

a practical guide to outsourcing

in the public sector

HELP



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Printed on stock sourced from well-managed forests, ISO 14001.

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Published by:

CIPFA \ THE CHARTERED INSTITUTE OF PUBLIC FINANCE AND ACCOUNTANCY

77 Mansell Street, London E1 8AN

020 7543 5600 \ publications@cipfa.org \ www.cipfa.org

© July 2015 CIPFA

ISBN 978 1 84508 439 4

Edited by Sarah Williams (sarah@redlane.org.uk)

Designed and typeset by Ministry of Design, Bath
(www.ministryofdesign.co.uk)

Printed by Trident Printing, London

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Acknowledgements

This publication was commissioned by the CIPFA Commissioning Joint Committee.

CIPFA would like to record its thanks to the following people, who provided invaluable guidance to the author of this publication, Christopher Loy:

Members of the CIPFA Commissioning Joint Committee:

Norma Atlay	Association of Local Authority Treasurers (ALAT)
Richard Auton	Independent
Chris Buss	Wandsworth Council
Doug Forbes	Consultant
John Hesp	Surrey County Council
John Maddocks	CIPFA
Bernard Wyld	Society for Public Architecture, Construction, Engineering & Surveying (SPACES)

Members of the CIPFA Social Care and Welfare Reform Panel:

Paul Carey-Kent	CIPFA
Alistair Rush	Wandsworth Council

CIPFA would also like to record its thanks to the following people for giving permission to the author to quote from articles and other publications or to use examples and case studies from their organisations:

Mo Baines	APSE
Vivienne Buckland	Leeds City Council
Julie Fisher	Surrey County Council
Carla-Maria Heath	City of London Corporation
Nigel Hillier	South Yorkshire Police
Helen Maneuf	Hertfordshire County Council
Kevin Nacey	Somerset County Council
Joanne Pitt	CIPFA
John Tizard	Independent strategic advisor and commentator
Alan Wilson	Oxford Economics

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Glossary

ALMO	arm's-length management organisation (see section 2.6)
alternative delivery model	alternative to traditional in-house management and outsourcing (see section 11)
bidder	supplier who bids for an outsourcing contract
CCT	compulsory competitive tendering (see section 2.2)
client	client organisation in its role as commissioner of services
client organisation	public sector organisation that commissions services from internal and/or third party providers (see also 'contracting authority')
commissioning	see section 2.1
contracting authority	public sector organisation that is subject to EU rules in respect of the award of contracts (see also 'client organisation')
contract notice	prescribed form of notice published in OJEU, which must normally be used as the call for competition under EU rules
delivery model	in-house management, outsourcing or alternative delivery model (contrast with 'method of delivery')
end users	people for whose benefit services are provided
EU rules	the European Union's public procurement rules (see section 6.2)
GDP	gross domestic product – indicator of the size of a country's economy
HR	human resources
inputs	see section 5.7.2
IT	information technology
KPI	key performance indicator
market engagement	engagement with suppliers prior to the commencement of procurement, including market soundings and market warming
market soundings	engagement with suppliers prior to the commencement of procurement to obtain information from them that may be useful in planning an outsourcing project

market testing	testing the value for money of an incumbent provider by tendering the service and enabling the incumbent to compete against other bidders (may be done either by the client to test the value for money of an in-house provider or by a supplier to test the value for money of a sub-contractor)
market warming	engagement with suppliers prior to the commencement of procurement to inform them about an outsourcing project and encourage them to bid
method of delivery	the inputs by which a service output or outcome is achieved (contrast with 'delivery model')
NAO	National Audit Office – the public body responsible for scrutinising public spending on behalf of Parliament
the new regulations	the Public Contracts Regulations 2015
Ofsted	public body responsible for the inspection of state-funded schools in England
OJEU	<i>Official Journal of the European Union</i>
OJEU notice	notice published in OJEU as the call for competition under EU rules
OJEU thresholds	specified thresholds in terms of expected contract value above which contracts let by public sector organisations in the European Union must normally be advertised in OJEU
outcomes	see section 5.7.2
outputs	see section 5.7.2
outsourcing	see section 2.1
PFI	private finance initiative – see section 5.6.5
PIN	prior information notice – prescribed form of notice published in OJEU, containing less detail than a contract notice, which is usually used to inform potential bidders of forthcoming opportunities, but may in some circumstances be used as the call for competition under EU rules
potential bidder	supplier who may bid for a specific outsourcing contract
prospective bidder	supplier who expresses an interest in bidding for an outsourcing contract
provider	entity that performs services commissioned by the client and which may be either a part of the client organisation or a third party
sourcing project	see section 3.2

sourcing strategy	see section 3.2
supplier	organisation that provides outsourced services under contracts
the Teckal exemption	see section 6.2.4
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations
voluntary organisation	see section 5.4.2
voluntary sector	see section 5.4.2

SECTION 1

Introduction

1.1 PURPOSE OF THIS GUIDE

This is a practical guide for public sector organisations who are thinking of outsourcing a particular service, reviewing an existing outsourcing arrangement or rethinking their entire strategy in relation to outsourcing. It sets out the issues they need to consider, including whether outsourcing is indeed the best option, and explains what is required at each stage in order to maximise the chances of a successful outcome.

