



starting to
modernise

achieving best value

a practical guide

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Geoffrey Filkin



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preface

Best Value offers an exciting opportunity for local politicians to deliver the outcomes their public want through strong leadership, a radical challenge to what has been done in the past and a vigorous exploration of how to deliver their functions to match the best for the future.

Local authorities will need to engage in real discussion with their public to find out the outcomes they truly desire; to search actively for innovation and service excellence wherever it is located; to find how they can increase investment significantly. And it will require councils to make decisions as to how best to procure their services and investment, judged by what is in the public's interest.

This will amount to a revolution in how services and investment are delivered in local government over the next decade and will require strong and effective leadership from elected members and managers.

We should have no ideological view of whether the public or private sector is better but should explore how the most can be achieved by the two working together and with the voluntary sector.

Best Value will imply great changes for local government employees, but it should be possible to make these changes responsibly as the government is committed to putting in place a fair system of employee safeguards building on the good work done by the Social Partners - the LGA, CBI and TUC.

Most councils will rise to these challenges and demonstrate that a modernised local government can meet its public's needs through good government and excellent services.

This report is well timed to help councils address these issues, particularly the central issue - how to secure the outcomes the public want by improving the relevance, quality and value of the functions they provide.

For at the heart of the Best Value processes of challenge, compare, consult and compete is the question of how are we going to improve. This requires us to make a decision of how we can get the standard of service and investment the public want including through partnerships with the private and voluntary sectors. Every local authority has to make this judgement based on analysis and evidence in the interests of their public.

This report shows clearly how to address this and I warmly commend it.

I hope every local authority member and manager will read it.

Rt Hon Hilary Armstrong MP

Minister for Local Government and Housing



introduction

From working with local authorities over the last two years it has become clear that most councils support the policy of Best Value and want to succeed at it, yet many are finding it difficult to undertake in practice.

This is partly because it is a strange new world where there are no longer detailed prescriptions of what they have to do, as was the case with CCT.

The central problem, though, is that councils lack a clear methodology as to how to improve their services - what Best Value is about.

The report proposes a solution to this problem. It suggests that a methodology based on intelligent strategic procurement provides the appropriate basis for improving performance and delivering the outcomes the public want.

The report explains what this means for members and officers and quotes from leading Best Value local authorities who are moving in this direction.

This report does not address the challenge and consultation processes, vital though those are, but focuses on three issues:

- How to compare;
- How to improve;
- How to procure.

It explains how:

- Best Value reviews must focus on improving performance;
- Strategic decisions about procurement and investment are needed;
- The key staffing issues can be addressed;
- Major changes in service delivery will offer improved services for the public;
- To decide whether to make or buy a function;
- Members need to drive these changes to deliver outcomes their public want.

I hope it is of help to all councils as they make their crucial preparations for the imminent start of Best Value.

Geoffrey Filkin

July 1999



executive summary

Best Value must be about results, not processes.

The result that matters is improving services that the public notice and value.

A STRATEGY FOR BEST VALUE

Best Value will require major cultural, managerial and technical changes.

Traditional political attitudes in local government that will need to change if a council is to address Best Value successfully - including the view that in-house is always best and that other forms of service delivery are intrinsically worse.

These old ideologies need to be debated, challenged and resolved in the council or they will impede an open minded approach to Best Value - that what is best for the public should determine the means of service supply.

Leadership by members is fundamental to achieving Best Value. Members need to:

- Promote the change of culture that Best Value service reviews and procurement analysis require;
- Decide whether to make or buy according to which gives most for the public based on evidence;
- Want the authority to be best and that nothing is off limits if it delivers more for the public.

Good procurement decision making is a central driver for improving performance in Best Value reviews and has to be approached corporately.

It focuses on the question - which service deliverer is best placed to raise our performance to the standard of the best?

The methodology is about:

- Searching for excellence, not comparing with similar authorities;
- Being radical, finding ways to improve performance, not finding excuses why it is impossible.

Increased investment will be needed to deliver Best Value. Every local authority needs to undertake a five year review of its investment needs and contrast this with its likely conventional investment resources. If there is a major shortfall the council will need to procure its investment through non-conventional routes and this will have a major effect on its service delivery strategies.

THE HUMAN ISSUES

Service delivery will transform in local government over the next five years which will mean major changes for local government workforces.

Best Value means we have to:

- Put the interest of the public first - if change delivers better service for them then the change has to happen;
- Manage the change process as a good employer should.

Because Best Value would lead to significant changes for employees it was seen as essential that a decent framework of employment law, practices and principles was put in place.

The Local Government Social Partners, consisting of the LGA, the TUC and the CBI have addressed these issues to ensure:

- Employees were treated fairly;
- TUPE was clarified so that transfer generally took place;
- Pension benefits were transferable.

This has now come about.

- They have developed and agreed a strong code as to how employees should be treated in the change process;
- TUPE will apply in Best Value for the generality of public sector outsourcing in first and subsequent transfers;
- Employees will transfer from one employer to another without loss of pension entitlements.

This means that there is no longer a reason to resist change in order to defend employee interests.

HOW SERVICE DELIVERY WILL CHANGE

Service delivery will change beyond all recognition in local government in the next decade driven by public expectation, joined up government and new means to access and deliver services. Preventative actions will become more important.

The public will expect local government to provide the same choices of how and when to access services that they get elsewhere. Every local authority will be expected through Best Value reviews to consider how to deliver better access to services for the public.

All this will amount to a revolution in the pattern of accessing local government services. That revolution is about to happen.

Major changes are also happening to the ways in which services are delivered sometimes as a result of new technology, sometimes through new management methods.

These new opportunities need to be vigorously pursued if they deliver better value for the public.

IS IN-HOUSE ALWAYS BEST?

A good Best Value review process will search out excellent performance and then analyse why it is able to be so good.

Another service provider may do things better because they bring major economies of scale, or more investment, or have greater specialist skills, or better service groupings for example. If the council is to match their performance they will have to replicate the ingredients for success. This will not always be possible through in-house service delivery by the individual local authority.

Great changes will occur to many local authority processing functions as a result of changes to information technology and communications. These will often require large scale processing, major capital investment and highly specialist management and technical skills.

MAKE OR BUY?

In every Best Value review the council has to decide how it is going to achieve performance as good as the best. Can it achieve this by improving the in-house service or might an external service deliverer give the public more?

For every Best Value review the council has to decide whether to 'make' the function or 'buy' it from elsewhere.

This crucial strategic choice needs to be driven by an assessment of which option is most likely to secure the improvements the public want.

To make the choice requires an open minded process of comparing the options. The choices need to be tested and challenged through good procurement processes - and this applies as much to a decision to improve in-house delivery as to buy externally.

So the key driver to improving services will be the decision whether to make or buy a function according to which will be more likely to deliver the quality of service that the public will want.

Good procurement skills and strategies are central therefore to delivering Best Value.

GOOD PROCUREMENT

Local authorities want to procure improved services for their public - whether secured in-house or externally.

There are three stages in a good procurement process:

- 1** The overall specification of what outcomes are sought.
- 2** A commissioning or procurement process which maximises the chances of securing them.
- 3** Managing the process in practice so that the outcomes are achieved - including continuous improvement.

The principles of good procurement are:

- Take a strategic approach - avoid short termism, look at whole life costs;
- Review related activities together - to maximise the scope for improvements;
- Research the market - speak to the private sector, to customers and to staff;
- Decide whether to make or buy - on a rational basis;
- Seek innovation - to find step changes in quality, performance and cost.

Any form of procurement requires the council to decide what to procure, to define the scope of the project, what sort of relationship is required, how to package it.

Local authorities will need to attract interest and in some cases to act to make markets.

There is a general need to move away from adversarial contract relations which lead to inflated tenders and wasted resources.

Local authorities will need to make clear that they want positive long term relationships with service suppliers.

Councils with poor reputations with the private or voluntary sectors will have to demonstrate they have changed their attitude.

More understanding of risk is required; risks need to be identified costed and managed.

Local authorities - and other public bodies - will look increasingly to joint procurement:

- Procurement skills are scarce;
- Joint procurement may increase buying power.

Similarly more collective approaches to producing services may need to be explored.

It seems unrealistic to think all 400 local authorities should even attempt to be expert at producing all of the 40 or more main local authority functions in every single local authority.

Another local authority as a provider, or local authorities jointly, might deliver more service benefits than the local authority acting in isolation.

There is a need for a wake-up call to the private sector as much as to local government - they have no automatic right to undertake work and it will not fall into their lap without effort. The private sector needs to do more to understand local government and show how it can contribute.

An open minded approach by local authorities and an active engagement by the private sector is needed.

LEGAL ISSUES

Senior members and managers need to be aware of the key legal issues that will affect how their authority procures under Best Value:

- The powers of the local authority;
- The contractual options;
- The European Union Procurement Rules;
- Probity;
- TUPE.

WHAT SUPPORT IS NEEDED NATIONALLY?

Support services are needed nationally and should be established as soon as possible:

- Centrally collated data sets which analyse cost and quality performance data for all functions;
- Studies to identify the reasons for differences in performance, essential for rational decision making about what procurement route is most likely to deliver the improvement;
- A procurement advisory service to help develop procurement skills in local authorities, including information about changes in supply markets and how to stimulate them.



chapter 1

a strategy to achieve Best Value

Best Value will require major cultural, managerial and technical change processes.

Four things are needed to make this happen:

- A shift of attitudes;
- Leadership of change;
- Developing a council wide procurement and investment strategy;
- Developing appropriate skills.

1 CHANGING POLITICAL ATTITUDES

Traditional political attitudes in local government will need to change if a council is to address Best Value successfully:

In-house is best

There is nothing wrong with in-house service delivery in *principle*. The issue is whether in *practice* in-house is able to deliver as good a service as other means. There will be occasions when this will not be possible.

The ideology of doing things in-house runs deep in many councils, a hang-over from a political tradition of owning the means of production and that saw workers as oppressed by the private sector which made profits out of the public purse.

These old ideologies need to be debated, challenged and resolved in the council for they will impede an open minded approach to Best Value - that what is best for the public should determine the means of service supply.

A later section will look at the human issues - and whether it is true that a workforce is always better off under a local authority than under a private sector employer.

Profit is bad

The issue of profit colours the attitude of many members to procurement:

- Because the private sector makes a profit, the public sector has to be better;
- Relations between a council and a contractor are a tug of war, if a contractor makes a profit, then the local authority has made a loss.

But a reasonable profit for the private sector and reduced costs for the local authority are possible if the supplier brings better performance and more investment to the delivery.

They rip us off

There is a view that the private sector will try to rip councils off so they have to be tied down by detailed specifications and policed with an army of inspectors. Contracts were characterised by a lack of trust and a resort to penalties at the first opportunity.

There has been weak understanding that risks have to be balanced with rewards.

Contractual relations of this sort have been abandoned by good private sector organisations when they procure services. Instead contracting is seen as a partnership where both work together to achieve as much value as possible so that both sides can benefit.

Such an approach has been advocated in the Latham and Egan reports and by the CBI to its members. Good local authorities have been operating in this way for years.

CCT hangover

Many councils saw CCT as being about defending the in-house organisation from losing the work to an external bidder. The private sector organisation was seen in hostile terms and the aim was to make it as unlikely as possible for them to win work.

Local authorities became skilled at deterring interest:

- Contract periods were as short as possible;
- Risk was all placed on the other side, including unmanageable risks;
- Information was withheld;
- Contracts were highly specified, complex and hostile in tone;
- There was little attempt to involve the contractor's ideas in how to do things better.

These methods have to be abandoned. If local authorities want to deliver Best Value they will want to attract, not deter, interest from external service deliverers.

For many members and councils this is a complete ideological turnaround and it needs to be addressed by leaders and chief executives as one of their prime tasks. If this is not addressed the council is unlikely to achieve Best Value for its public.

The following questions may help expose whether the council has a problem:

- Is a prime aim to protect the in-house workforce?
- Does the council have an open mind about how to deliver services? - or, as one Midlands council leader said: 'We support Best Value and doing things in-house'
- Are competitive process aimed at deterring interest so that the council continues to do the work?
- Would officers be seen as suspect if they brought reports which looked at all options for service delivery with an open mind?
- Are the private sector, registered social landlords and the voluntary sector seen as intrinsically less good than in-house?

Elected members have to discuss and understand these issues. Without a cultural shift Best Value will not result in significant performance improvements. There is a real need to grasp the opportunity and embrace the new culture. Members need to give the lead in this.

