty on continuing cost and value for money' (page 57, *Market Testing in the NHS*). NHS units therefore have a degree of flexibility over the period in which redundancy costs are calculated.

It suggests that redundancy costs should be minimised by the use of redeployment and retraining. Potential costs should be estimated early in the market testing process so that the 'estimated costs of redundancy and severance pay can be given to to all those invited to tender.' This is phrased in terms of advice and is not a requirement. Tenderers should be informed that redundancy costs will be taken into account if TUPE does not apply but need not be given any figures.

Performance bonds

The NHS market testing guidance states that 'performance bonds should not be used' (page 43). The 'use of all available

NHS: Summary of additions and subtractions

Add to contractors' bids	Add to inhouse bid	Subtract from inhouse bid
TUPE Tenders		
Cost of detriment payment for pensions	Cost of unrealisable savings on equipment	Cost of employing staff with disabilities
Any significant costs currently incurred by the inhouse provider which would not be saved if the function were contracted out.		Indirect costs which Dept will pay irrespective of who is awarded the contract, for example, auditing of suppliers systems, cost of management time.
Estimated cost of loss of economies of scale		
Cost of TUPE indemnity		
Cost of additional monitoring		
Cost of closure of inhouse operations		
Non-TUPE Tenders		
Redundancy & redeployment costs.	Cost of unrealisable savings on equipment.	Cost of employing staff with disabilities.
Net costs of redeploying or making redundant support service staff if they would have been used by in-house bidder		
Any significant costs currently incurred by the in-house provider which would not be saved if the work is contracted out.		Indirect costs which Dept will pay irrespective of who is awarded the contract, for example, cost of auditing suppliers systems, cost of senior management time.
Estimated cost of loss of economies of scale.		
Cost of additional monitoring.		

guidance should give sufficient "protection" for provider units in awarding contracts.' It puts the onus on tender evaluation stating that 'the evaluation team should satisfy itself that each tenderer is able to deliver the service at the evaluated tendered price'.

Capital charging

All tenders should where appropriate be adjusted to include the cost of common capital charges, for example, equipment and buildings that are common whoever wins the contract. (see also *Capital Charges and Trust Equivalent Manual*, NHSME, February 1993)

VAT

Since April 1993 all central government and NHS services contracted out are eligible for a VAT refund. VAT payments should therefore be excluded from the financial assessment of tenders.

There is no reference to assessing savings.

Assessing the cost of closure of an in-house service

There are often additional the costs incurred in closing down an in-house service if the award of a contract to a private contractor would leave the authority with no option but to close the in-house operations. (See assessing costs for civil service market testing above).

Cost of TUPE indemnity

If a NHS unit agrees to an indemnity requested by a contractor (against costs which may arise if the contract is started on the basis that TUPE does not apply but is later found to apply), the costs of obtaining the indemnity can be added to the contractor's bid as a prospective cost.

Assessing the viability of Management Buy Outs (MBOs)

A tender from an MBO must be treated the same as all other bids and subjected to a full and thorough assessment. A MBO is a company with no record. It will have no experience of business planning, its financial base may be unsound and its operation and structure untested. (*Management Buy-Outs in Local Government, Enforced Tendering Advice No 5*, Local Government Information Unit, 1991) There are clearly additional risks for the authority in awarding a contract to an MBO given the recent failure rate in local government and the NHS.

It is essential that a tender submitted by an MBO is subjected to additional scrutiny which should cover the following:

- the technical and commercial aspects of the proposed MBO company
- MBO's funding arrangements - start-up funds and availability of external finance
- MBO team's ability to deliver its share of funds
- its longer term viability and dependency on winning other contracts
- the MBO's business plan
- the availability of business expertise
- the necessity for and value of assets to be sold at market value
- safeguards against asset stripping activities by the MBO
- availability of support services
- clarification of ownership and management control of company
- ability of MBO to fund TUPE obligations including a broadly comparable pension scheme

Assessing low or loss leader bids

The authority may reject tenders which it considers to be too low to be credible. This applies to all tendering under EC regulations (see below and Part 1). There is no law which prevents a contractor from submitting a loss leader bid.

But not all low bids are loss leaders. Very low bids are submitted for different reasons:

- the contractor may not have properly tendered for all the required work.
- the contractor may not have fully understood the specification and contract conditions and may have seriously underpriced certain aspects of the work..
- the contractor may have decided to effectively buy or subsidise the contract as part of a longer term strategy to gain market share. In these circumstances it is important to determine whether the bid is indeed a loss leader

and to seek confirmation from the contractor or parent company.

A detailed appraisal should try to establish how the contractor has arrived at the tender price.

