

A new role for local government

Contract Management: A New Role for Local Government

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A key element of the government's approach to local government is the introduction of market mechanisms where possible. The Local Government Planning and Land Act 1980 introduced competition for building and highways construction and maintenance. The Transport Act 1985 required local authorities to establish arm's length companies for public transport operating on a competitive basis. There are now proposals to introduce competitive processes into the education and housing services. In this paper I shall consider the implications of the Local Government Act 1988, which will require competitive tendering for certain defined activities.

The Local Government Act 1988

The Local Government Act 1988 applies to refuse collection, street cleaning, catering, cleaning of buildings, grounds maintenance, vehicle maintenance and leisure services. If the authority wishes to carry out the work by its own directly employed labour, then it must win the right to do so by going through a process of competitive tendering, and bidding successfully against any private sector company that chooses to bid for the contract. Private sector companies must be allowed to bid

on the same basis as the direct labour organisation (DLO). The local authorities' actions in the competitive process will be strongly limited by the requirement not to do anything that would restrict, distort or prevent competition. This very general provision could apply to any decision that the local authority might make. The local authority need not accept the lowest tender, but will need a good reason for not doing so. If the authority does win the right to do the work by direct labour, then it must keep a separate trading account for each of the defined services, which must make a surplus sufficient to make a specified rate of return on capital. No cross subsidisation between trading accounts will be allowed. The legislation must be introduced according to a strict timetable that has been specified by the government.

The Act also outlaws various aspects of contract compliance. A number of activities are defined as non-commercial, for example terms and conditions of employment and arrangements for promotion, training and transfer. The authority may not ask questions about these matters or take them into account in awarding the contract. There are some specific exceptions, notably so that the authority may fulfil its duties under the Race Relations Act, but, generally, the effect will be to limit local authority contract compliance activity. Policies that are intended to provide equal opportunities for women or for people with disabilities may not be considered in awarding contracts. A Lords' amendment to allow action in favour of people with disabilities was removed when the bill returned to the Commons.

This legislation will have a considerable impact on local authorities. Though some of the services are essentially supportive to the major services provided by local government, they are pervasive and there are few aspects of an authority's activities that will be wholly unaffected. The government is also likely to extend the competitive tendering regime to other services, should it win the next election. Local authority members and officers will have to learn to manage competition.

The effects of competition

The need to go through a tender process will require authorities to consider the quality of the services that they provide. Unless an authority can define clearly the service that it wants, then it will not be

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able to write a tender specification. It is unlikely, in cases of the services that we are concerned with, that the authority already has detailed knowledge of the standards that it provides at present. Developing detailed knowledge of the services that are to be provided will require a great deal of effort in developing descriptions of the work, for example measuring buildings for cleaning, defining the meals to be provided or deciding how grounds should be maintained. The determination of service quality is one of the key aspects of local authority policy-making and management highlighted by the need to engage in competitive tendering.

The size, length and packaging of contracts can all vary and authorities will need to make strategic decisions on what is the best form in which to let contracts. The government has proposed limitations on the minimum and maximum lengths of contract, but decisions will be possible within these limits. Authorities will need to use what freedom they have to ensure that, in future, contracts can run over the same periods if necessary. A residential home, for example, might want to ensure that cleaning and catering contracts ran over the same periods, so that relations between contractors could be clarified more easily.

The decisions on the size and packaging of the contracts are crucial. Large contracts may work to the benefit of the authority, through allowing economies of scale, for example in the purchasing of food. But the larger the contract, the more the authority faces the danger of being trapped in monopolistic relationships with contractors or direct labour organisations. The authority can package contracts in different ways. It might let large contracts separately for each service subject to competitive tendering, for example for catering or cleaning. It might, for example, let a single contract for cleaning all the establishments in the local authority. It might, alternatively, want to let a contract that combined activities, for example letting a single contract for cleaning, catering and grounds maintenance in a residential establishment.

Decisions on quality, size, length and packaging are crucial, because they will influence the way that the authority is to manage contracts in future. They are decisions that should be made from the point of view of what is best for the client. Managing a series of small contracts will require a different pattern of management from the management of single large contracts. It will be necessary to make

decisions about the structure of contracts in the light of the sort of culture that the authority wishes to develop.

Contracts and specifications

There are a number of matters that must be dealt with in the contract conditions, for example insurance, price increases, taxation and capital equipment. But perhaps the most important matter with which the contract must deal is what shall be done should the contractor or DLO fail adequately to deliver the service. In the case of major failure, for example simply not doing the work at all, then the contractor is in breach of contract, and the authority may simply wish to terminate the contract. In this case the situation is relatively clear. The service has not been provided and the contract is not being adhered to. The more difficult situation will occur when the contractor or DLO is doing the work but is not doing it very well. The floors are being cleaned, but not very well; the meals are being delivered, but they are not particularly edible. In such cases it is not possible simply to withdraw from the contract. Contractors must be allowed the opportunity to perform adequately and cannot be excessively penalised for minor failures in performance. It is important that those letting contracts should have thought carefully about how they will deal with minor default, and have embodied their approach clearly in the contract conditions.