2 LEADERSHIP OF CHANGE

Leadership by members is fundamental to achieving Best Value. Members need to:

- Promote the council's commitment to the concept of best provider. Clear political signals are essential;
- Promote the change of culture that Best Value service reviews and procurement analysis require;
- Decide whether to make or buy according to which gives most for the public based on evidence;
- Champion the public's interest, not of providers or tradition;
- Expect to be told if performance is mediocre - before the inspection process and the local papers find out;
- Want the authority to be the best and that nothing is off limits if it delivers more for the public;
- Manage staff issues positively.

3 A PROCUREMENT STRATEGY

Good procurement decision making is the central driver for improving performance in Best Value reviews and has to be approached corporately.

It focuses on the question - which service deliverer is best placed to raise our performance to the standard of the best?

The council collectively has to:

- Decide what sort of local authority it wishes to be for the future;
- Understand how supply markets are changing and the opportunities these offer for better service;
- Decide how to relate to the public in the future - whether it adopts call centre technologies for example can only sensibly be adopted on a council wide basis;
- Set the terms of reference of Best Value reviews to be wider than service silos to open up the opportunities for improvement;
- Compare with other local authorities and the private sector across all its functions and support and monitor this corporately;
- Undertake make or buy decisions with skill and an open mind across the council - this will require corporate support and promotion and a resource plan to address it;
- Decide how to increase investment which will have a profound effect on service procurement strategies;
- Determine how to integrate its sustainable development agenda with its service delivery strategy.

Service commissioning and Best Value

A number of local authorities, including Brent, Hackney, Islington and Lewisham are introducing a 'commissioning' approach - familiar in health and social services - across all public services.

In this approach, each department brings strategy, needs assessment, customer consultation, resource allocation, performance management, procurement and contract management together in a commissioning team. The team commissions services from providers which may be in-house teams or private, voluntary or community sector organisations. Commissioning decisions are evidence-based and the desired outcome in each case is a partnership with the provider. Authorities that have adopted a commissioning framework are well placed to take a systematic approach to the selection of Best Value providers, with a clear organisational focus on the 4C's.

Community leader or service provider?

Some local authorities may decide that their community leadership role requires maximum attention:

- To scan the needs of the area;
- To set political priorities to address them for the next 5-10 years;
- To work with others to promote their achievement.

They will see delivering high quality services for their public as important but will not want the time that managing in-house service delivery takes to distract them from these priorities. Some councils may therefore need to be convinced that in-house service delivery is necessarily better for their public rather than the other way round.

A corporate approach to make or buy decisions

The methodology of searching to find excellence in all sectors needs to be understood throughout the council:

- It is about finding excellence, not comparing with similar authorities;
- It is about being radical and finding ways to raise performance to the level of the best, not finding excuses as to why it is impossible;
- It will require decisions to be taken about policy, means of relating to the public, ways to bundle services to attract more interest, or to obtain more investment which will cut across departmental or committees structures.

This will require:

- Skilled corporate support functions;
- Good corporate working across leading members and top managers.

Suffolk County Council Best Value Group are developing a competition policy based on the extent of market development and competition that exists measured against the strategic importance of the service to the county council.

This is part of a strategic procurement process to develop supply chain management within the county council.

4 INVESTMENT DECISIONS

Increased investment will be needed to deliver Best Value. A council needs a corporate approach to investment which is strongly integrated with its service delivery strategic decisions. Very few, if any, local authorities have done this as yet.

The reasons why this is necessary are as follows:

- 1** Local authorities are constrained in the investment they can make and these controls will be retained.
- 2** The aggregate investment local authorities need to make far outstrips the likely level from its own resources. Council housing alone has a renovation backlog of £10 billion¹.

¹ Deputy Prime Minister's Housing and Regeneration Statement of July 1998.

- 3 The private sector and registered social landlords are free to borrow to invest.
- 4 If investment is to increase it will have to come through private sector means.

This will require a strategic analysis by each local authority of how it is to procure the investment its public needs.

Each local authority needs therefore to undertake the following analysis;

- 1 Forecast of the level of capital investment that the council judges it needs to undertake over the next five years based on surveys of the need for repair and improvement and for new investment. This needs to be realistic - the level of investment whose revenue costs would and could be supported. It is better to do a rough and ready forecast than none at all. For example such an estimate might show a real need for £500 million of investment over the next five years.
- 2 Forecast the likely level of conventional investment resources from borrowing approvals and receipts over the next five years. For example the forecast might show about £250 million of likely resources.
- 3 Compare the two forecasts. If the gap is significant this has strategic implications for the authority. In the example the gap between the two forecast shows a shortfall of £250 million investment needed - some £50 million extra each year.

A large shortfall means the council will need to secure investment for some of its services through means other than direct investment and ownership - through the private finance initiative, through establishing local housing companies or transferring stock to registered social landlords or by longer term service delivery contracts which bring investment with them.

- 4 The alternative investment options then need to be appraised to see which services are best placed to obtain investment externally so that those that cannot are allocated conventional resources.
- 5 There needs to be a mature debate about these issues and options corporately at member and officer level.

In many authorities this will lead to major strategic decisions about how investment is to be obtained and services delivered in the future. These decisions are strongly inter-connected.

5 DEVELOPING CAPACITY

‘Modern public procurement demands far higher and more varied levels of expertise than even five years ago.. the transition from shopping for goods to managing outcomes’²

All those in leadership roles, including chief executives and council leaders, need a sound understanding of procurement processes and skills.

The LB of Newham and other local authorities have developed a corporate strategy for developing procurement in the council as a central part of Best Value.

The Chief Executive of the **LB of Newham** established a Best Value Procurement Group made up of senior managers to:

- Support the cultural change needed;
- Support Best Value teams to evaluate procurement options;
- Provide specialist advice;
- Make corporate learning take place.

The key actions taken so far are:

- The development of a procurement training programme;
- The Best Value procurement support pack;
- The review of the council's standing orders.

'It is our experience that when the council begins to generate procurement proposals significant capacity issues are raised.' *Bryn Griffiths LB of Newham.*

Developing good commissioning or procurement capacity will be essential to delivering Best Value.

Innovation needs to be encouraged whilst retaining strong probity mechanisms.

Developing client manager standards

Hertfordshire County Council has produced its own competence based standards for the role of client manager.³

'We have a lot of people who are now having to learn to be good purchasers.' *Hertfordshire CC.*

Procurement strategy and how to develop the procurement capacity of the council should appear on top management agendas.

But it is unrealistic to think that every local authority acting in isolation could develop the level of procurement expertise of the best. There will therefore be a need for lead authority procurement services and consortia purchasing schemes as discussed later.

The pioneering work described later by the LB of Hammersmith and Fulham in developing new housing management systems and by Hertfordshire County Council and others in call centres needs to be repeated for a wide range of other local government processing functions - perhaps by consortia of local authorities

3 Client Manager Standards. Hertfordshire County Council 1994.

working with a range of private sector agencies to develop new systems as the development costs and risks may be too much for one authority to bear in isolation.

Staff skills

An inventory is required of the skills development needed in the council to address good strategic procurement undertaken by the IDA with SOPO and CIPS.

Newham have consulted their staff and found a demand for training in:

- Taking risks;
- Negotiation;
- Contract management;
- Seeking market intelligence;
- Shortlisting and tender evaluation;
- EC procurement law;
- Joint ventures.

This learning will need to take place through websites, action learning sets, peer seminars, establishing a skills database and through secondment opportunities. The local government national bodies will need to promote the delivery of these support processes rapidly.

There will be a need to develop contract management skills - contracts need to be managed effectively to deliver value even if good prior processes have been used.

ACTION CHECKLIST

Will your council's political attitudes get in the way of delivering Best Value for your public? Use the checklist questions in the centre pages to find out. If this shows a problem you will need to address this as a priority by debate within political groups and in council meetings.

Only elected members can lead Best Value. What signals are you giving? Do they sense from you what a major challenge Best Value is for the authority or that everything is fine and that you have 'already done Best Value'?

Has the council decided that it will chose whatever means of service delivery will deliver most for the public? If not why not?

Have officers been instructed to report honestly on service quality?


Instruct top management to advise on what a corporate approach to strategic procurement would mean, using this report and examples from leading councils.

Does the council recognise that it has to make a decision on each review of how to deliver the service in the future based on evidence of what will be best for the public?

Forecast the need for investment in the council over the next five years as shown on page xx. Contrast this with the likely level of investment resources from conventional resources. If there is a gap what are you going to do about it?

Instruct officers to report on how investment could be significantly increased if all options were on the table. This is likely to lead to significant change in how you get investment and how you deliver services.

Developing the council's capacity for good Best Value reviews and good procurement will require major changes. Assess what you need to do and put an action plan in place to do it now.



chapter 2 the human issues

Service delivery will transform in local government over the next five years as explained later.

These changes will affect the employees who work in these services in local government and elsewhere.

CCT has coloured thinking in local government:

- Employees did not feel they did well out of the process;
- It created conflict between the public and private sectors;
- Many councils saw a prime objective was the defence of the in-house workforce from losing their jobs or being externalised;
- In-house was best and the private sector were widely condemned as bad employers;
- CCT developed as a price dominated tendering exercise put pressure on all parties to reduce costs. There were some benefits from this;
- But it also led to contracts where the only way to win the work was to seek to reduce basic pay and conditions as low as possible;
- At a time of massive industrial re-structuring and job losses the defence of local jobs on the council was seen as a legitimate political objective - the slogan 'Protecting jobs and services' expressed the mood;

These old focuses of political attention will now have to change.

Best Value means we have to do two things at once:

- Put the interest of the public first - if change delivers better service for them then the change has to happen;
- Manage the change process as a good employer should.

So the first issue that has to be faced in a council is that the old agenda of defending the status quo has to be replaced with a culture that expects the workforce to change, but is supported in the process of change.

GENERAL ISSUES

Best Value and the drive for improved performance could, if well handled, offer positive opportunities for local government employees.

How you treat employees is crucial to the quality of the service that they provide to the community. Good employers see their employees as their main asset. Without their ideas and commitment little improvement will happen. A culture that values the ideas and contributions of employees and involves them positively in Best Value reviews will be important. Similarly employees should embrace flexibility because flexibility can create better services and where appropriate better jobs and rewards.

But it is apparent that employees will resist a transfer of employment, even if it is in the public interest, if they fear the consequences. The Government has therefore committed to put in place a system that will ensure the proper handling of people issues in Best Value and procurement with new measures to protect employees, promote fair competition and reduce the fear of transfer.

Best Value is not a price competition but about how to achieve the quality and performance outcomes the public want. Competing on price alone through low wages is unlikely to be the route to success. Good firms are clear that paying low wages leads to high turnover, low commitment and poor quality.

Because it was clear from the beginning that Best Value would lead to significant changes for employees it was seen as essential that a decent framework of employment law, practices and principles was put in place.

THE LOCAL GOVERNMENT SOCIAL PARTNERS

The Local Government Social Partners, a partnership between the LGA, the TUC and the CBI was formed in September 1997 to address these issues and to advise on what needed to be done to ensure that workforce issues are properly addressed by ensuring:

- Employees are treated fairly;
- TUPE is clarified so that transfer generally took place;
- Pension benefits are transferable.

The underlying message in the 'Social Partners' proposals is that the procurement process if well done will deliver a double benefit in terms of better value for money and a better deal for staff.

Specifying a good quality service, and making sure it is delivered, will require the successful bidder to have working conditions that will attract and retain a suitably skilled and motivated workforce. Contracting decisions based on the lowest possible price will damage the service and take a toll on workers' terms and conditions.

Proposal for the Amendment of the Local Government Act 1988

In this policy statement the Social Partners set out general principles which are directed at local authorities and the private and voluntary sectors:

- 'There must be a new relationship of trust and confidence between clients and all service-providers. Our approach is designed to promote that culture change and high standards of employment and training across all providers of local authority services, whether in-house or in the private sector.'
- 'The workforce deserve proper protection in the tendering process. ... We support therefore new measures that will protect employees and promote fair competition, removing barriers to Best Value whilst not erecting barriers to business.'

- 'Fair treatment of employees should be of equal concern to the client and contractor.'

The Social Partners then gave specific advice about how workforce issues should be handled throughout the procurement process:

Pre-qualification stage

'When developing select lists of firms to be invited to tender, authorities need to be able to form a view on the general competence of the potential service provider. ... enquiries at this stage should also include general competence in handling the workforce matters that are relevant to the service.'

Specification and tender evaluation stages

'By specifying and enforcing a high quality service, the local authority client can drive the contractor to ensure that the workforce is appropriately skilled, motivated and treated in terms of remuneration, training, opportunities and career prospects.'