What can be done

There are five possible sources of action which the authority can take:

1. Reject the tender

The Public Services Contract Regulations 1993 allow authorities to reject tenders which they consider to be 'abnormally low' after they have given the contractor the opportunity to explain the bid and they are not satisfied with the explanation (*para 21(7)*). The term 'abnormally low' is not clearly defined. Before reaching a decision the authority must first:

- make a written request for an explanation of the tender (or parts of it) considered to be abnormally low;
- if awarding on the basis of lowest price only, examine all the tenders made in the light of the explanation offered;
- if awarding on the basis of the economically most advantageous bid, take the explanation into account when assessing the tender.

The regulations make reference to the possibility of 'objective' reasons for a tender appearing abnormally low and which should be taken into account. These may include:

- economy of the construction or service method planned
- technical solutions offered
- exceptionally favourable conditions available to the contractor
- originality of the works or service method proposed

An authority which has chosen to award the contract based on the lowest price but rejects an 'abnormally low' tender must send a report justifying rejection to the EC via the DOE.

Authorities may want to try to enlist the support of the District Auditor (local authorities) or in the case of the civil service and the NHS, the department's, agency's or the authority's auditor. This will depend on the local circumstances. It may also depend on whether the District Auditor is one of the large accountancy firms who may also be the auditors for the contractor in question (a different division of the same consultancy).

2. Carefully assess quality

It will be very important to critically assess the technical and qualitative criteria for low bids and to examine whether the contractor has allocated sufficient resources to meet the required standards and working methods. The Quality Plan should be reassessed.

3. Re-examine risk assessment

It is commonplace for contractors to try to recoup the losses in submitting a low tender through stringent exploitation of weaknesses or loopholes in the specification and/or contract conditions and seeking variation orders and claims at every possible opportunity. This could lead to substantial increases in costs and disputes between client and contractor. There is also much greater risk of the contractor terminating the contract if any additional losses are incurred.

4. Re-examine monitoring resources

The contractor may try to claw back losses by taking short cuts in the provision of services, reducing staffing, trying to operate with an unacceptable level of non-completion of work and trying to reduce the quality of the service provided. None of these will be known in advance of the contract but experience from previous loss leaders suggests one or more of these tactics are likely. In these circumstances the authority could legitimately argue for differential monitoring and assume, that if the contractor is awarded the contract, then the number of monitoring staff would be increased. The increased client side cost would have to be set against the contractor's bid.

5. Seek further assurances or guarantees from the contractor

It is not unusual for the authority to seek additional assurances from the contractor and confirmation or guarantees from a parent company that it will bear the financial consequences of the loss leader bid by a subsidiary company.

If doubts still remain about the contractor's ability to provide the required level and standard of service at the tendered price, it is advisable to reassess the key earlier stages of the technical and quality evaluation.

Part 8

Stage 5: TUPE

There are three elements to this stage:

Stage 5

1. Decision on the application of TUPE
2. Technical assessment
3. Financial provision for TUPE

1 Legal decision on the application of TUPE

The authority must reach a decision about whether the TUPE regulations apply to the specific contract.

If, at this stage of tender evaluation, the DSO or in-house bid is the leading tender then TUPE is not a relevant matter and authorities can move into Stage 6 of evaluation.

If the leading tender is a TUPE-based bid then the authority should proceed to examine the tender on the criteria below.

If the leading tender is not a TUPE-based bid and the authority considers that TUPE applies, current Government advice suggests the authority should inform the tenderer stating the reasons and invite the contractor to submit a TUPE bid with a revised price (*para 15, Issues Paper, DOE, 1994*). Other tenderers should also be informed and given the opportunity to revise their bids within a certain timescale. If a tenderer is unwilling to submit a revised TUPE based bid then the authority can 'properly decide not to proceed with the tender (*para 18, Issues Paper, DOE, 1994*).

If the contract is awarded to a DSO or in-house service a rejected tenderer could argue that the authority had acted anti-competitively. The authority would be required to justify its decision.

2 Technical assessment

In evaluating TUPE bids the authority will need:

- Confirmation that staff transferred under TUPE will be working on the specific contract. There is no legal requirement that transferred staff must be employed on the specific contract tendered for although the contractor would have to abide by the TUPE obligations with respect to jobs, pay and conditions of service. For example, the contractor

could impose their own management personnel whilst allocating transferred staff to other work within the company. Other staff could be allocated to other contracts.

- The authority will need to know whether a contractor intends to operate a two tier wage system in which new starters will be on lower pay and conditions than those transferred under TUPE. Substantially lower terms and conditions for new starters may cause recruitment problems and subsequent staff shortages thus affecting the quality of service. This is particularly important for contracts which require unsocial hours and shift work.
- The authority can legitimately enquire, as one of the quality criteria, how the contractor intends to maintain the appropriate level of qualified and experienced staff over the length of the contract (*see Ability to Retain and Recruit Staff above*). The commitment to TUPE is clearly a material matter in this context.
- The authority will also need to examine the contractor's proposals for the transfer of existing staff with the minimum of disruption to the service and users (*see Contract Start-Up*).