The most important job to be done, if the authority is to operate compulsory competitive tendering effectively, is to specify the work that is to be done clearly and accurately. Specifications may be extremely detailed or very general. Certain types of work, for example professional services, are difficult to specify objectively and, rather than writing a detailed specification, authorities will often look for other guarantees of performance, such as skill, training and the qualifications of the staff. In the case of cleaning and catering it is possible to write extremely detailed specifications, if it is felt to be either necessary or desirable. Even so, some matters, for example the attitude towards residents, may be difficult to state objectively. Local authorities will need to decide the level of detail they want to specify for those bidding for the work.

There are a number of factors that will determine the level of detail decided on for specifications. First there will be the skill of the

authority, both actually to design the specification and then to monitor its implementation. Local authorities may lack the skill for doing highly detailed specification work, and it may not be worth hiring in expensive consultants. In many cases it will not matter very much if we get things a little wrong, especially if getting things right would cost a great deal. In many areas of grassland, for example, the detailed standards of the cut will not matter very much.

The second factor that will determine the appropriate level of detail in the specification is the ability of the local authority to monitor. At its simplest, if the authority cannot monitor the specification then it is not worth specifying. This means that it must be worth the authority's time to do the monitoring, that it has developed methods of monitoring, and that the monitoring does not cost too much. Those who will do the monitoring of the contracts will need training to do so, and they will also need guidance in the form of a monitoring document, which will reflect the contents of the specification. If the specification cannot be reflected in a monitoring document then it has little purpose.

The third factor that will determine the level of detail in the specification is the cost of doing the specification work. It is not worth specifying if the cost of doing so is greater than any benefit that could accrue. The danger of an over-detailed specification is that it simply creates an extensive set of loopholes, which contractors will be able to exploit. It will also require extensive monitoring, and may mean an extensive contract monitoring bureaucracy. When specifying the contract the authority will need to consider the management implications, especially at the local level. The local managers must be enabled to manage the contract without being forced into punitive relationships with contractors.

Evaluating, managing and monitoring contracts

The authority will need to evaluate the ability of contractors to do the work as well as evaluating the cost of the contract. In the case of labour intensive service provision it will be necessary to consider the quality of staff and even to involve contractors' staff in the authority's training programme. Evaluation may well be difficult in the case of the many new firms that are likely to start up in response to the legislation.

Monitoring and managing contracts, whether the work is done by the DLO or by an external contractor, will make new demands on managers. The legislation will have a particularly strong impact on middle managers, whose roles are likely to change more than those of senior managers and front-line staff. Local authorities will need to develop the skills of managing and monitoring contracts.

Controlling the output of contractors and DLOs will involve both quality control and quality assurance. Quality control is retrospective. It involves the inspection of the work after it has been done in order to determine whether it comes up to a pre-defined standard. Quality control can serve the purpose of preventing poor products reaching the market in the case of manufactured goods. Defect levels can be specified, and inspection used to ensure that these levels are not exceeded. This approach is difficult for services, which cannot be made, stored and tested. Services, in the extreme, go out of existence as they are produced. It is more important than in the case of manufactured goods to get it right first time, which requires quality assurance.

There is a good deal of work now going on to develop quality assurance processes for local authority services. The development is likely to be slow, and the problems of monitoring contracts will not be solved simply by requiring that contractors must have accredited assurance procedures. The approaches that can be used for the control and assurance of quality in manufacturing industry cannot be used in local authorities. It is also important that the elected members, the users and the public are involved in the monitoring of contract performance, if accountability is to be maintained.

Internal trading

Most of the contracts that are now being let will be won by the local authorities' own DLOs, but that does not mean that the operation and management of local government will not change. The requirement that authorities keep trading accounts for the defined competitive services will have major implications. The local authority will be forced to separate out client and contractor roles, possibly into separate departments. Similar separation may be necessary at the committee

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level, otherwise elected members may find themselves facing difficult conflicts of interest.

Present local authority information systems are inadequate for the running of trading accounts. They are not developed to provide the sort of information that is necessary to manage departments that do not have a guaranteed income. The DLOs will only be paid for work done to the required standard, and there is no necessary reason why total income should be greater than total cost. Information frequently comes to operational managers too late, and in a form that is difficult to use. Those who must manage trading services must think carefully about what they will need in order to meet contractual obligations and to be sure of making a surplus of income over expenditure.

DLOs will have to be managed as quasi-independent profit centres. Local authorities will need to examine their standing orders, schemes of delegation and committee reporting systems in order to see whether they are appropriate to the constraints under which competitive services must manage. Generally it will be necessary to allow the managers of DLOs to have more freedom to determine their pattern of management, though along with that greater freedom will need to go strong forms of accountability. In certain cases DLO managers will need to be given greater autonomy in the terms and conditions on which staff are appointed, and in such activities as the purchase of materials.