'The statutory framework should... permit the client to examine in more detail the potential service provider's record as an employer.'

'Bidders will need to demonstrate that the services to be provided will be achieved without overall detriment to the terms and conditions of any employees who may transfer.'

'Bidders may address particular requirements in the service specification by making proposals which relate to equal opportunities in employment issues.'

'Client authorities should be able to check that potential service providers have, or can provide, adequately qualified and trained workforces.'

'For longer term contracts... clients and service providers may want to explore an approach which focuses on agreed training development plans in the light of the level of service outcomes required.'

'The approach to contract monitoring should be a positive one between client and service provider, with both working together to address problems which might arise.'

Staff involvement

'There must be full, effective and continuous communication by local authorities with the workforce and their representatives throughout the procurement process. In appropriate circumstances meetings between the bidders and the workforce and their representatives would be beneficial.'

Staff wish to know what is happening and have a right to know what will happen to them. Good employees value staff and wish to inform them. Staff know the service and contract - an incoming employer does not.

Contact between workers and bidders

There are benefits in certain circumstances of bidders meeting the workforce they would inherit if they win the contract. Increasingly the private sector is at least as keen as the workers for these sorts of meetings to take place. They can help to reassure staff and give them a better idea of their future. They can also give bidders more information, which improves the quality of their bids. But these meetings must not be presented as an opportunity for trade unions to vet or veto bidders; the procurement decision is for the project sponsor to take.

As well as advice the Social Partners have worked to remedy some of the problems with how workforce issues were treated under CCT in particular about TUPE and pensions.

TUPE

Under CCT it was a lottery whether the workforce would transfer with the work.

A prime objective of all parties has been to clarify the operation of TUPE so that in virtually all cases the workforce would transfer with the work to ease, if not remove, the fear of transfer.

This has succeeded and new TUPE regulations and guidance should remove almost completely the uncertainty over when TUPE applies in Best Value. It will also raise the level of practice on key issues such as employee consultation and the provision of information to bidders.

It is expected that TUPE will apply to the generality of public sector outsourcing in first and subsequent transfers.

On transfer, the terms and conditions of employees will generally be protected. However employers need to be able to negotiate changes to the terms and conditions of employment contracts as the needs of the service and the drive for continuous improvement demand. The law allows this which means that staff can be anxious as to how long they will be protected. There is scope for discussions between tenderers and the council, within the law, to seek clarification in these areas and some firms offer no deterioration in terms for specified minimum periods.

There will be necessary safeguards and the aim is to avoid overall detriment.

PENSIONS

The Social Partners - the LGA, TUC and CBI - have reached agreement on the handling of pension arrangements where local authority employees transfer to a private sector employer - and any subsequent transfers whether to another private sector firm or back to a local authority.

The broad thrust of the agreements are to ensure that employees can transfer from one employer to another without loss of pension entitlements and thereby be treated fairly.

This will also mean that a local authority can choose the service provider that gives most for their public without detriment to the reasonable conditions of employees.

The agreement will come into force later on this year and provides that:

- If a private contractor has an occupational scheme which matches the local government pension scheme (LGPS) they can transfer into it;
- If the scheme does not meet this test, the contractor can arrange for the transferring employees to continue in membership of the LGPS.

CONCLUSION

The government has largely accepted the recommendations of the Social Partners and will enact them in the Local Government Bill and in subsequent regulations.

As a consequence, a framework of decent employment conditions and processes should be in place for the start of Best Value.

This is of fundamental importance because it will facilitate a rational procurement approach, with councils confident that the interest of employees will be protected. That in turn will remove barriers to Best Value and permit councils to decide who is the best provider. The public therefore come first but employees do not come a sorry second.

ACTION CHECKLIST

Brief all the council about the report of the Local government Social Partners and its implications.

Brief all members and staff about how the new law and employment code, the operation of TUPE and protection of pension rights should protect their rights if they move employers.

Try to ensure that the council at member, staff and union level recognises that the interests of the public must come first. Much change is likely to happen but that employees' reasonable interest will be protected.

Put in place appropriate local agreements setting out how the workforce will be consulted and involved in Best Value reviews generally and in proposals for change.

Develop good practice guidelines as to how workforce issues will be handled in any externalisation.



chapter 3

how service delivery will change

Service delivery will change beyond all recognition in local government in the next decade.

These changes, well handled, should offer better outcomes for the public and therefore need to be pursued vigorously by a local authority that puts its public first.

Councils will need to raise their expectations as to what is possible in the form and quality of service delivery. Some Best Value reviews are only tinkering at the edges of current forms of delivery and standards.

Five major forces will drive change:

- 1 Public expectations
- 2 Joined-up government
- 3 New means to access services
- 4 New means of delivering services
- 5 Preventing the need for a service

1 PUBLIC EXPECTATIONS

Public expectations will drive change in local government service delivery. The public are less deferential, more demanding, more knowledgeable. They do not want public services as a form of welfare but as a right.

They expect high quality services that are accessible in a variety of ways at times that suit them. They expect to get more choice in the form of a service and quick redress if things go wrong.

They are critical of:

- gaps between services;
- failures of government bodies to connect;
- having to give the same information more than once;
- no obvious person to help.

Service improvements in the private sector, in retail and finance for example, raise expectations for all sectors.

Best Value is about putting the interests of the public first.

- 'Because institutions tend to look after their own interests, public services can be organised too much around the structures of the providers rather than the users. This can be evident in their opening hours, their locations, the demands they make of citizens.'¹⁴

- 'People want government which meets their needs, which is available when they need it, and which delivers results for them.'

MORI's survey's of public attitudes

MORI has regularly surveyed attitudes towards the public or private provision of 'public services'. For most people out-sourcing to the private sector is not a significant issue.

What concerns the public is whether services meet their needs. MORI's work for dozens of local authorities suggests that having responsive local services is far more important than who provides them - public, private, national or local government, or which tier of local government.

2. JOINED UP GOVERNMENT

The White Paper - Modernising Government will affect how local authorities address Best Value and procure services.⁵

It aims to make:

- policy making and service delivery joined up between government bodies;
- public service users the focus, not providers.

It sets out a reform package for action:

- Public services available 24 hours a day where there is a demand;
- All dealings with government possible electronically by 2008;
- Access to different parts of government through one transaction.

The White Paper makes commitments that will affect local government:

'Local government must be an equal partner in our drive to modernise government. We want to encourage initiatives, to establish partnerships in delivering services by all parts of government in ways that fit local circumstances; and to establish common targets, financial frameworks, IT links, management controls and accountability mechanisms that support such arrangements.'

- By the end of 2000, older people should benefit from joined up services and integrated planning in at least half our local authorities;
- People should be able to notify different parts of government of details such as change of address simply and electronically in one transaction;

⁵ The White Paper declares that central government will adopt the principles of Best Value and apply them to all its own workings - perhaps one of the rare occasions that a policy invented by local government has been adopted by central government for its own workings.

- New benefit claimants will be able to deal with their employment needs and benefit claims in one place.

3 NEW MEANS TO ACCESS SERVICES

The ways for the public to access services are changing radically.

- 97% of homes have a telephone - 80% of people prefer to telephone rather than write to an organisation;⁶
- Almost all services provided by the private sector can now be enquired about, delivered or ordered over the telephone or the internet;
- The public will expect a similar range and standard of service accessibility from public services.

Being asked to confirm in writing everything that has been said on the phone or repeat the enquiry every time you are passed to a new extension is not an acceptable response to the public.

Handling an enquiry on the telephone and entering details straight into a computer is much less expensive than face to face contact or correspondence. When it is well done the public prefer it.

'From a council perspective the most expensive enquiry dealt with is by personal visit, the next most expensive by letter, the next by phone and the cheapest by direct computer access. So it was evident to us that there will be a cost advantage in trying to deal with as much of the County Council's business by telecommunications as possible.' *David Hammond Hertfordshire Gateway project.*

New means of accessing central government services will transform the public's expectations of how they should be able to access all public services. The public will expect local government to keep pace.

- The Government is committed to making public services available twenty four hours a day, seven days a week where there is a demand;
- By the end of next year everyone in the country will be able phone NHS Direct, twenty four hours a day for healthcare advice and information.

By 2002 the public will be able electronically to book driving tests, look for work, be matched for jobs, submit tax returns, get information and advice about benefits, get on-line health information and advice, use the National Grid for Learning, and apply for training loans and student support.

Local authorities will need to improve service accessibility with access routes chosen by the public not imposed by the provider.

Integrated one stop shops whether physical, electronic or via call centres will form the main point of contact between the public services and the public in the future.⁷

6 Henley Centre Report
'Teleculture - The Citizen
Speaks'.

7 Kay Holman
New Connections 1999.

A revolution in access to local government services is about to happen. Every local authority will be expected through Best Value reviews to consider how they deliver better access to services for the public driven by the performance improvements that are now possible.

Hertfordshire Gateway

Hertfordshire County Council audited public contacts with the authority and found that most services had similar process characteristics - giving information, handling enquiries, managing cases, handling applications etc.

They found that a large number of contacts did not get through, or tied up a disproportionate amount of staff time or were passed round the system to find the right person.

Their MORI research found that the public wanted to access a single information point for all local services.

The Gateway will allow the public to contact the Council either by telephone on a single number or through the internet and a web site or in person through a variety of public access points including in libraries and supermarkets.

- More than 70% of calls will be dealt with without reference to specialist staff;
- The web site will provide information and direct transactions by the public;
- Over time the proportion of self-help enquiries should increase considerably;
- Telephones will be answered 8am to 8pm plus Saturdays with 1.5 million calls a year;
- The set up costs are £3.2 million with a pay back of four years from the savings made.

'Public services who are not addressing the issue of joined up access or not prepared to work in genuine partnership towards integrated services, planning, resources allocation and measurement of outcomes may find it being done for them'.⁸

4 NEW MEANS OF SERVICE DELIVERY

Major changes are happening to the ways in which services are delivered sometimes as a result of new technology, sometimes through new management methods, for example in no particular order:

- Translation services provided by video-conferencing;
- Electronic shopping for the house-bound;
- School support services of building, grounds maintenance and cleaning being handled as one integrated service;

- Environmental maintenance services being grouped together;
- Leisure Trusts to attract more investment and gain taxation advantages ñ for example see Greenwich and Wycombe;
- Joint out of hours emergency services for social services between several London boroughs;
- Round the clock helpline for people providing care services ñ for example see Clackmannanshire;
- The separation of back-office functions which do not need to be at the point of service delivery or enquiry - human resources, information technology, finance administration, public relations, facilities management, property client, payroll etc.;
- Councils who have set up a joint internal audit service in Yorkshire;
- Blue collar organisations looking afresh at how they are organised;
- The integration of the housing benefits service with the Benefits Agency services;
- More joint working between the NHS and local authorities.

Epsom and Ewell Borough Council is considering whether to combine their refuse collection and street cleaning functions with another authority.

'As small authorities we suffer from diseconomies of scale. A combined operation may offer residents better value through economies of management and vehicles. We will appoint consultants to see if our hunch is correct.'

Some people have multiple contacts with public agencies. For example the parents of children with learning difficulties may be contacted by up to 20 different organisations, each asking the same basic questions about the child's history. An inter-agency assessment model tries to give families a better service by co-ordinating education, social services and health processes and providing one clear swift path for parents to get the support they need.

5 PREVENTION IS BETTER THAN CURE

Preventing the need for a service will become more important.

Local government operates with a pathological mind set - when something goes wrong, we act to remedy it:

- The streets are dirty - the local authority will sweep them;

- A family is homeless - give them temporary accommodation;
- Parents are not caring for a child - it must be put in a place of safety;
- The frail elderly need to be cared for - admit them to a home.

These interventions are failures of prevention and are characterised by the local authority taking responsibility away from the individual or the group.

- If the public did not drop litter, like the Swiss, we would spend less money on street sweeping;
- If families could be helped to parent well there could be less educational failure, deviancy, crime and long term employment failure by individuals.

Best Value reviews should question if we need to do more on prevention activity even though this may require long term strategies and will often require experimentation.

