

Competitive tendering

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Local authorities now have to observe market disciplines in a number of their functions;¹ most importantly, the Local Government Act, 1988 requires them to contract out some of their services.² They have to seek competitive tenders from private companies or groups formed from their own employees. The idea, once more, is to promote a more enabling style of local government in which the council coordinates the operations of other bodies carrying out the functions formerly undertaken by local authorities themselves. The aims are to separate the regulation of functions from their provision and to increase the efficiency with which services are delivered.

Increasing the role of the private sector in government services, including those of central government and other public bodies, has been promoted since 1979. For local government it began in 1980 with a requirement in the Local Government, Planning and Land Act that direct labour organisations should have a rate of return on capital of at least 5 per cent, and that work had to be contracted out for the construction and maintenance of highways and buildings. Tendering was subject to exceptions, and direct labour organisations continued to do most council work. In the following years central government tried to encourage local authorities to consider the option.³ The definition of activities was widened. Some local authorities, such as Southend and Wandsworth, have put services out to tender of their own accord.

The ideas which informed the new policies at both the local and central levels reflected an awareness of changing organisational practice in the private sector – the move to smaller central offices and the contracting out of service functions.⁴ The policy had been advocated by organisations such as the Centre for Policy Studies and the Adam Smith Institute, though professional bodies such as the Chartered Institute for Public Finance and Accountancy had also made the case for competition in the direct works functions.⁵ It appealed to ministers because the policies appeared to help the private sector.

In 1985 the government started to plan to extend competitive tendering to other activities,⁶ but, as with other policies, the pace and quality of the change differed markedly after 1987. The Local Government Act, 1988 extended competitive tendering to services such as refuse collection, street cleaning, school catering and parks maintenance. These have been tendered out since August 1989, and the process has to be completed – with the exception of parks maintenance – by October 1991.

Central government can add other activities to the list, subject to consultation; and council building and maintenance work were added in April 1990. The management of local authority sport and leisure facilities has also been included, with local authorities keeping control over pricing, opening hours and admissions policies. This change has to be made in 1992 and 1993. The effect may be to limit local authorities' policies that promote the social and educative side of recreation.

The procedures for putting work out to tender are defined precisely: for works contracts at least three persons must be invited to carry out work, sufficient publicity of the contract must be provided, and the organisation entering into the contract must not restrict, distort or prevent competition. The Secretary of State can direct an authority to terminate a contract and seek another if he or she thinks it has not fulfilled the conditions of the Act. Central government has started to use these powers over a few councils, such as Hillingdon and Bristol, and threatened to use them for Glasgow District Council.

Local authorities may not take into account non-commercial matters when awarding supply and works contracts. Non-commercial matters include the terms and conditions of employment by contractors; the conduct of contractors in industrial disputes; the country of origin of supplies or of the company; and the political,

industrial or sectarian affiliations of contractors. The Secretary of State has the power to add to the list. The Act attempts to make illegal the policies known as 'contract compliance', and the Secretary of State can specify what questions and information a local authority may ask from a contractor. Recently guidelines designed to prevent anti-competitive practices have been tightened.

The Act, then, restricts local authority discretionary powers and sets out in detail the procedures to be followed. It replaces the discretionary powers of an authority with market disciplines. A local authority is prevented from pursuing policies affecting the way it provides these services, such as a purchasing policy to promote local economic development. The Act introduces new powers for central government, such as the power to close down a direct labour organisation or to prohibit a local authority from unfairly awarding a contract to its own direct labour organisation. As with other changes in the role of local government, central government can have a directive role.

Contracting out changes the role of the local authority. It reduces the cost of providing the services and may increase efficiency.⁷ The other advantages claimed are flexibility and the reduction of the size of bureaucracies. It reduces the number of staff. There may be spin-offs for the authority more generally through the spread of commercial attitudes and practices. As a result the local authority's role becomes supervisory and monitoring, rather than providing. The role of councillors to intervene in the detail of service provision is curtailed. Because the contracts have to be agreed, an authority has to plan service provision and budgets further ahead than formerly.⁸

Because other organisations are providing the services, with the authority acting only as a regulatory body, contracting out appears to make local government the enabling rather than the providing authority. But how much discretion do local authorities retain? They have a supervisory role, and the contracts can be changed if the local authority is dissatisfied. The ability of local authorities to pursue social or welfare objectives when awarding or monitoring contracts is, however, severely limited. The quasi-market for local government services, intended to resemble the real market as much as possible, is being introduced in a way that reduces local government's discretion and hence in one sense its enabling capacity.

Part of the change in the role of local government depends on the way contracting out is carried out. The experience of competitive tendering since the Act has shown that about 75 per cent of contracts have gone to former in-house organisations set up by the local authorities as management buy-outs.⁹ They are concentrated in Labour controlled authorities, though most Conservative authorities are also awarding in-house contracts. In Scotland, where the legislative provisions are identical, few private contracts have been awarded.

Local authorities have not been as tied down by the Act as the government wished. They have managed to retain some control, though the in-house organisations have had to engage in cost cutting to win contracts. The outcome may be the same as if private companies obtained the contracts. The problem is in developing a competitive market for local government services. Companies seem to be reluctant to commit themselves to fixed price rather than cost-plus contracts and are happier to place their bids where they are politically welcome.¹⁰

Another change separating provision from regulation is the proposal to reform the functions of waste disposal authorities. Waste disposal authorities have to reorganise their operations into local authority companies at 'arms' length' from local authorities.¹¹ The aim is to separate waste disposal services from other environmental or consumer services. The reform includes a more finely targeted default power for the Secretary of State, and powers of inspection. Continuing the theme of contracting out, local authorities have to seek competitive tenders for waste.

References

1. For a review of the extension of market principles into local government from 1979-1985, see M. Loughlin, *Local Government in the Modern State*, London, Sweet and Maxwell, 1986, pp.167-171.
2. For a review, see K. Walsh, 'Competition and service in local government', in J. Stewart and G. Stoker (eds.), *The Future of Local Government*, London, Macmillan, 1989.
3. Department of the Environment, *Housing Maintenance: Value for Money and Contracting Out*, Circular 12/83, London, HMSO, 1983.

4. This point refers to the controversial debate about how post industrial social and economic change has affected local government, as reviewed by G. Stoker, 'Creating a local government for a post-fordist society: the Thatcherite project', in J. Stewart and G. Stoker (eds.), *The Future of Local Government*, Basingstoke, Macmillan, 1985.
5. Walsh, op.cit. p.31-32.
6. Department of the Environment, Consultation paper, *Competition in the Provision of Local Authority Services*, London, Department of the Environment, 1985.
7. The government and various studies expect savings to be 20 per cent, for example S. Domberger, S. Meadowcroft and D. Thompson, 'Competitive tendering and efficiency: the case of refuse collection', *Fiscal Studies*, 7, 1986, pp.69-87; Audit Commission, *Competitiveness and Contracting Out of Local Authorities Services*, Occasional Paper No.3, London, HMSO, 1987; Audit Commission, *Competitive Management of Parks and Open Spaces*, London, HMSO, 1988. Another study – SCAT, *The Price of Winning*, Manchester, SCAT 1989 – showed that some savings were offset by extra administrative costs.
8. Walsh, op.cit. p.50.
9. *Municipal Journal*, 21, 25 May 1990, pp.27-29.
10. *Local Government Chronicle*, 6 October 1989, p.35.
11. Department of the Environment and Welsh Office, *The Role and Functions of Waste Disposal Authorities*, London, Department of the Environment, 1988.