3 Financial provision for TUPE

Although the obligation to comply with the TUPE regulations in terms of the transferred staff rests with the new employer, the authority must ensure that tenderers are aware of their liabilities. The contractor will effectively inherit a financial liability and the authority will need to ensure that their tender is a competent TUPE based bid. It is in the authority's interest to ensure that external tenderers have taken the full cost of TUPE into account in bids which are stated to be TUPE based tenders.

The authority will have assessed the contractor's staffing arrangements and qualifications on the basis of a transfer of existing staff. It also has an interest in minimising disruption to services caused by industrial action as a result of non-compliance with TUPE. The authority should determine whether the financial provision in the bid is adequate to comply with obligations under the TUPE regulations. The new employer also takes over responsibility for all future redundancy costs including the length of service entitlement from the authority. In effect the contractor inherits a liability. Tenders must therefore include:

1. First year labour costs which reflect the transfer of

existing jobs, terms and conditions. Whilst labour costs could be slightly lower than the authorities because the contractor could employ new employees at a lower pay rate and can reduce staffing levels with the agreement of staff and unions, there should not be a marked difference in costs between the authority's current labour costs and those of the contractor (assuming that the TUPE regulations would be complied with for at least the first year of the contract). This should include employers NI costs and pensions. The latter has to be comparable and this may be reflected in the overall total. When contractors submit TUPE and non-TUPE bids then the amount allocated to meet TUPE commitments should be clearly identifiable. Differences in the total labour costs could reflect the contractor's plans to reduce employment and/or terms and conditions claiming 'economic, technical or organisational reasons'.

2. The authority will also know the financial commitments for redundancy which will be transferred to the new contractor. It will be more difficult to identify these costs in tenders because they may be spread over the length of the contract. It is in both the interests of the authority and the contractor that the latter acknowledges the cost of the redundancy obligations it is taking on.

3. The Government's market testing guidance is very clear about the issue of pensions. To avoid the risk of claims for constructive dismissal 'pensions in the new employment should be broadly comparable to the PCS (civil service pension scheme) or the employees should be compensated. Contractors should therefore be asked, if submitting tender proposals to which TUPE would apply, to state in the tender document the pension terms employees would be offered after the transfer.' (*para 5.18, Government's Guide to Market Testing*). They must also indicate whether any change in terms and conditions after transfer should be regarded as compensation for lesser terms of pensions.

The accuracy of the contractors' allocation for TUPE in the tender will depend in part on the staffing information supplied by the authority at the tender invitation stage. However, many authorities and trade unions are opposed to divulging potentially confidential and commercially sensitive information to contractors who do not accept that TUPE applies. Releasing detailed staffing and labour cost information at that stage could publicly expose the structure of in-house costs and enable contractors to undercut in-house bids, particularly if a decision was made that TUPE did not apply to the contract. The same contractors who seek detailed staffing and labour costs information from authorities are likely to adopt a similar position to safeguard their own interests when TUPE applies to contracts they are retendering.

Where the authority and a contractor are uncertain whether about the applicability of TUPE, and they wish to proceed that TUPE does not apply, the authority can require an indemnity from the contractor against possible

claims based on a failure to consult staff as required by the TUPE regulations. The authority can add the cost of obtaining an indemnity to the contractor's tender price for the purpose of tender evaluation (*Issues 1 and 2, Issues Paper, DOE 1994*).

Some contractors have accepted that TUPE applies and have also agreed to indemnify the authority against any additional costs which may arise in the event of claims or any decision of any tribunal or court that the Regulations apply.

There have been cases where Contractors have submitted TUPE based bids which are in effect qualified TUPE tenders because they are based on one or more staff being made redundant or they fail to provide a broadly comparable pension arrangements. Authorities will have to decide whether to set aside qualified bids or to seek full indemnity against tribunal or court decisions that the Regulations apply.

Authorities should ensure that a requirement for the disclosure TUPE-related information is included in the Contract Conditions of all contracts. Private contractors are currently under no obligation to provide authorities with TUPE-related information on contracts they currently operate which are about to be retendered.

Part 9

Stage 6: Contract Decision

A contract decision must be based on a careful weighing up of the findings of the technical, environmental, and financial assessments. The advantages and disadvantages for each tender should be clearly identified.