IMPLICATIONS FOR BEST VALUE REVIEWS

- The standard of service that local authorities are aiming to offer their public for the future will have to reach beyond current performance or they will seem poor as public expectations rise;
- Search for new ways of delivering services that will better meet the public's demand for accessible, convenient and integrated services - searching for what works best;
- Best Value review should look across departments and agencies;
- Focusing on the current means of doing the service may fail to deliver adequate improvements;
- The terms of reference of a review should not be drawn tightly around a current service or this may exclude step changes in performance that can come from new methods. Thinking outside the box of traditional methods is essential to deliver Best Value;
- Explore the concept of best supplier - which supplier will deliver most for the public?⁹

'Unfortunately some authorities have interpreted the Compare 'C' as meaning benchmarking and not much more. Of course benchmarking is important, but it is also about having conversations with other public and private sector organisations, about how they do things and seek and share views and ideas.'
David Hammond Hertfordshire CC

9 Modernising government White Paper: 'We will develop an approach based on the straightforward idea of best supplier, retaining an open mind about which supplier, public, private or partnership can offer the best deal.'

ACTION CHECKLIST

Start all Best Value reviews by finding out what outcomes are desired by the public, irrespective of which department or public agency is responsible.

Undertake a few Best Value reviews excellently this year rather than lots to a mediocre standard. Set wide public-focused terms of reference; involve the private and voluntary sectors in exploring what is possible.


Consult the public on how they would like to access the services.

Investigate how access to the council compares with the best retailers and telephone based companies.

Hold a workshop for members and managers to brainstorm how service delivery will change in the future - perhaps with other local public sector bodies, the private sector and the public.

Carry out a fundamental review of how the council will improve service access for the public. This is likely to require major re-engineering of many services plus new investment and technologies.

Consider as a council how Modernising Government will affect policy making, Best Value reviews and service delivery.



chapter 4 is in-house always best?

The tradition in many local authorities is of in-house service delivery.

Best Value asserts that what is best for the public should determine who delivers the service.

There are several reasons why another organisation may be able to perform a function better:

- Economies of scale;
- Application of new technology;
- Increased investment;
- New groupings of services;
- Better utilisation of spare capacity;
- More market focused;
- Economy of support services;
- More specialist skills;
- Greater ability to obtain work;
- A better customer focus;
- Better processes;

Economies of scale

‘Until now local government has not been expected actively to seek out economies of scale since models of service delivery based on the individual local authority have been the accepted norm and mindset.’

Steve Davies, Chair of Inter Authorities Group.

Changes in communications, technology and management methods now make it possible to obtain economies of scale for many local government functions:

- The production facility does not have to be in the same location as the public who are served;
- New technology allows PC based processing functions to be carried out accurately, quickly and with less labour.

Local government has many processing functions. The volume of transactions amount to millions of transactions in aggregate and will become amenable to sophisticated computer handling systems.

'There is potential for large savings due to economies of scale in the provision of:

- revenues and benefits;
- payroll and pension managed services;
- personnel services;
- management and operational advisory services;
- training services;
- maintenance works services;
- property management services;
- call centres;
- IT services.¹⁰

Local authorities will also be aware that economies of scale are not guaranteed in practice - there can be diseconomies of scale or theoretical economies may fail to deliver in practice. Nevertheless the drive for economies of scale and systematisation of processes will extend over the next decade to many local authority functions.

To access economies of scale local authorities will need to look to joint procurement of some functions or joint provision of others as will be explored in chapter 6.

Application of new technology

LB of Hammersmith and Fulham is re-engineering its housing management services through new means of relating to the public aided by sophisticated IT and telecommunications systems using integrated management systems, call centre technology, document imaging and work flow processing:

¹⁰ Evidence presented by WS Atkins to the Environment Sub Committee 28 April 1998.

Housing Management for the Millennium – **LB of Hammersmith and Fulham**

This project aims to secure a fundamentally different housing service that will significantly improve the quality of service provided, the ways the public access the services and at the same time achieve substantial savings.

It is a major change away from the traditional model of service delivery with a clear separation of front and backroom services - between processing and customer contact with the thrust of change being customer-centred and driven.

Customer access to services will fundamentally change through the use of technology and the integration of telephone and computer.

Self service and interactive access will become important.

It will end many low-level processes and deliver substantial reductions in housing management costs.

Technology has relevance to other services too.

'One of the ways in which life could improve for older people is the harnessing of new technology in new, imaginative and profitable ways. Such use of technology will enable older people to be cared for more easily so that they feel secure in their communities without the need for other, more expensive interventions... through for example devices for opening windows, turning taps on and off, raising and lowering work surfaces, setting alarms, turning off lights, monitoring whether... people may or may not need help' *Royal Commission on Long Term Care Cm 4129. 1999.*

Given the growth in the number of the frail elderly forecast over the next decade helping more people to sustain independent living will be important for them and for the local authority.

Increased investment

The need for more investment will be a major driver for change in service delivery. If a service needs more investment a council has to find ways of securing it in non-traditional ways if it cannot fund it directly. The public want the result and are unconcerned about the means.

A review of council housing in a London borough found that tenants thought the quality of their homes was not good enough. They wanted improvements and repairs carried out, requiring much greater capital investment.

The council had to increase investment if it was to deliver Best Value not excuses.

This meant it had to explore other ways of increasing investment - through large scale voluntary transfers, local housing companies and PFI deals and assess which was best.

New groupings of services

Services groupings will change. Havering street care initiative put all its environmental maintenance functions together to provide a more accessible service for the public with less duplication.

'Over the last five years there have been major changes in the management of highways networks. Inspection of defects, instructing repairs, carrying them out and checking for compliance and payment do not have to be done as separate operations by different people. Aggregating work, redesigning jobs and establishing quality assurance processes eliminated the need for over 2,000 works orders a year in one major service contract.' *Babtie Group*

Better utilisation of spare capacity

In 1998 LB of Islington established a joint venture company, Islington Cleansing Services Ltd with John Doyle plc which has successfully improved the performance of the borough's refuse collection, street cleansing and fleet management. As part of this it has led to the better utilisation of an under-used and under-invested council depot.

More specialist management skills

It is unrealistic to expect that a local authority could be a market expert at delivering every function itself.

A partnership between Bolton Council and Brophy's Grounds Maintenance

In Bolton the council was maintaining two thirds of the borough and Brophy's the remainder. This was inefficient and the council did not see themselves as experts in grounds maintenance. They formed a new agreement to work together under a combined management structure led by Brophy's. The new arrangement is a soft partnership where the council gets the benefit of the specialist management skill of Brophy's, better utilisation of plant and a increase in the grass cutting frequency from 16 to 20 cuts for no extra cost.

Martin O'Hanlon from Brophy's commented 'You can do a lot of things that benefit both organisations and the public if you start to work together rather against each other.'

Greater ability to obtain work

A number of functions have moved out of local government when they have been unable to secure sufficient work from public sector bodies to support their costs - highways maintenance for example.

WHAT THIS MEANS FOR BEST VALUE

It is essential that a local authority is realistic about why others are performing better and open minded about the means to procure improvement.

If another service provider delivers a better service because they have economies of scale or increased investment then unless the local authority can secure similar economies and investment it will not match their performance.

To succeed in a Best Value review a council needs to:

- 1** Search local authorities and supply markets to find excellent service performance
- 2** Analyse why others perform better
- 3** Decide whether it is better to buy the service from elsewhere rather than make it itself
- 4** And if it decides to buy the service to have a process which secures a supplier who delivers improved performance for the public

These steps are a procurement process and good strategic procurement is fundamental to successful Best Value.

PROCUREMENT

Local authorities have always made decisions about how to procure their services, but for many these decisions have been taken without any process of exploration or analysis – ‘it’s how we have always done things’, or ‘doing things in-house is best.’

- Every Best Value review has to answer the question - how will we deliver the service in the future to achieve the standard of performance of the best?
- Such a decision needs to be evidence based and rational;
- The council will need to show that it has explored all realistic alternative options and that the decision on how to deliver the service will produce a standard of performance in quality and costs that will match that of the best;
- The decision will be audited and inspected as part of the Best Value inspection process.

The next chapter looks at how a local authority should address the central issue of Best Value review - how to improve the function. As part of this it looks at how to decide whether to make or buy the function in the future.

ACTION CHECKLIST

Is the council open-minded about how services are delivered - that it is the results for the public that count.

Do your Best Value reviews search to find excellent performers in all sectors or simply compare with similar councils?

Are your reviews expected to open out fresh thinking about how services could be better delivered in the future.

Are your reviews analysing the reasons for better performance by others? Do they then lead to a rational assessment of what means of service delivery will produce the performance of the best?

Are staff instructed to explore supply markets and talk to other service deliverers as part of a proper exploration of what might be possible?

Are they are expected to seek out innovation, improve performance - to be radical?

Or are managers skilled in giving excuses as to why you are different and cannot be expected to deliver as well as others?



chapter 5 make or buy?

Let us imagine a typical local authority that is carrying out a Best Value review of a function. The comparison process should have led the council to understand the gap between its current performance and that of the best local authority or service supplier.

It is then facing the crucial decision.

Can it achieve competitive performance for the public by improving the in-house service or might an external service deliverer give the public more?

Every Best Value review has to address this make or buy decision. It can be addressed on a case by case basis but it also requires the local authority to think strategically about what it really wants to achieve in the future, what it wants to concentrate on and where its crucial role is.

Who delivers the function is a secondary issue.

Which service delivery vehicle?

A local authority will have a wide range of options for delivering its functions:

- By the in-house organisation;
- By another council;
- By a local authority consortium;
- By a joint venture company;
- By the private sector;
- By the voluntary sector or a registered social landlord;
- By a mix of these.

The choice should depend on which is most likely to deliver improvements for the public.

- If getting more investment is fundamental then a service deliverer who can bring investment may be right;
- If there are significant economies of scale then external delivery may be appropriate;
- If the function requires specialist skills then in-house teams may be less able to be competitive with specialist private or voluntary sector suppliers.

Some local authorities - LB of Newham and LB of Lewisham in particular - have experimented with sophisticated evaluation tools to ensure all the relevant criteria are considered, before deciding who should deliver the service.

'The choice of the means to deliver Best Value for money, should be based on a robust assessment of the options in each set of circumstances. Departments should not make a choice they cannot justify publicly if challenged.'¹¹

Such decisions require a careful exploration of the options and the evidence.¹²

MAKE AND RE-STRUCTURE

Many local authorities will want to analyse whether the in-house service can be made as good as what could be obtained elsewhere. This should be an open minded enquiry, not an attempt to find evidence that justifies in-house provision and ignores contrary evidence.

'Alternative procurement is not meant to be a last resort, a sanction only when services are irredeemably poor. It is intended to be an option if better value is available from another provider even if the in-house service is performing adequately.'

Toward Best Value. A report by the Open University on Newham Council's first year as a pilot.

How should it go about such a sensitive analysis?

The process should start from an understanding of why the best performers manage to do so well as indicated above.

For some functions it is becoming clear that in-house supply is unlikely to be competitive. A local authority should not expend too much time on a strategy of in-house improvement when the evidence indicates this is unrealistic.

In other cases the evidence may be more marginal and a council may want to explore whether improving the function in-house might match the performance of the best.

Reality checks

There have to be strong reality checks on a claim that in-house performance can be raised to the standard of the best externally:

- Will method changes raise performance to the level desired?
- Is there evidence that this is possible from elsewhere?
- Is additional investment required and is it available? Have its costs been factored into the calculation?
- Is there a clear timetable for raising performance to the desired level?
- Are managers capable of achieving this?

11 'Best Value Procurement Support Pack' London Borough of Newham.

12 Better Quality Services

- What are the risks and consequences of failure?
- Is there a long term future for the resources currently providing the service?

Deciding to deliver a function in-house is a major procurement decision. It needs to be based on evidence and a comparison with the alternative options.

Such testing is better carried out external to the department that is claiming it can deliver and maybe external to the council itself.

CAN IN-HOUSE MATCH THE BEST?

The Best Value legislation imposes a duty on all local authorities - to their public. Each local authority has to demonstrate that it has met this duty after a service review - in short that the service after improvements is competitive with the best.

The White Paper states that a local authority which provides a service in-house without clear evidence that it is competitive with the best elsewhere may not be able to demonstrate that it is providing Best Value for its public:

Some local authorities are waiting for the DETR regulations about competition so they can decide how to get round them and ensure that services are retained in-house. This is to miss the whole point of what Best Value is about.

- An authority which is committed to its public's interests will want to explore positively whether an in-house solution is better or not;
- It will know from the experience of CCT that the spur of competition led to significant improvements in performance for many local authorities.

The White Paper set out six ways of testing competitiveness, three of which are relevant to this discussion of whether an in-house service is competitive:

- 1** Commission an independent benchmarking report so that it could restructure the in-house service to match the performance of the best external providers.
- 2** Provide a core service in-house and buy a top-up service from the private sector.
- 3** Tender part of the service with an in-house team bidding against private sector and other local authority bidders.