The need to examine costs, in order to ensure that DLOs can be effective in competition against the private sector, will lead to a questioning of the costs and nature of central services. DLOs and service departments pay for the services they receive from personnel, finance, law, computers and other central departments through the central establishment charge. These services are now being closely examined by local authorities, under pressure from those who manage DLOs, and there are likely to be great changes in methods of internal charging in the future. In effect, central departments themselves will be operating on a trading basis, stating clearly what services they are offering, quoting unit prices for them, and allowing the client more choice in the level of central services that they use.

Competition and social services

The requirement to engage in competitive tendering and internal trading for specified services will have a direct impact upon local authority social services departments. As users of catering, cleaning and grounds maintenance services, in particular, they will be the clients for these services. There are some exemptions in the legislation which will apply to social services. Catering is excluded in the case of residential establishments where meals are prepared for residents on the premises. Cleaning is also excluded where it is of dwellings, which would exclude large parts, if not all, of residential establishments. The work of individuals may be excluded when the defined activity, catering, cleaning or whatever, is only an incidental part of their activity. The preparation of meals on wheels, though not delivery, falls under the provision of the legislation. But, apart from these exceptions, competition will apply to social services as to other departments

The legislation may also have indirect effects on the social policy of local authorities. Some authorities provide work for those who might otherwise find it difficult to gain employment because of disabilities. It will be difficult to continue such practices, for example in road sweeping, and, if the authority considers it important to do so, then it will need to write the practice into the specification.

It is important that the managers of social services have a strong influence on the way that contracts are packaged. Large contracts may not be to the advantage of service in a residential home. The social services department will need to consider whether it is to let contracts establishment by establishment, area by area, or using a combination of methods. The department may wish to let combined contracts for individual establishments, where a single contractor will undertake to provide catering, cleaning and grounds maintenance services. Uniform patterns of contracting may not be to the best advantage of the authority.

When specifying catering, cleaning and other services to be provided to residential establishments it will be necessary to consider the special context of social services. The experience of the National Health Service has shown the difficulty of specifying the softer, care elements of service. It is easy enough for a perfectly adequate meal to be provided in an uncaring and insensitive way. It will also be necessary to consider how accidents are to be dealt with, for example spillages.

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Again, experience in the hospitals has shown that it is difficult to deal with anything that interrupts the normal pattern of service.

Managers will need to be trained to manage staff who are not employees of the authority. This will be more difficult the greater the number of contractors who work in an establishment. Given the nature of social services establishments, it is necessary to be especially careful about the staff that are employed by the contractors or DLOs. Social services departments will want to develop strong procedures for the vetting of staff and to retain the power to exclude anyone whom they feel is undesirable.

The most important impact of competitive tendering on social services, as for other departments, will be through the pressure to be clear on the nature of the services that they want from contractors or DLOs and the standards they must meet. The need to develop contractors that will run for a number of years will encourage more forward planning by local authorities.

Competition and the future of local government

Local government is undergoing fundamental change. As well as the competition provisions in the Local Government Act 1988, there are to be fundamental changes in education, housing and local government finance. Social services are also changing radically. In effect local government is to be reorganised far more fundamentally than in 1974. The management of that change will be the major priority for local authority officers and members over the next few years.

The departmental structures of local authorities will change as client and contractor roles are separated. Initially local authorities may go for minimal change, but over time, there is likely to be radical separation. When combined with the pressure for decentralisation, the impact of tendering on the central management of the local authority is likely to be that more of the work shifts to the edge of the organisation.

The competition for local authority services will not be great, in the first instance, though it is likely to grow over time. Local authorities will need to get used to the idea of losing contracts, and be prepared to win them back later. It is not necessarily the case that a service, once lost, will never be won back, though the authority will need a clear tender strategy if it is to do so. Much of the competition is likely to

come from other authorities, and decisions will have to be made about the extent to which the authority will compete with, and allow competition from, other authorities. It is likely that a strong inter-authority market will develop over the next decade.

There is strong pressure both in local government itself and from central government to decentralise local authority pay bargaining. From the government's point of view this decentralisation is part of the process of allowing labour markets to work freely. Trade unions will fight the threat to hard won pay and conditions. The need to compete is likely to lead many authorities to change pay and conditions. Bonus systems, in particular, are likely to be abandoned. There is no doubt that competitive tendering poses a major threat to levels of employment and to the pay and conditions of local authority workers.

The introduction of competitive tendering will lead to an emphasis on quality and standards. In effect, competition will lead to a form of zero-based budgeting. The process of specification will lead authorities to examine what they do now, and how each aspect of their activity contributes to the service that they want to deliver. There is little point in specifying services without thinking carefully about the outcomes that they are intended to bring about. The requirement to let contracts that will run for a period of years will mean that authorities must plan more explicitly and effectively and consider how they will deal with the impact of changing circumstances on the contractual services.

The future of the local authority is, in part, a future of contract management. This means that the authority must be precise about the services that it wishes to have provided, and what they will do in the case of contractual difficulty. Managers of contracts will have to manage people who are not the employees of the authority and must deal with other organisations more than has been their practice. The local authority will be less self-sufficient than has been the case up to now. They will be part of a network that must be created, managed and controlled if services are to be delivered effectively.