Stage 5:

1. Post-tender negotiations (if required)
2. Assessment of technical and financial issues in contract award model
3. Preparation of report and recommendations
4. Notification of contract award

1 Post-tender negotiations

Post-tender negotiations should only be held in the following circumstances:

- if there is no overwhelming evidence in favour of any particular tenderer
- if doubts remain, even after interviewing the tenderers, about quality and/or performance
- if terms and conditions of the contract require further clarification and negotiation. The civil service market testing guidance refers to allowing 'any adjustments to be made to the documents, which will enable the potential supplier to operate more effectively while satisfying the needs of the Department or Agency. Care must be taken, however, that any decisions made at this stage do not materially affect the earlier selection process, nor discriminate against other bidders.' (para 9.14, *The Government's Guide to Market Testing*)

Post-tender negotiations can be a means of obtaining further clarification about contractor's proposals, quality and performance, or where the terms and conditions of the contract require further clarification and agreement. Post-tender negotiations must include all acceptable tenderers and no tenderer should be given an opportunity to reconsider a tender without inviting all tenderers who submitted lower bids to do likewise.

A European Directive (89/440/EEC) and the Local Government Acts 1988 and 1992 preclude significant changes in specifications in post-tender negotiations. The Directive also excludes changes in prices. A local authority can enter into post-tender negotiations with the DSO even

if it has submitted the only bid but this should not include any amendments to the specification (*Para 38, DOE Circular 10/93*). Although the EC Directives preclude changes in prices, this is almost inevitable if negotiations cover any changes to working methods and/or the volume of work. The authority and the DSO can make allowance for post-contract variations in the mix, volume and difficulty of the work.

Tenant/user representatives should be consulted again during and after post-tender negotiations.

2 Assessment of technical and financial issues

It is essential at this stage that all the criteria which authorities have used in the evaluation of tenders are in fact part of the final contract award decision. It is important to restate several important points at this stage:

- EC regulations (92/50/EEC Article 36) allow authorities using the 'economically most advantageous' basis for contract awards to base their decision on various criteria such as technical ability, quality and price or other criteria defined by the authority as long as these criteria were notified to contractors in the tender notice or in the contract documentation (*see Part 5*).
- There is no legal requirement for any local authority, NHS unit or civil service department or agency to award a contract to the lowest bidder (*see Part 1*)
- Government advice for contract decisions in market testing in the civil service states that the contract award decision should be based on:
 - value for money, which includes both the quality of service to be provided and the price;
 - the ability of the successful candidate (and staff) to work with and within the Department or Agency, and
 - dependability.

Local authorities must take into account tenants views of the quality of tenderers bids, their competence and proposed working methods. Authorities should also take other users and clients views into account where they have a legitimate interest in the quality and delivery of the service.

With respect to waste disposal contracts, the Secretary of State has clearly stated: 'WDA's can award contracts which offer clear environmental benefits even where a cheaper

option exists' (DOE Circular 8/91).

It is important to address the following questions once the detailed evaluation of bids has been completed:

1. Do all the bids meet the technical and qualitative criteria and meet the requirements of the authority? Those that do not should be set aside.

2. Can the technical and qualitative differences between the bids be clearly stated?

3. What is the relative value to the authority of the technical/qualitative advantages of the bids in comparison with the financial differences between the bids?

4. What are the differences in the financial costs of each tender and are these likely to be sustained?

for further reference:

		Tender B	Tender C	Tender D	Tender E
Technical ability	25%	17.25	18	19	15
Quality	15%	12	13	12	9
Price	50%	16	24	28.5	29.5
Tenants/user views	10%	6	7	8	5
Total	100%	51.25	62	67.5	58.5

Closely matched tenders

Where two or more tenders are closely matched the following points should be considered:

- If there are only marginal differences on both technical merit, quality and price between tenders then little is likely to be gained by changing the contractor, particularly if this involves contracting out the service.
- Authorities can consider 'the burden on clients and their agents of arranging work with a new contractor who is unfamiliar with their work' provided there is no material difference between the tender of the present contractor and the lowest acceptable tender (*para 6.05, Code of Practice, CIPFA, 1993*).
- Authorities should examine the potential impact of future price increases for different aspects of the work and determine the relative effect on the overall costs of tenders.
- If the service has previously been contracted out but, on retendering, the in-house bid is only marginally more advantageous than private sector bids, then other factors must be taken into account in terms of the advantages of returning to in-house provision.
- The views of tenants and users should be reexamined when bids are closely matched.
- The impact on other policies of the authority should be considered. Although not technically included in the evaluation criteria, the impact of contract decisions on economic development policies and the local economy can be substantial (*see Part 6*).

Justifying award to other than the lowest tenderer

There is no legal obligation to award the contract to the lowest tender. The assessment of the contractor's technical abilities and quality plan are very important. However, a decision to award a contract other than to the lowest tenderer will need to be justified to the authority as a whole and in the public interest. If tender evaluation has been thorough and rigorous then the reasons for such a decision should be clearly evident.

Authorities are entitled to make commercial judgments and the following are substantive and legal reasons for rejecting tenders. Authorities can:

Basic contract award model

It is important that the quality and technical aspects of each tender are set side by side with the financial appraisal. One method of doing this is by listing the advantages and disadvantages of each tender in a simple grid. This will assist the Evaluation Team and Committee in reaching a recommendation and decision. It will also provide a suitable summary of reasons for rejecting tenders.