Using a benchmarking consultant will be popular with both local authorities and consultancies! There may be some dangers here. It is not unknown for consultants to tell clients what they want to hear. The real question is: is it likely given what would have to happen to performance, culture, management and investment?

There is no benefit to the public or the authority in playing games with Best Value.

If it decides to make the function then it will be on challenge to show that the judgement was based on an open minded assessment of the options and the evidence that it could raise performance to match the best through an internal improvement strategy. Such assertions are bound to be examined thoroughly in the inspection process carried out by the Audit Commission.

COMPETITIVE TENDERING

One way that the local authority can test whether the in-house service is competitive is to submit all or part of it to a tendering process.

Many local authorities are keen to avoid competitive tendering with an in-house team pitted against external service providers.

The CBI tend to share this view.

'In essence we dislike the CCT-style approach because it is adversarial. The council's attention and loyalty may be split between supporting the in-house bid and attempting to secure Best Value. The workforce can feel like pawns in the exercise. They will certainly feel threatened and defensive. And most of the good practice in handling the workforce issues - in supporting the employees through an unsettling period - is rendered difficult if not impossible. Many good private sector companies will not bid in such circumstances.'

Steliou Stefanou Chair of CBI Local Government Procurement Panel.

The advantages of competitive tendering are:

With a good specification and proper pre-tender enquires it should lead to good evidence of what the alternative providers can do;

- Competition motivates improvements;
- It reduces the risk of being duped by an in-house or external provider.

The disadvantages are;

- Many private sector firms will not bother to tender if they think there is an in-house bid because their experience of CCT has led them to believe many councils will do all they can to award the function in-house;
- The process consumes resources;
- It creates uncertainty for staff.

An alternative strategy that is recommended by the CBI and supported by some authorities is to make a 'make or buy' decision based on the evidence and the analysis.

If the council decides to 'buy' the function no in-house bid is submitted.

Local government may well be given the freedom to take 'make or buy' decisions this way - without being forced to a CCT type tendering process. If so it will demand considerable maturity from local authority members:

- to give a clear lead that they only want to do work in-house if it can be as good as any other option;
- to face out opposition if they decide the public will do better if an external provider provides the service.

Some councils have been acting in these ways for years; for others it will require a considerable shift of attitude.

The inspector will call

The inspection process will look at decisions to 'make' a function without competitive pressures particularly closely, particularly if there is a pattern of such decisions from the authority.

But when all is said and done Best Value is about results not processes. The acid test for a local authority and for local government collectively will be, do services to the public improve significantly after a Best Value review? If they do not, things are going wrong whichever method has been used.

This report argues that decisions about how to procure improvement is central to Best Value. The next chapter looks at how a council might go about this.

ACTION CHECKLIST

Make sure your Best Value reviews explicitly address the key question - how to raise performance to match the best.

Instruct that all Best Value reviews must analyse whether it would be better to buy a function rather than make it.

Consider the range of options for delivering services and obtaining investment and appraise the potential advantages and disadvantages of each without coming to a decision of principle as to which you will use - this can only be judged on the evidence of a specific review.

Test any proposal that in-house delivery can be raised to match the best as rigorously as you would test an external service provider.

Is it conceivable that the council could decide to externalise a function without an in-house tender? If not why not?



chapter 6 good procurement

Good procurement is a key process to achieve the outcomes the council desires for its public through:

- enquiring into what might be possible;
- deciding what is sought to be achieved;
- a pre-tender enquiry stage;
- the purchasing decision and process;
- managing the contract relationship to deliver the results.

This chapter considers procurement from outside the council but the same principles, processes, tests and judgements should be applied to any procurement decision whether from an in-house or external service deliverer.¹³

GOOD PROCUREMENT PRINCIPLES

There are three stages in a good procurement process:

- 1 The overall specification of what outcomes are sought
- 2 A commissioning or procurement process which maximises the chances of securing them
- 3 Managing the process in practice so that the outcomes are achieved - including continuous improvement

Central government has produced useful reports on public sector procurement. Its Handbook¹⁴ sets out guidance on what government department should do when reviewing their services and activities much of which is relevant to local government:

- Take a strategic approach - avoid short termism, look at whole life costs;
- Review related services and activities together - to maximise the scope for improvements and minimise the costs of achieving them;
- Explore the scope for cross agency working;
- Research the market - speak to the private sector, to customers and to staff about the outcomes desired;
- Decide whether to make or buy - by appraising the options, but the decision must be a rational one that could be defended as in the public's interest;
- Seek and encourage innovation - to find step changes in quality, performance and cost. Do not limit this by specifying inputs and working methods as happened under CCT.

13 Public sector procurement must fit within the EU Public Procurement Directives as covered later.

14 Better Quality Services. A Handbook on creating partnerships through market testing and contracting out. The Stationery Office 1998.

A council will need to consider:

- Is the service appropriately designed and packaged to allow a market response?
- Is the market capable of providing the service now or in the near future? Discussions are needed with potential suppliers to explore this;
- Is expertise required which the private sector is better able to provide?
- Hertfordshire County Council decided to outsource the management of its new call centre as they could not be specialists in call centre management;
- Are there vigorous competitors with good track records?
- Can external providers offer economies of scale?
- Are they better able to manage the risks that are always present?
- Is capital investment needed which would be more likely from an external supplier?

Under a Best Value review the analysis and the judgements that are made in coming to a procurement decision need to be recorded because they will be inspected by Audit Commission inspectors. They will see the evidence from scores of other Best Value reviews and the procurement analysis and decisions made so they will have a considerable body of evidence to compare with the council's own process.

THE PROCUREMENT PROCESS

Any form of external procurement requires the council to consider:

- 1** What to procure
- 2** How to define the scope of the project
- 3** What sort of relationship is required
- 4** How to package it
- 5** How to attract interest
- 6** Information requirements
- 7** Making markets
- 8** How to handle workforce issues

9 How to meet the European Union rules

10 How to handle risk

11 How to evaluate tenders

12 Longer term contracts

13 How to handle contract management

These issues are explored below.

1 What to procure

The council needs to be clear about:

- the outcomes it wishes to achieve for its public;
- the quality standards it wants to achieve - this is not about lowest cost tendering any more;
- what structure, contract size and form is most likely to obtain improved benefits for the public.

For example putting grounds maintenance out to tender might offer less potential for improvement than packaging all environmental works together.

Alternatively putting out to tender all the grounds maintenance work of all the public sector bodies in a county might produce more improvements.

The decision about what to procure needs therefore some understanding of service delivery innovation outside the council in other local authorities and in the private and voluntary sectors.

The process should be an open minded exploration of how to find better ways of doing things and then moving onto relationship building, working for mutual success.

Portsmouth's review of its school meals service

Many councils are finding that their school meals service costs them money yet is not well used by pupils. Portsmouth City Council started its review by consulting stakeholders in a series of workshops and quickly identified areas for improvement. Managers then showed all details of the existing service and system to private sector suppliers and challenged them to show how it could be done better.

They have been overwhelmed by the innovative and deliverable ideas which have been put forward which they are confident will enable them to move from the second division to the Premier League within two years.

2 Defining the scope

- Larger packages may often but not always generate greater interest. Should the council procure with other councils to increase buying power?
- Avoid contracts being seen in departmental terms - this will reduce their size and may limit benefits;
- Competitively tendering whole services or whole business processes rather than individual functions may allow outcomes to be more clearly specified and require fewer management interfaces;

3. What relationship?

The council should decide before tendering what relationship is wanted with the service provider.

Purchasing a commodity might suggest that a consortium or framework agreement that delivered volume buying power might be appropriate.

If there needs to be a high degree of mutual understanding of what is being sought and a need to work together positively to pursue it, then a partnership approach may be needed.¹⁵

Partnering arrangements require significant resources on both sides to make them work and are not appropriate therefore for short term contracts.

There must be competition at the outset to select partners, run in accordance with the EC Procurement rules and show a clear rationale for the choice.

There is a need to build into partnership arrangements:

- Best Value review processes;
- Customer involvement in monitoring and review;
- Open book accounting;
- Shared benefits when results exceed contract targets;
- Influence for the council before major changes;
- Contributions from the partner to the wider objectives of the council;
- The ability to grow the business to create jobs and reduce costs.

There is a general need to move away from adversarial contract relations which lead to inflated tenders, wasted resources on inspection on resolving disputes. None of this produces better value.

15 Partnerships for Best Value Mark Campbell and Geoffrey Filkin KPMG/New Local Government Network 1998.

Kent County Council, having reviewed its requirements for engineering and transportation consultancy, decided to outsource the function.

The process included a review of the proposals for the contract framework in which leading private sector providers were invited to participate.

This became the initial stage of a selection process based on quality. After reducing the contenders to a 'long list' staff presentations were organised to ensure that the final short list was chosen on criteria which included suitability as a host for the 200 staff to be transferred.

Only when a final group of three potential providers had been selected was the complex and expensive stage of pricing the contract undertaken. The tender prices were assessed against a model of the council's anticipated programme and the results evaluated along with a suitable quality component to select a preferred provider for final negotiation.¹⁶ *Babtie Group*.

4 Packaging

- Packages need to be appropriate to the market. Larger packages may generate more interest than smaller ones though the council may not want to deter small and medium sized enterprises from bidding;
- Grouping activities to reflect current market competencies can help generate interest;
- Seek advice from contractors themselves.

5 Attracting interest

Bidding takes time and money.

The history of CCT has led many service suppliers to believe that some councils are opposed to services being delivered externally and councils may find they experience little interest from the private sector.

'If, when we look at the invitation it has MBC in the title we will not waste our time submitting a tender.'
Managing Director, Trident.

Local authorities need to make clear that they want positive long term relationships with service suppliers.

Councils with poor reputations with the private or voluntary sectors will have to demonstrate they have changed their attitude.

If a council wants to attract interest it will:

- Demonstrate a serious interest in using external suppliers - by both members and officers;

16 Example provided by Babtie.

- Develop an understanding of the potential sources of supply;
- Hold informal discussions with potential service suppliers well before the invitation to tender, to help understand them and to develop a better knowledge of how to package the work. The EC rules permit this but care must be taken to ensure fairness, openness and transparency;
- Use the negotiated procedure where possible;
- Develop properly targeted publicity;
- Be prepared to negotiate on detail;
- Set a contract period that is long enough - a short contract period suggests that you are not really interested;
- Contract periods have to be longer if capital investment is required;
- If the council has already decided to buy the function without an in-house bid it will attract more interest.

6 Information requirements

Better information flow will produce better bids, better bid evaluation and a boost to staff confidence.

- Ask enough to see whether compliance or capability is for real but no more. It costs to provide information and to evaluate it;
- Only ask for information that can properly be taken into account (limited by the European Public Procurement rules);
- Tell bidders exactly how the information will be used;

Information must also flow to bidders. They need accurate and timely information on the workforce that would be transferring under TUPE.

7 Making markets

Many private sector firms' experience of CCT has led them to believe that the local government market is a difficult and unattractive one. Some firms have left the market as a result. Others will not bother to tender if there is an in-house bid as their experience makes them believe there is little prospect of a level playing field.

Local authorities and local government will need to work to change this reputation.

For some local authority functions there may not yet be a market for service delivery. The local authority may need to act to develop suppliers. This has been done by social services authorities when they sought to promote the development of private sector residential services and home help services through the private and voluntary sectors.

The example given earlier of Hammersmith and Fulham seeking to develop a new form of housing management service delivery system is an act of market making.

8 How to handle the workforce issues

There needs to be clear strategy and principles for handling workforce issues before any procurement process starts. This has to cover clear commitments to information, consultation, to meetings between staff and their representatives with potential tenderers, to how TUPE and pension issues will be handled. These issues are explored in more detail in chapter 2.

9 European Union procurement rules

Unless the value of the services is below certain thresholds the European Procurement Rules will apply. These rules specify procedures to ensure all service suppliers in Member States are treated equally.

There are three main procedures:

- **Open procedure** - when any interested party may bid;
- **Restricted procedure** - when only bidders who have pre-qualified at the selection stage may bid;
- **Negotiated procedure** - under which the terms of the contract may be negotiated with the potential competitive providers.

The rules allow a choice of award criteria - lowest price or economically most advantageous which includes overall value for money, end user needs and satisfaction and whole life cycle costs.

These options are considered in more detail in the legal chapter.

'In 1996 the Council commenced negotiations to outsource £40 million of direct services as part of Lambeth's change process. We got down to the three best after six months of consultation with potential partners. Within three months we were able to complete a 1700 employee transfer and £10 million PFI investment in capital equipment and vehicles. The partnership was under-pinned by a Joint Venture agreement with explicit qualitative and quantitative outputs specified in our 'partnership principles'. Work continues between Team Lambeth and the Council to develop a continuous improvement in service quality and to exemplify the Best Value framework.' *Councillor Jim Dickson, Leader Lambeth Council*

These processes are not quick and cannot usually be rushed except in exceptional circumstances.

An example of a timetable for a negotiated procurement¹⁷

A period of discussion and consultation with potential providers to explore the market and good ways to package and structure the contract - a Prior Indicative Notice. *January - March*

The Council places Official Journal advert and prepares information for interested parties, receives expressions of interest and issues pre-qualification and options questionnaire. *April*

Interested parties prepare pre-qualification, options and ideas response. *May - June*

The Council evaluates response including interviewing front runners. *July*

The Council shortlists 3 or maximum 4 potential partners. *Early August*

The Council firms-up options in discussion with potential partners and prepare Invitation to Negotiate (ITN). *August - mid September*

The Council issues ITN inviting Best Negotiating Positions (BNPs) identifying range of acceptable options. *Mid September*

Potential partners prepare costed BNPs and submit. *Mid September to end October*

The Council evaluate BNPs and conduct clarification interviews. Determine preferred way forward. *November - late December*

Select Preferred Partner and one reserve partner. *Late December*

The Council conducts detailed negotiations with Preferred Partner finalising detailed working arrangements. *January*

Preferred Partner prepares and submits Best and Final Offer (BAFO) *Early February*

The Council and Preferred Partner complete final partnership and contract negotiations (this should be minor and non-controversial matters only). *End February - early March*

Sign Agreements and Contracts. *Early March. Total time 15 months.*

The Preferred Partner can begin transition to the new working arrangements when the main negotiations (Task 10) are complete. Three months would be reasonable but a shorter time frame may be possible. *February - April*

Partnership Start. *Early May*

Note TUPE arrangements also have to be dealt properly and have their own timetable obligations.

¹⁷ Thanks to David Robinson of WS Atkins for providing this example. Other negotiated processes might be simpler and shorter than this.

10 Risk

Any procurement decision has risks - whether in-house or external supplier and these need to be explored and evaluated.

There is demand risk - that the public will no longer require a particular type of service or facility in the future.

There is supply risk - that the service will fail to meet client needs or the supplier provides service below the required level.

- Risks need to be identified, evaluated and costed;
- Risk should be allocated to whoever can manage it best;
- Dumping all risk on the other party will lead to increased costs to the council;
- Payment should reflect risk;
- It is not sensible to impose on another party risks that they have no possibility of controlling - for example that they carry the risk should legislation change.

11 Tender evaluation

Local authorities need to evaluate tenders with skill and fairness. In the past some local authorities have been seen as evaluating tenders with one aim in mind - to find justification for awarding the work in-house.

Best Value allows local government to balance quality and price. The basis on which this is to be done should have been clear to all parties well before they submitted their bids.

Local authorities will often seek to find a cost benchmark whether or not there is an in-house bid.

If there is an in-house bid it is particularly important it is handled in an unbiased way if the local authority is to attract private sector interest in the future - bad reputations travel fast.

Also the local authority could be called to account to justify the reasons for a procurement decisions by the auditor, an aggrieved party or in an inspection process; there should be a clear logical process with data and evidence to justify that the decision is rational and in the interest of the public and Best Value.

12 Longer term contracts

In recent years local authorities have become more willing to enter into longer term contracts, often in PFI deals where contract terms of 15 to 25 years are common to allow adequate time for pay-back on substantial capital investment.

There has appeared a tension between the demands of Best Value for five yearly reviews and continuous improvement - how is this possible if the council is 'locked in' for 20 years?

There is an issue with major capital investment decisions however they are financed - a new school or waste incinerator is around for a long time. There is risk here if the design is wrong or if the demand changes for the asset and it is not easily re-usable. This argues for very thorough project appraisal for any major capital investment decision if it exposes the public sector to long term obligations.

It looks possible to build Best Value principles into contract clauses which would ensure:

- A flexible variation clause to cater for continuous improvement;
- A benchmarking clause;
- Flexible termination and variation provisions to cater for five year reviews;
- Open book accounting and access to quality systems and documentation;
- A requirement that sub-contractors are subject to Best Value processes;
- A requirement on the contractor to consult and involve the public regularly.

13 Contract management

Effective contract management is critical to delivering benefits in practice. There is a need to move away from an adversarial approach to one which seeks to develop a win/win situation for client and supplier.

The contract document itself needs to be sound and achieving this depends on having an appropriate specification and term, constructive post-tender negotiations, planning for the changes that may be required.

But the contract should be turned to as the last resort rather than the first and the aim should be to establish good contract relations which are more open, have continuity of personnel on both sides, and where both sides are motivated and rewarded to seek improvement.

Good contract management is time, cost and result effective and about searching for continuous improvement.

Voluntary sector provision¹⁸

The voluntary sector is a major provider of local government services, particularly in the fields of health and social services and regeneration. The voluntary sector is particularly important in providing services in areas in which there is no market, or where the market is weak, for example around mental health, addiction or homelessness.

18 This section was drafted with the assistance of Ann Blackmore of the National Council for Voluntary Organisations

Local authorities, in considering how to secure a service, will need to scan what the voluntary sector could provide in just the same way it will the private sector. Voluntary organisations will often have a dual role as both service provider but also as representative or campaigner for the relevant client group or the wider community. This makes the relationship more complex than just a business one. If a private sector provider does not like the terms of a contract it can walk away, or take legal action if in dispute. A voluntary organisation may be less inclined to do this, particularly if it believes that the interests of the user - its primary client group - are likely to suffer. A recent report by the National Council for Voluntary Organisations¹⁹ highlighted some of the difficulties voluntary organisations experience in negotiating contracts with local authorities.

Voluntary organisations may receive funding to provide local services either as grant funding or through a more formal contract for the supply of specified services. In recent years there has been a shift from grant funding towards contract funding, in addition to which many local authorities have moved some grant funding on to a much more quasi-contractual basis. Whichever form of funding operates voluntary organisations will need to demonstrate that they too provide Best Value. However it is important that local authorities involve voluntary organisations in their plans for Best Value from the outset and not simply at the contractual stage because of the wider role they can contribute in representing the views of certain, often under-represented, sections of the local community.

But whether a service is provided under a contract or through a grant, voluntary organisations will need to demonstrate that they provide Best Value. And it will be important for local authorities to involve voluntary organisations in their plans for Best Value from the beginning.

The issues have so far been considered as if local authorities will make decisions about procurement acting in isolation. But this is not likely to be the case in the future and joint procurement mechanisms and vehicles may well have to be developed through collective action.

ACTION CHECKLIST

Hold workshops for members and officers on why good procurement is central to success in Best Value.

Request a major report on what needs to be done to develop the council's strategic procurement capability.

Ensure there is powerful corporate leadership to develop good procurement capacity in the council.

Review how the council has procured goods and services in the past and what needs to change.

What is your council's reputation with the private and voluntary sectors? Commission an independent report to find out.

19 Mutual Obligations - NCVO's Guide to Contracts with Public Bodies, by Joss Saunders, NCVO Publications 1998



chapter 7 collective action

Local authorities need to be able to collectively:

- develop joint procurement approaches;
- explore joint provision;
- standardise documentation.

Actions are also suggested for private sector.

JOINT PROCUREMENT

Local authorities - and other public bodies - will look increasingly to joint procurement because:

- procurement skills are scarce;
- joint procurement may increase buying power;
- not every local authority can develop high quality procurement skills across the full range of local authority functions.

There is also a need for centrally developed procurement support services as discussed later.

Purchasing power is a significant issues for local government's 400 authorities because:

- local authorities are small purchasers by comparison with central government;
- they are occasional purchasers and may not build up repeat experience.

How is local government going to get the purchasing volume to secure the economies of scale that some larger contract sizes can offer?

'Our experience is that councils are completely paralysed when asked to decide whether they want savings or local jobs. The answer is that they always want both and we cannot deliver both, unless there is an opportunity to join the service with others locally.' *Ian Scotter, CSL Group Ltd*

This is an issue for all local authorities, not just the small ones - but it is one that is felt immediately by small councils. In revenues and benefits large metropolitan councils appear to be achieving considerable savings; district councils cannot get the private sector interested in them as their turnover is too small to give a return.

It would be easy for district councils to believe that because there was no market interest in some of their functions this meant they could continue with traditional forms of delivery. This cannot be right. Why should the public have to pay more for the services in some areas because of the chance of where they live?

A Regional Revenues and Benefits Centre

Brighton and Hove, Tandridge, Wealden and Lewes Councils are developing a regional centre for handling council tax, National Non-Domestic Rate and benefits administration through a new joint venture company with CAPITA.

The councils wanted to improve access to and the quality of the service to the public and secure substantial economies of scale through one high quality centre rather than four separate ones.

Consultants confirmed that savings of up to 30% were possible whilst providing a better service to the public.

Each council will be able to specify the exact form of service it wants and retain local face-to-face access points while the 'back-office' processing is separate with telephone calls handled through a call centre offering much longer opening hours.

The councils wanted to use a joint venture structure to share in the success of the company and influence its development.

They aim to transfer 200 staff with protected terms of employment. The project should go live in 2000.

It is suggested that all local authorities will have to explore means to obtain the economies of scale, investment or specialisation by developing collective buying mechanisms or new vehicles which deliver similar benefits for a wide range of services. How should this be promoted?

Wiltshire & Swindon Procurement Panel

A procurement group has been established by the Wiltshire & Swindon Partnership Panel which consists of the County, District and Borough Councils, the Chief Constable and Fire Officer plus the Health Authority and the TEC.

They will be exploring the possibilities of collective procurement action in a range of services to identify where it looks most likely to be beneficial - financial services, payroll, billing; vehicle procurement, leasing and maintenance; DLO Partnerships; building maintenance; accommodation sharing, leasing, sales; council tax/housing benefit joint system; databases; staff benefit packages; green commuter schemes, car parks etc; energy bulk purchase; telecoms bulk purchase and IT systems and maintenance.

Local authorities have used consortia for buying goods for many years. There are a range of good buying consortia, some arranged as voluntary groupings with no legal entity, others as joint committees.

The Central Buying Consortium has 17 local authority members. It is organised as a federation with no legal status using individual local authorities as its purchasing mechanism. It has a turnover of £0.7 billion with target savings of £10 million each year. Most of its purchases are in goods or for services which local authorities have not usually provided in-house.

Joint purchasing may be easier where it is possible to 'commodity-ise' services for collective or bulk procurement.

Joint procurement could become impossibly complicated. If councils could agree a common core specification for a function they could go through a collective commissioning process with a clear understanding that at the end it would result in the selection of a single supplier. This supplier could deliver services to each of the authorities through separate bilateral contracts between each authority and the supplier but nevertheless delivering the economies of scale. (MM: 'and the supplier with economies of scale')

Franchising may also develop whereby a private sector supplier would design a basic service 'menu' which local authorities could then add to and purchase with potential economies of scale built in.

Joint procurement will require a major mind shift in some councils where both members and officers have been highly territorial in the past about service delivery and defined their role as being the management and delivery of in-house services.

JOINT DELIVERY

'COSLA president Keith Geddes is encouraging councils to seriously consider merging DLO's with neighbouring ones.' *Local Government Chronicle 25 September 1998*

If there are significant economies of scale or specialism in a function then individual local authorities as producers may not be able to deliver them.

'Dorset CC has awarded a three year highway works contract worth £21 million to an in-house consortium of the in-house teams from the County Council, Christchurch BC, and Weymouth and Portland BC.' *Local Government Chronicle 8 January 1999*

In other services we have not yet seen the market develop - does it make sense for there to be a plethora of separate production units in an area each undertaking environmental maintenance? Would one local authority and/or one private sector firm offering services to the rest make more sense?

New technology may open up economies of scale for some local authority processing functions. The technology, its introduction and management is expensive and the economies in processing it offers only become real if there is large scale through-put. Thus only larger scale contracts may deliver the savings in some cases. Related to this is the impossibility of all local authorities being experts at managing and delivering all the new forms of service delivery that the future will require.

It seems unrealistic to think all 400 local authorities should even attempt to be expert at producing all of the 40 or more main local authority functions in every single local authority. Best Value should stimulate us to consider whether another local authority as a provider or local authorities jointly might deliver more service benefits than the local authority acting in isolation.