The Evaluation Matrix at the end of Part 5 can be used to compare the assessment of different criteria.

Comparing technical and financial issues

	Technical & Quality		Financial		Tenants/User views	
Tender	Advantages	Disadvantages	Advantages	Disadvantages	Advantages	Disadvantages
A						
B						
C						

This should be followed by listing the reasons for awarding the contract to the tenderer:

- 1
- 2
- 3
- 4
- 5

Comparing quality and price

A model for comparing quality and price is fully described in Part 3 in which the evaluation criteria (technical ability, quality, price and tenant/user views) are scored and weighted. The example used in Part 3 is reproduced here

- take into account any differences in the quality of service which have not been eliminated by specification
- reject any tender which is too low to be credible but the authority must first request an explanation from the tenderer with regard to tenders or parts of tenders which they consider to be too low.
- where there is no material difference between the present contractor and the lowest acceptable tender, and on the basis that the service from the present contractor would not be inferior in anyway to a lower priced tender, the authority can take into account the burden on clients and agents of arranging to work with a new contractor who is unfamiliar with their work.

Under CCT regulations local authorities can also take into account the cost of employing apprentices and trainees and disabled people, the cost of additional supervision and management where this is judged necessary, the cost of premature termination of leases and maintenance agreements, and where TUPE does not apply, the cost of redundancy payments, the additional cost of pensions for early retired staff, and pay in lieu of notice. These costs should be taken into account in the financial analysis (*Part 7*).

It may also be prudent to note the following points:

1. Do not rely on one reason alone no matter how convinced you are of its importance – build a case.
2. The reasons need to be clearly stated and must be ‘justified’. Make sure you can justify each reason with financial data and/or well reasoned technical and professional opinion.
3. The justification should arise out of the evaluation of tenders.
4. Use ‘value for money’ and ‘fiduciary duty’ arguments to support the case.
5. The evaluation criteria should be clearly stated in the tender documents and should not be introduced later (see Brent example in box).
6. Focus on technical and quality matters relating to the contractor’s ability to meet the specification and contract conditions.
7. Ensure that the tender evaluation team is well qualified and, if necessary, draw on expert opinion from other sources (not management consultants unless this is carefully planned and controlled).
8. If contractors are interviewed, prepare the structure and content of questions very carefully (*see Part 1*).

3 Preparation of report

The evaluation report should contain all the main findings and summarise the methodology used in the assessment of tenders. The report should include:

- Brief description of the service being tendered
- Terms of Reference/legislation
- Tender invitations
- Tenders received/reasons for withdrawal
- Summary of evaluation process and criteria
- Technical and quality assessment
- Financial assessment
- Environmental assessment
- TUPE policy – views of users/tenants
- Contract award analysis and recommendation
- Implications for staff
- Contract implementation

Retendering

If the authority decides to reject all the original tenders it can retender the contract and must:

- invite all previous tenderers to tender again
- no tenderer should be given any information about any of the first tenders.

4 Notification of Contract Award

Contract award notice

Authorities awarding contracts under EC regulations must send a contract award notice within 48 days to the Official Journal of the European Union which should state:

- the name of the successful contractor
- the number of tenders received
- the amounts of the lowest and highest tenders
- the criteria for awarding the contract (lowest price or most economically advantageous)
- the proportion of work likely to be subcontracted

Notifying unsuccessful tenderers

Both the EC regulations and the Local Government Act 1988 require the authority, if requested by a tenderer, to give the reasons why they were unsuccessful within 15 days of receiving such a request. They are also entitled to the name of the successful contractor if their tender was unsuccessful. Both the NHS and civil service guidance suggest that, if requested, unsuccessful tenderers are given a debriefing in which information and advice (although not commercially confidential information) are made available.

5 Issues for contract monitoring

The evaluation of tenders should also be identifying areas or parts of the contract which the contract monitoring officer will need to focus attention, at least in the early stages of the contract. Tender evaluation should be able to pinpoint concerns to enable monitoring staff to target their resources accordingly. It also reinforces the case for a strategic and integrated approach to the tendering process.

Learning the lessons from tender evaluation

It is very important that after a contract has been awarded the evaluation team identify the major lessons which have been learnt in the process. This may include recommendations to change tender documentation to require contractors to submit more detailed information or present it in a particular way. Lessons will clearly be learnt about the assessment of Quality Plans which could benefit other departments about to undertake tender evaluation. Other lessons can be drawn from the way the evaluation process was organised and resourced. Use the checklist at the end of Part 1 as an agenda.

Part 10

Best Practice: Accounting for all the costs and benefits

The process of tender evaluation is being increasingly distorted by government regulations in which tender evaluation is being used as a tool of competition policy rather than a full technical and financial assessment of tenders in the public interest.