For any service where there are economies of scale or where specialist skills are needed, or where councils are all duplicating similar services are ripe for consideration of rationalising the delivery arrangements.

These new delivery solutions sometimes need to be geographically based, but often not given how technology allows remote processing.

There are many examples of this developing - many more are needed:

Wiltshire Emergency Services

The Fire, Police and Ambulance services in the County are exploring whether they could deliver better value through a common control room. They will also explore whether joint headquarters, shared infrastructure support and rationalisation of sites might make sense.

They are bidding for Invest to Save funding from both the Department of Health and the Home Office.

By early June, police and fire will share a common finance system - a significant step to shared infrastructure.

'There is a conviction on the part of all concerned that what is happening is right for Wiltshire and must be delivered successfully if all three emergency services are to discharge their obligations under Best Value.'

- Warwickshire and the West Midlands Fire Service are studying how they might be more efficient by either providing services on behalf of the other;
- The 'Crossing the Boundaries' initiative in trading standards service seeks to obtain the benefits of specialisation through collaborative working between authorities.

North Yorkshire Audit Partnership

This is a partnership between Ryedale District Council, Scarborough Borough Council and Selby District Council for the provision of Internal Audit Services through a consortia approach. The project involves joint arrangements for client services for the procurement, monitoring and performance measurement of the Internal Audit Services. The Partnership has now been established and became operational on 1 February 1999.

A collaborative approach between councils is particularly important in two tier areas.

If the payroll and personnel costs of shire districts are frequently more expensive pro rata than counties, ought not the public bodies in the area be looking to whether one excellent service provider for them all makes more sense than a multiplicity?

For other functions it is not possible to look at strategies for the needs of the elderly in an area without joint policy work between counties, districts, the health authority and this may lead to strategic agreements about who should deliver what service in the future, or components of services.

But a new public sector joint delivery body or a lead local authority is not necessarily the best solution. That too needs testing to see whether it would make more sense to get services from specialist private or voluntary sector suppliers rather than local authorities attempting to deliver economies of scale or niche specialisms.

The purpose of local government is to secure the outcomes its public want, not to be specialist service deliverers!

There are no rigid rules here - apart from the need to look at all options and make objective judgements of what is best for the public.

STANDARDISATION

Local authorities want to help efficient supply markets develop to help them deliver Best Value. There are a range of impediments in the markets currently and these increase transaction costs and reduce competition.

It cannot make sense for 400 separate local authorities to develop bespoke tender documentation. This is costly for both the local authority and those tendering.

This points to the need to develop:

- standardised tendering processes;
- common documentation and 'boiler plates';
- common basic contractual terms that all parties accept and understand;
- common set of core pre-tender enquiries;
- framework agreements so that companies only have to pre-qualify once to get on the list.

There are issues here for CIPS and SOPO and for national level support for good local government procurement. In September 1999 SOPO will be publishing the first checklist for reviewing procurement activity in local authorities.

COLLECTIVE ACTION BY THE PRIVATE SECTOR

What does all this mean for the private sector?

There is a need for a wake-up call to the private sector as much as to local government - they have no automatic right to undertake work and it will not fall into their lap without effort.

But to make Best Value work requires both an open minded approach by local authorities and an active engagement by the private sector.

Perhaps companies need to act:

- to understand local government decision processes, systems and culture;
- to understand modernisation;
- to show specifically how they can help a local authority deliver better value;
- to contribute to data sets to show what is possible in the market;
- to improve market intelligence generally.

There are leadership issues for the CBI and for trade associations collectively here.

ACTION CHECKLIST

Explore where joint procurement might be desirable and where might it be essential?

Explore alternative procurement routes - lead buyer, consortia, joint committees;

Challenge why every local authority in your area is each separately providing a wide range of local government services in-house. Identify where there might be arguments for rationalisation. Commission proper appraisals on some of the more promising areas;

Explore where your contractual documentation, standing orders etc could be standardised.



chapter 8 legal issues

'Procurement rules and regulations should not be used as an excuse for poor performance. Partnering, framework agreements and other initiatives are all possible under current procurement rules and regulations, yet they are largely unused within the public sector.'²⁰

Senior members and managers need to be aware of the key legal issues that will affect how their authority procures under Best Value.²¹

There are issues about:

- 1 the powers of the local authority
- 2 the contractual options
- 3 the European Union Procurement Rules
- 4 probity
- 5 TUPE - dealt with in chapter 2.

1 POWERS

In Britain local authorities can only legally do something if legislation has authorised it.

If a local authority acted beyond its powers (*ultra vires*) - by entering into a contract to provide a service not authorised by statute - then the authority's action becomes vulnerable to legal challenge by a third party or an action by the District Auditor.

If the Court decided that the authority had acted beyond its powers it is likely to decide that any contract entered into as a consequence is void. In effect the Court strikes out the contract completely and the parties to the contract cannot enforce its terms. An example of just this situation arose in the 'Allerdale' case.

The Courts' restrictive interpretation of local authority powers and the doctrine of *ultra vires* led to a considerable uncertainty in relation to local authority and private sector joint ventures, in particular, the Private Finance Initiative.

To resolve these problems in part, the Local Government (Contracts) Act 1997 was passed.

The Local Government (Contracts) Act 1997

The Act achieved the following:

- Where a local authority has a statutory function or power, the authority will have the power to enter into a contract under that power;

²⁰ Constructing the Best Government Client. HM Treasury 1998.

²² This chapter has been largely written by Helen Randall of Nabarro Nathanson and warm thanks for doing so.

- If a local authority gives a certificate under this Act that it has a relevant power then even if the contract is subsequently challenged, the parties will be able to be compensated.
- The protection afforded by a certificate under the Act to parties contracting with local authorities has encouraged more innovative transactions to take place.

An example of the reassurance offered by a certificate

In one of the first PFI transactions for the provision of a fully serviced school to a local education authority, a private sector company, Jarvis was on the point of entering into a PFI contract with Dorset County Council to construct and provide services at a new Colfox School before the Local Government (Contracts) Act was passed. Nervousness by the private sector company's funder as to whether Dorset County Council had the requisite powers to enter into the contract required an extremely detailed legal opinion on powers. However, shortly afterwards, the Local Government (Contracts) Act was passed, obviating the need for the detailed legal opinion on the Council's powers and accelerating completion of the transaction.

22 Local authorities are authorised under Section 111 of the Local Government Act 1972 to 'do anything (whether or not involving expenditure, borrowing or lending of money or the acquisition or the disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.'

23 Examples: Section 67 of the Transport Act 1985 allows a local authority to form a company to take over a bus undertaking, Section 13 of the Airports Act 1986 allows a local authority to own a municipal airport company, Section 32 of the Environmental Protection Act 1990 allow a waste disposal authority to form or participate in a waste disposal company, Section 58 of the Housing Associations Act 1985 allows a local authority to set up an unregistered housing association and Section 33 of the Local Government and Housing Act 1989 allows a local authority to establish or provide financial assistance to an undertaking which will create local employment).

The 'incidental' powers

Section 111 of the Local government Act 1972 seems to give local authorities wide powers to carry out their functions and deliver services in whatever way they consider appropriate but the Courts have interpreted this section very narrowly.²² As a result, local authorities' legal advisors usually suggest that a local authority wishing to enter into a transaction should rely mainly on a substantive service specific provision in legislation rather than using Section 111 alone to authorise a particular transaction.

Local authorities' powers to participate in companies

Local authorities have been keen to explore how they can collaborate with the private sector, voluntary sector and other parts of the public sector to deliver services in new ways.

Many have felt severely hampered by the existing legal regime governing their powers. There are still only limited powers which allow a local authority to:

- establish a company or buy shares in a company;²³
- supply services to other organisations (the Local Authorities (Goods & Services) Act 1970 and Government and Audit Commission Guidance allows local authorities to supply professional or technical services to organisations which have been designated as 'public bodies' only and where the local authority is using surplus capacity;
- second staff to local authorities or to other government agencies such as health authorities or NHS Trusts;
- delegate the making of its decisions to other organisations.

Local Government Bill, Clause 15

To resolve legal uncertainties about entering into joint ventures with the private sector for the delivery of services, the Local Government Bill 1999 contains a suitable clause. Clause 15 would allow the Secretary of State to make an order modifying or excluding the application of any legislation which is preventing a local authority from complying with the principles of Best Value and which would have the effect of conferring new powers on local authorities.

This power will be used by the Secretary of State in relation to groups of local authorities rather than on a single case basis.

In providing new or amended powers the Government will focus on four areas:

- facilitating joined up services;
- developing more service delivery models, an emphasis on partnerships, including powers to form companies, joint boards and allow staff secondments;
- clarifying when local authorities can provide goods and services to others;
- making better use of local authority assets.

2 THE CONTRACTUAL OPTIONS

A local authority will have a number of contractual options to as to how a service can be carried out:

- Keeping a service in-house;
- Externalising the service;
- Outsourcing the service but retaining some involvement by its own staff;
- Forming a partnership with a public sector body or voluntary organisation;
- Forming a partnership where the private sector helps with technology or skills transfer;
- Entering into a transaction under the Private Finance Initiative;
- Participating in a joint venture company or special purpose vehicle with another organisation (usually a private sector organisation);
- A mix of these.

The main considerations affecting the local authority's choice are explored below.

Keeping the service in-house

The forthcoming Local Government Act will abolish the CCT regime with effect from 2nd January 2000. From that point on, local authorities will have to ensure that delivery of any service by their in-house teams can be justified on Best Value principles which will require a service to be subjected to competition where there is clearly an established external market for the provision of that service.

An outsourcing contract

A well established route for externalisation:

- A local authority contracts out all or part of a service but retains the client role;
- Staff transfer under TUPE if there is an undertaking;
- The main scope for innovation under Best Value lies in the nature and mix of services to be contracted out through opportunities to let cross departmental contracts for educational/housing/social services for example.

Involving the DLO/DSO

Opportunities under Best Value include:

- Using the DSO/DLO as subcontractor to an external contractor - the main issue is the contractor's willingness to bear risk for potential under performance by the DSO and whether supply of the service requires 'public body' designation under the Local Authorities (Goods & Services) Act 1970;
- DSO involving itself in a management buy-out (e.g. Greenwich Leisure Services IS) the DSO will need early independent legal, financial and business planning advice;
- The DSO being retained in-house but being managed by an external private sector company to improve efficiency.

Partnerships with the private and voluntary sector

Partnerships with voluntary sector have been well established in the provision of community care services following transfer of community care provision to Social Services Authorities who had to use the Special Transitional Grant (STG) for contracting out services.

Also frequently used in provision of leisure services and in housing and regeneration.

The key legal issues under Best Value are:

- Will the innovative contract be compatible within the voluntary organisation's objects if it is a registered charity.
- If it is a public body, will it be within its powers?

Private Finance Initiative

PFI is relatively well-developed for waste collection and disposal, roads, leisure, schools, office accommodation and is developing in other services.

It involves delivery by a private sector partner(s) of a capital intensive service on a long term contract to an output specification. The private sector bears some of the key risks such as: under performance, delay in design and construction. The local authority pays a 'unitary charge' based on performance, availability and sometimes usage.

Joint venture company/special purpose vehicle ('SPV')

These have the potential under Best Value to blend expertise of private sector with knowledge of public sector in a specially created company with whom the LA contracts to provide a service.

Relevant legal issues that need to be addressed are:

- The local authority's power to participate in the company needs careful thought; (see para 1.4 above);
- Potential for conflict of interest if the local authority members/officers are co-directors;
- The local authority participation needs to be kept to a minimum to fall outside the ambit of the capital control;
- The local authority is likely to require parent company guarantees or bond if the SPV does not have a trading history or substantial assets.

3 EUROPEAN PROCUREMENT RULES

The current regime

This section gives an over-view of the rules but cannot be used in isolation.

The aim of the EC public procurement regime is to open up opportunities for cross border trade in public contracts and to set down principles of transparency and fairness in procurement.²⁴

- The Directives stipulate that a contracting authority's aggregated requirement for services/supplies of any one category has to be advertised and let by competitive tender if it exceeds a financial threshold;

24 There are at the time of writing 5 EC Directives: Supplies, Works, Services, Utilities and Remedies, implemented into domestic legislation by 4 sets of regulations, plus 1 amending Directive:

The Public Works Contracts Regulations 1991

The Public Services Contracts Regulations 1993

The Public Supply Contracts Regulations 1995

The Utilities Contracts Regulations 1996

- Current thresholds as at the time of writing (but due to change in Jan 2000) for local authorities are broadly:

Works **5 million Special Drawing Rights** **£4,016,744**

Supplies **200,000 Special Drawing Rights** **£160,670**

Services **200,000 Special Drawing Rights** **£160,670**

- Increasingly now, the Commission is taking action on breaches of the public procurement rules, especially serious breaches.

Typically these include: unjustified use of the negotiated procedure or discriminatory terms in the tender documentation or contract.

A serious breach can now be actionable up to six years afterwards (not just 3 months) as a result of the Court of Appeal's recent decision in the Matra Communications case;

- The regime currently makes it difficult for a contracting authority to take up an unsolicited approach by a single service provider to deliver a service innovatively - without putting it out to tender. Instead local authorities might think of output specifications which still give scope for innovative bids.

There are three procedures under which a contract may be let:

- **Open** - suitable for simple non-complex procurements (e.g. supplies) or for well specified services where there is a small market and scarcity of time to use the two stage or restricted procedure;
- **Restricted** - (a two stage procedure) as used in CCT - difficult to use for innovative contracts as dialogue with tenderers (other than raising clarificatory queries) is more limited - the selection of tenderers is limited to technical capacity and financial and economic standing. Strictly speaking therefore preventing local authorities taking into account social or environmental issues;
- **Negotiated Procedure** - may only be used 'exceptionally' but is used for most PFI projects - difficult to justify where a works contract does permit prior overall pricing. (Free choice of procedure under Utilities Directive). Allows some dialogue with tenderers but not a free rein.
- **The proposed new EC procurement regime** - a draft legislative package is being prepared by the European Commission which:
 - Makes clear that there is already scope for taking account of environmental and social factors when they relate to the service and as long as they do so in a non-discriminatory way;
 - Suggests the use of framework agreements under all Directives not just the eco Utilities Directive;
- **Framework agreements** - the potential use of framework agreements under Best Value is vast.

- They are also known as 'call off contracts' i.e. an existing arrangement with no minimum value which the local authority can call upon as and when;
- Framework agreements are frequently used for procuring community care services or building maintenance services or consultancy services and are currently only permissible under EC rules under the Utilities Directive;
- A current case before the European Courts of Justice, challenging the UK Government on the Department of the Environment's Northern Ireland's use of framework agreements to procure architectural services is on hold;
- The UK government remains of the view that frameworks are acceptable and central government framework documents remain in place.

Consulting the market

Consultation exercises must be clearly advertised as such and not purport to be advertisements for expression of interests in order to retain credibility within the market.

4 PROBITY ISSUES

New forms of procurement and contracting will require careful thought on probity issues.

The local authority has to be able to give an account of the legality and fairness of its processes and decisions if challenged by a resident, an aggrieved contractor or the auditor. There has to be an audit trail and good documentation for the whole process and decision chain.

Not all firms are reputable and collusion between private sector firms to ring markets has happened.

But the council has also to avoid driving out value by obsolete processes.

The LB of has found that after one year of Best Value pilots it needs to revise its standing orders to be consistent with Best Value process and aims.

Pursuing new procurement relationships whilst not exposing the authority to unreasonable losses will require skilled leadership.

It is possible and necessary to be adventurous in pursuing them whilst at the same time acting responsibly with public funds.

There are complex issues about political accountability:

- Balance for local authorities in obtaining Best Value by entering into exclusivity agreements with private sector against potential probity issues involving need for transparency and fairness and demonstrating value for money;
- Loss of commercial opportunities if a contract is subject to competent tender process;

- Prohibitions against single sourcing unless very exceptional circumstances can be demonstrated (e.g. only 1 possible provider for artistic/technical reasons) under EC rules.

Intellectual property issues

The acquisition of exclusive and perpetual IP rights does not come cheap and may be unnecessary for many projects with a limited life. The local authority should balance potential cost of acquiring IP rights to use in perpetuity against how much they will actually use the rights.

Rewarding innovation in tenders

Current EC regime allows contracting authorities to ask for variants in bids provided they specify the basis on which variants are sought.

Financial constraints

An understanding of the operation of the Local Authorities (Capital Finance) Regulations is an essential foundation for any local authority transaction. Most significant features include:

- Definition of a private finance transaction and the contract structure test;
- Concessions on the rate of debt set aside in relation to the disposal of housing land;
- Regulation of revenue and capital expenditure and credit arrangements.

Demonstrating value for money

The fiduciary requirement on local authorities to demonstrate Best Value for money to their taxpayers will underpin every transaction between a local authority and the private sector and is potentially enforceable by the District Auditor and local electors.

Constraints on LA companies

These are chiefly set out in Part V of the Local Government and Housing Act 1989 and The Local Authorities (Companies) Order 1995.

They consist of propriety and capital constraints, the basic premise being that if a company has a high degree of local authority participation it should be treated as part of the local authority itself.

In constructing a Best Value transaction around a joint venture company therefore, care needs to be taken *at the outset and throughout the entire life of the company* as to the proportion of local authority officers and councillors who participate in the company as company members or directors (including shadow directors), and how the company is managed, operated and funded. As a general rule, the lower the level of local authority involvement, the less the regulation to which the company will be subject.



chapter 9

what support is needed nationally?

Helping councils succeed in delivering Best Value is one of the most important tasks for national local government bodies. There are a range of support processes that would be likely to help local authorities.²⁵

HOW TO COMPARE

Local authorities have spent considerable resources on the comparison function, mostly on benchmarking:

- Many are finding it slow and resource intensive;
- It has often been with like authorities rather than searching for the best;
- There have been few comparisons with private or voluntary sector performance.

There is not the time for local authorities to continue unaided in this way, every local authority seeking to identify comparative data is grossly inefficient. There is a need to accelerate this process by:

CENTRALLY COLLATED COMPARISON DATA

- Centrally collated data sets which analyse cost and quality performance data for all functions. Then to construct distribution profiles to permit initial comparisons by a local authority of its headline performance both nationally and regionally and avoid substantial data collection and comparisons at local level. These data sets and analyses will be needed for cross cutting issues also;
- The data sets must include information about the cost and quality performance of the private and voluntary sectors; this will not always be easy to obtain or analyse;
- The common accounting conventions that will be in place by about 2002 should allow local authorities to insert their own costs and performance data into agreed templates and thereby obtain a rapid positioning of how their costs compare. But the process will need to go way beyond this and collect data about performance as well as cost, validating and then collating it;

Such a unit, perhaps as part of the Audit Commission, would need skilled staff to collect, collate, analyse and interpret and develop high quality data sets which are respected as accurate enough to fulfil the comparison function.

It would need to integrate data from local authorities, from CIPFA, the private sector and from the Audit Commission and to be respected by all parties to the process. It is likely to take several years for such data sets to be established.

²⁵ This chapter is based on Building Capacity for Best Value. Geoffrey Filkin. New Local Government Network. June 1999.

WHAT WORKS?

Each council will need to explore:

- What is possible?
- How do others achieve better performance?

Studies to identify the reasons for differences in performance are essential for rational decision making about what procurement route is most likely to deliver the improvement. It would be inefficient for each local authority to undertake complex research analysis individually for every service reviewed. A high quality research function is required.

Continuous tracking of successful practice across local authorities and the other sectors; good analysis of 'what works' and retailing of the findings.

Such functions could be carried out within the Audit Commission and/or the IDeA.

A PROCUREMENT ADVISORY SERVICE

There is a need for support to develop procurement skills in local authorities.

- There is little systematic understanding of supply markets and the alternative means of service delivery;
- Many authorities lack skill and experience at procuring services as the previous culture has been to undertake most work in-house;

Councils will want information about alternative means of organising and delivering services which appear to deliver better performance. The Treasury has a specialist unit helping Departments develop procurement skills. Local government procures over £75 billion of services and goods each year yet currently has no central support for developing good procurement practice.²⁶

Local authorities will need substantial help to raise their procurement understanding and skills:

- service specific information on the different ways to procure services whether from another local authority, the private or voluntary sectors;
- how to encourage a market response;
- how to secure capital investment with the contract;
- advice on contractual arrangements and options;
- how to procure a partnership deal in ways that satisfy public procurement rules;

26 Local authorities whether implicitly or explicitly decide where and how to procure their services and investment. In the past these decisions have often been made without explicit analysis, based on tradition.

- Legal and technical advice in good procurement practice. Pioneering authorities are spending considerable sums on specialist legal and consultancy advice which could be more widely distributed to other interested local authorities.
- Guidance on strategic procurement; how to integrate a council's service procurement strategy and capital investment policy.

This would need a high quality team of research analysts and procurement and legal specialists able to develop good advisory manuals and templates as well as provide some telephone advice.

Supply market research and development


As part of a procurement advisory service, local government needs to understand how supply markets are developing and to influence them.

- Advice and information about changes in supply markets and how they are developing in all sectors;
- Intelligence about service suppliers and what they have done.

This advice and information can be economically provided by a central service rather than by obtaining it individually at higher cost.

As well as the above functions a unit should take on four other challenging roles:

- Acting to stimulate supply markets;
- Identifying market dislocations or inefficiencies;
- Developing templates for collective procurement;
- Stimulating service procurement consortia.



appendix 1

further reading

DETR

Modernising Local Government: In Touch With The People. 1998.

DETR / Warwick research papers on Best Value

notably: Paper 6 (02/1999) Best Value Through Competition, Benchmarking and Performance Networks.

Paper 7 (02/1999) Achieving Best Value Through Partnership.

Local Government and the PFI – An Explanatory Note On PFI and Public/Private Partnership In Local Government.

CABINET OFFICE

Modernising government. Cm 4310 March 1999

Better Quality Services. A Handbook on creating partnerships through market testing and contracting out. The Stationery Office 1998.

Competing for Quality. Cabinet Office Policy Review.

Efficiency in Civil Government Procurement. HM Treasury/Cabinet Office 1998.

HM TREASURY

Government Procurement Policy Guidelines

CUP (Central Unit on Procurement) guidance: notably guidance notes 58-61 on Contracting For Strategic Services

PFI Taskforce guidance

notably: Partnerships For Prosperity (Nov 97)

A Step By Step Guide To The Procurement Process (revised April 1998)

How To Appoint and Manage Professional Advisers

Policy Statement No 4: Disclosure of Information and Consultation with Staff and Other Interested Parties.

Technical Note: How To Follow EC Procurement Procedures and Advertise In the OJEC.

Colfax school, Dorset, A Case Study On the First DBFO School Project

Constructing the Best Government Client: The Government Client Improvement Study.

Joint note with DETR on environmental issues in procurement.

MOD

Code of Practice For TUPE Transfers In MoD Contracts. Partnership Sourcing Ltd. Partnering between MoD and its suppliers

OTHER PUBLICATIONS

New Connections - joined up access to public services. Kay Holman 1999.

PFI and Social Housing. The 4P's. 1998.

Partnerships for Best Value. Mark Campbell and Geoffrey Filkin KPMG/New Local Government Network 1998.

Local Government Social Partners: Proposals to the Government for the amendment of Part II of the Local Government Act 1988.

Starting to Modernise. Geoffrey Filkin and others. New Local Government Network. 1999.

Mutual Obligations - NCVO's Guide to Contracting with Public Bodies

UK Voluntary Sector Almanac 1998-99.

Holistic government. Perri 6. Demos 1997.

LOCAL AUTHORITY REPORTS

Guide to Market Testing. Buckinghamshire County Council. Jeff Gaskell 1999.

Guide to Good Commercial Practice. Hertfordshire County Council.

Towards Best Value. A report by the Open University Business School on Newham Council's first year as a pilot authority. Newham Council 1999.

Best Value Procurement Support Pack. Newham Council 1999.

Client Manager Standards. Hertfordshire County Council 1994.



Local authorities are engaged in the challenge to deliver Best Value for their public, yet many are finding it difficult to undertake in practice. The central problem is that councils lack a clear methodology as to how to improve their services. Strategic procurement is at the heart of achieving Best Value.

This report commissioned by the New Local Government Network and written by Geoffrey Filkin, draws on a range of experts from the private and public sector and suggests that a methodology based on intelligent strategic procurement is the appropriate basis for improving performance and delivering the outcomes that the public want.

The report provides practical examples from leading Best Value local authorities that are moving in this direction and explains how:

- Best Value reviews must focus on improving performance;
- strategic decisions about procurement and investment are needed;
- the key staffing issues can be addressed;
- major changes in service delivery will offer improved services to the public
- to decide whether to make or buy a function
- members need to drive these changes to deliver outcomes their public want.

JR
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