In fact the term 'in the public interest' has less and less meaning as the government's regulatory framework imposes private sector interests and the deliberate avoidance of real costs borne by the public sector.

In a period of deregulation it is important to understand the scale of the increasing Government regulation of tender evaluation.

It is vital from both a political, technical and public service management perspective to retain a clear vision of best practice tender evaluation. This section outlines the key parts of this approach.

Principles

Ideally, tender evaluation should be based on the following principles:

1. **All the public sector costs incurred in contracting out should be taken into account. Cost analysis should not be confined to the financial effects on one departmental or section budget.**
2. **The wider social and economic costs and consequences should be taken into account in the awarding of contracts.**
3. **Quality of service and quality of employment are integrally linked and tender evaluation must include the assessment of the employment impact of the contractor's proposals.**
4. **The cost of administering the tendering process should be taken into account in tender evaluation**

The ideal methodology

An end to compulsory tendering:

Authorities should not be compelled to put services out to tender, nor should managers' performance be judged on the extent to which they have put services out to tender. Authorities would then have greater freedom to develop new or expanded in-house services and/or to use the in-house services from other authorities.

Public service regulations in place of anti-competitive restrictions:

The current anti-competitive rules would be replaced by public service regulations which would provide a best practice framework where there was no alternative but to contract out work.

TUPE:

The Transfer of Undertaking Regulations should be widely applicable and authorities should have the flexibility to make additional payments when staff are transferred to authorities from private contractors who have been operating with lower terms and conditions.

Assessment of pay and conditions of service:

Authorities should be able to have full information on each tenderers pay and conditions of service and to fully assess the contractor's employment practices and policies.

Equal opportunities policies:

Each tenderer should supply detailed evidence of their equal opportunities employment policies and practices for the contract and be able to satisfy the authority of their commitment to implementing equal opportunities in the specification with regard to service delivery.

Packaging of contracts in the interest of public services:

This should be based on the needs of the service and economies of scale and not on the requirements of contractors. Authorities should be empowered to reject bids which do not meet their requirements.

Comprehensive method statements:

Comprehensive method statements should be a condition of the contract and bids rejected if such statements are not provided or are unsatisfactory.

Full technical and qualitative analysis:

This should apply to all tenders for all services with no distinction made between manual and white collar services.

Require trade union recognition and proper industrial relations framework:

Tender evaluation should assess the contractors proposals to recognise and negotiate with trade unions and the provision of a proper industrial relations framework for dealing with grievances, disciplinary procedures, disputes, involvement and consultation with the workforce and other matters.

Training:

Fully assess the type and quality of training planned by the contractor together with the full details for the provision of adequate cover.

Environmental policies:

Contractor's environmental policies both in general and those relevant to the service being tendered would be assessed.

Vetting of contractors:

The investigation of contractors would be more thorough with the ability not to invite contractors who did not have sufficient public service experience.

Freedom from the threat of Government intervention:

Authorities, particularly in local government, have the threat of Government intervention hanging over the tender evaluation process either as a result of overstepping evaluation regulations or because of decisions taken earlier in the tendering process but which become transparent when the contract is awarded. Private contractors should not be given such extensive opportunities and encouragement to complain when contracts are not specified, packaged, and assessed in their interests.

Full public sector costs: Social and Economic auditing:

There are two aspects: firstly, the costs of contracting out must take into account all the relevant costs to the department or authority associated with contracting out; secondly, the additional costs imposed on other public sector bodies directly as a result of contracting out must be considered.

The full cost of tendering includes assessing:

- the cost of administering the tendering process
- contract management and monitoring costs
- the various costs incurred in contracting out

The cost of administering the tendering process

Cost savings are the reason cited most often for contracting out services. However, there are substantial costs in tendering services which should be considered before the tendering out process begins. These include staff time spent on:

- preparing service profiles and reviewing services
- drawing up specifications and contract documentation.
- preparing the in-house tender
- advertising tenders
- investigating contractors
- processing tenders and tender evaluation
- the use of management consultants and other advisers
- the cost of the separation of client and contractor functions
- the cost of any joint trade union and management working arrangements.

The average cost of preparation for competition in local government was 7.5% of the first year costs, and about 1.8% of the total contract value given the average length of contracts. **But this excludes the cost of officer time.** Estimated costs of subsequent contracts are reported to be about 40% of these costs. (*Competition & Service*, HMSO) In addition the cost of contract monitoring and management which have averaged 6.2% of contract value for local authority manual services. These costs should be set against the claimed savings.

Cost of contract management and monitoring

Client side costs of contract management and monitoring are usually excluded from tender evaluation on the basis that they are borne irrespective of who carries out the work. This is true but the cost of the contract does not reflect the full cost of operating the service and obscures the real cost of tendering. These costs should be made transparent in order that authorities can regularly assess the real cost of tendering and service delivery.

Cost of contracting out

These should include all the costs of transferring the work to a private contractor. All payments to staff must be included, if TUPE does not apply, together with all costs to the authority of facilitating the transfer to the contractor which would not have been incurred had the work remained in-house. These could include administration costs, losses on the sale of equipment, staff time dealing with the transfer, and other costs which remain with the authority.

The US Federal Government recognises the high costs of transferring work and requires that costs equal to 10% of in-house costs are added to contractor's bids before comparing costs.

Additional costs imposed on other public sector bodies

There are substantial other public sector costs associated with contracting out which include:

- increased unemployment and welfare payments relating to the loss of jobs
- loss of national and local tax revenues
- cost of special employment schemes

In addition the loss of jobs, wage cuts and reduced benefits has a knock-on effect on the local economy leading to reduced spending in shops and services. It has been estimated that for every four public service jobs lost through contracting out or the closure of public services, one additional job is lost in the local economy. For example, a recent social and economic audit of the proposed rundown of the Royal Hospital in Belfast revealed that the loss of 2,270 hospital job losses would result in a further 560 job losses in the

local economy. With the annual cost of unemployment in Northern Ireland calculated at £10,740 per claimant per annum the total cost was £30.4m per annum. Virtually all these costs fall on central government.

The Sheffield Privatisation Audit is another example. It estimated 'savings' in local authority budgets through tendering and contracting out would be more than offset by cost increases borne by central government. So while one department or authority may claim a 'saving' the real effect is an increased cost to the public sector as a whole.

These wider costs borne by the public sector are rarely considered, let alone taken into account. But they should be accounted for in any assessment or audit of the full costs of tendering. These costs could be taken 'below the line' after assessing the costs directly associated with each tender.

Public authorities are usually major employers in the local economy and changes in employment policies will have a knock-on effect on the local labour market. It is extremely difficult to quantify the impact but it is vital that it is taken into account so that the authority is not undermining its other policy initiatives under, for example, economic development.

The purpose of social and economic auditing is to identify the wider costs and benefits to public policy decisions. *'Social auditing is a way of thinking, not a technical number-crunching exercise. It provides a political economy methodology which can be used to examine the macro and micro impact of public and private investment policies. It is a framework to test the validity of claims and to evaluate the full consequences of both public and private investment, identifying who pays, who benefits and who may suffer adverse consequences.'* (The Welfare State)

The potential impact of each tender on the local economy should be assessed using a range of criteria including the following:

- number of direct job losses
- impact on unemployment and the local labour market
- quantify reduction in income for workforce as a result of job losses and/or reduced hours and/or changes in pay and conditions
- number of job losses in local economy – a multiplier of 1.25 is commonly used
- place of residence of those losing their jobs: this will help to determine the effect on particular communities
- effect on the local community and particular groups
- estimated increase in unemployment and calculate increased cost (approximately £10,750 per claimant unemployed per annum, 1993)

Full details of this approach can be found in the Social & Economic Audit of the Royal Hospital, Belfast (Centre for Public Services for UNISON).

Contract Decision

The technical and financial advantages and disadvantages of each tender should be outlined in a simple grid together with the environmental assessment. The result of the wider social and economic audit would be taken 'below the line', in other words taken into consideration after the formal evaluation of tenders.

Contract decision				
	Tender A	Tender B	Tender C	Tender D
1. Technical and quality analysis				
2. Environmental assessment				
3. Contract price				
4. Social and economic audit:				
£ Impact on the authority:				
£ Impact on other public bodies:				
Economic effects:				
Social effects:				

Appendix 1

Sources of Advice**Local Government**

Association of Metropolitan Authorities,
35 Great Smith Street, London SW1, Tel. 0171-222 8100

Association of District Councils,
9 Buckingham Gate, London SW1E, Tel. 0171-828 7931

Association of County Councils,
66a Eaton Square, London SW1W 9BH, Tel 0171-235 1200

Association of London Authorities,
36 Old Queen Street, London SW1H 9JF
Tel 0171-222 7799

Local Government Information Unit,
1-5 Bath Street, London EC1V 9QQ. Tel 0171-608 1051

ADLO,
4th floor, Olympic House, 17-19 Whitworth Street West,
Manchester M1 5WG, Tel. 0161-236 8433

Competition Advice, ADLO,
4th Floor, Olympic House, 17-19 Whitworth Street
West, Manchester M1 5WG, Tel. 0161-236 8433
*Technical assistance with the tendering process including
specifications and tender evaluation, client/contractor
organisation, and training of evaluation teams.*

Public Services Privatisation Research Unit,
Civic House, 20 Grand Depot Road, London SE18 6SF,
Tel. 0181-854 2244
*Information on contractor's and their performance on public
sector contracts. Available only to trade unions.*

Centre for Public Services,
1 Sidney Street, Sheffield S1 4RG, Tel. 0114 272 6683
*CCT strategy advice, training and technical assistance and
publishes Public Service Practice series.*

NHS

NHS Management Executive,
3rd floor, Eileen House, 80-94 Newington Causeway,
London SE1 6EF, Tel. 0171-972 2280

NHS Supplies Authority,
14 Russell Square, London WC1B 4EP.
Tel. 0171-637 8990.

Trade Unions

UNISON,
1 Mabledon Place, London WC1H 9AJ.
Tel. 0171-388 2366

GMB,
22-24 Worple Road, Wimbledon, London SW19 4DD.
Tel. 0181-947 3131

TGWU,
Transport House, Smith Square, London SW1P 3JB.
Tel. 0171-828 7788

UCATT,
177 Abbeville Road, London SW4 9RL.
Tel. 0171-622 2442

Fire Brigades Union (FBU),
68 Coombe Road, Kingston upon Thames,
Surrey KT2 7AE. Tel. 0181-541 1765

Council of Civil Service Unions (CCSU),
58 Rochester Row, London SW1P 3JU.
Tel. 0171-834 8393

National Union of Civil and Public Servants (NUCPS),
124-130 Southwark Street, London SE1 0TU.
Tel. 0171-928 9671

**Institution of Professionals, Managers and Specialists
(IPMS),** 75-79 York Road, London SE1 7AQ.
Tel. 0171-928 9951

Civil and Public Services Association (CPSA),
160 Falcon Road, London SW11 2LN.
Tel. 0171-924 2727

Inland Revenue Staff Federation (IRSF),
231 Vauxhall Bridge Road, London SW1V 1EH.
Tel. 0171-834 8254

Association of First Division Civil Servants,
2 Caxton Street, London SW1H 0QH. Tel. 0171-222 6242

Manufacturing Science Finance (MSF),
64-66 Wandsworth Common North Side,
London SW18 2SH. Tel. 0181-871 2100

Prison Officers Association,
245 Church Street, Edmonton, London N9 9HW.
Tel. 0181-803 0255.

Appendix 2

Glossary of terms

Annual price review: A process which adjusts payments to contractors to take into account the effect of inflation and pay awards.

Avoidable costs: Costs that can be identified with a particular activity and which would not be incurred if that activity were not undertaken.

Bid: Another name for a tender from a contractor to carry out work.

Cartel: A group of suppliers acting in concert to control the supply of goods or services artificially.

Collusion: A fraudulent arrangement between two or more parties whereby, for example, prices are manipulated so as to do away with competitive tendering.

Compulsory Competitive Tendering (CCT): Tendering imposed on local authorities under the Local Government Acts 1988 and 1992. The Government defines the services, timetable and rules under which tendering takes place.

Contingency: An allowance or sum included in the estimated cost of a project or service to cover unforeseen circumstances.

Contract Award Notice: Notice of award which is published in the Official Journal of the European Community as required under the EC public procurement directives.

Contract Conditions: The rules governing the operation of a contract and set out the responsibilities of both client and contractor.

Discount rate: The annual percentage rate at which the present value of a future £, or other unit of account, is assumed to fall away through time.

Fiduciary duty: The duty of those with public responsibility to act in the public interest

Method statement: Details how the contractor will organise and operate the required service and the resources which will be employed.

Outsourcing: Another term used for contracting out.

Overheads: The additional cost of running a service covering such items as rent, rates, heating, and office costs and calculated separately from the cost of staffing and materials.

Performance bond: A financial guarantee taken out by a contractor, usually with a bank or insurance company, and held by the authority to cover any extra expenses incurred arranging for alternative provision in the event of the contractor defaulting.

Performance measure: Objectives or indicators which are used to assess progress and achievements and the extent to which targets are implemented.

Post-tender negotiations: Negotiations which are carried out between the client and tenderers after tenders have been submitted but before a contract has been awarded.

Prospective costs: the costs borne by the authority as a consequence of awarding a contract to a private firm and making their own staff redundant.

Quality Plan: A programme of systematic actions developed to ensure that the specified quality of service and performance targets are achieved for the duration of the contract.

Qualified Tender: A tender which does not fully meet the contractual requirements set by the client

Qualifying tender: A tender which does not meet all requirements of the contract.

Retendering: An authority decides not award a contract and seeks new bids.

Social and economic audit: A framework to test the validity of claims and to evaluate the full consequences of both public and private investment, identifying who pays, who benefits and who may suffer adverse consequences.

Specification: A quantitative description of the work and the quality and standards required.

Subcontracting: When a contractor engages another contractor to undertake part of the contract.

Tender: A priced bid from a contractor to undertake work on behalf of a client.

Transfer of Undertakings (TUPE): Employment law stemming from a European Union Directive which protects jobs and conditions of service when work is transferred to a new employer.

Weighting: Different values used in the assessment of tenders.

Appendix 3

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- Evaluation of IS/IT Services*, HMSO, 1994
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