There is already an abundance of literature on this subject, but much of it originates from those who have a vested interest in either supporting or opposing outsourcing. There is some good, impartial guidance (of which various reports published by the National Audit Office are notable examples) but this tends to focus on issues with particular contracts or to set out general principles of good practice. Until now, there has been no practical step-by-step guide available from an impartial source; this is the gap that this publication seeks to fill.

The factual material and references to public sector organisations in this guide are specific to England unless stated otherwise. The main principles are, however, applicable to public sector organisations everywhere.

1.2 EXECUTIVE SUMMARY

Since the introduction of compulsory competitive tendering in the 1980s, outsourcing has been extended to more and more areas of public service provision in the UK. In the wake of the 2008 financial crisis, the pressure to outsource has intensified, with Prime Minister David Cameron declaring in July 2011 that henceforward the state would have to justify why it made sense to *'run a monopoly'*.

The outsourcing market in the UK today is huge. A review based on data from 2010 indicated that it was worth £72bn per annum, accounted for around 3% of GDP and employed around 4% of the workforce. It is likely that there has been a significant increase since then as the government has extended outsourcing into new areas. International comparisons show that the UK has one of the highest proportions of outsourced public services in the world.

While the advance of public sector outsourcing seems to be inexorable, there is no conclusive evidence to support the view that this trend is generally beneficial. Indeed there are numerous examples of outsourcing arrangements that have failed, in some cases spectacularly. There are also numerous examples of services having been brought back in house when contracts have expired. These examples do not, however, provide conclusive evidence to support the opposite view – that outsourcing is a flawed concept in principle; they merely show that success is not guaranteed.

This guide has two key messages for practitioners: the first, that they should think carefully before taking a decision to proceed with outsourcing, and the second, that having decided to outsource, they must plan and manage the project very carefully in order to maximise the chances of success.

Decisions to outsource should follow an appraisal of the pros and cons of different delivery models, including in-house solutions. Such decisions are, however, best taken within the framework of a corporate sourcing strategy, which includes plans for how and when the delivery models for various services will be reviewed and how the organisation's resources will be deployed to ensure different sourcing projects are delivered successfully.

Public sector clients commonly fail to plan, procure and manage their outsourcing projects properly, with the result that projects either fail in an obvious way or, more insidiously, fall short of achieving their full potential benefits. The planning phase is the most critical; investment of time, effort and resources at this stage is the key to success as the project is procured and delivered.

Clients need to think through all the key issues before commencing procurement of an outsourcing project. These issues include:

- what their objectives are for the service being outsourced
- how outsourcing will deliver benefits that cannot be achieved in house
- to what extent the project will be innovative or based on a tried-and-tested approach
- what type of procurement process will be used
- what type of contractual arrangement there will be with the supplier
- to what extent requirements will be expressed in terms of inputs, outputs and outcomes
- what the contractual incentives will be on the supplier to perform
- how the contract and the relationship with the supplier will be managed
- what will happen when the contract ends.

To inform their thinking about these issues clients should:

- learn lessons from other outsourcing projects delivered by their own and other organisations
- consult with key stakeholders, especially end users and employees
- engage with suppliers.

Meaningful engagement with suppliers is critical in order for clients to test the realism of their assumptions about what outsourcing can deliver. Such engagement therefore needs to start before a decision is taken to proceed with outsourcing.

Clients also need to consider how they will maintain employee morale during a period of transition and uncertainty. This is critical in order to maintain productivity during the transitional period, avoid an exodus of disaffected employees and ensure that employees transferring to the new supplier are motivated to perform well.

Where a decision is taken to outsource, there should be a presumption in favour of competition, as restricting competition may preclude the best bids and thereby result in a

worse outcome. Competition should only be restricted where there is a sound reason why this will achieve better value for money than a procurement process open to any interested party.

Clients need to be aware of the internal and public procurement rules that apply to their outsourcing projects. Under the EU rules, which have recently been revised, there is a specified threshold above which contracts for most services must be advertised in the EU's official journal, OJEU, in which case the contract must be procured in accordance with one of five specified procedures. Contracts for certain services – notably in the areas of social care and health care – benefit from a light-touch regime, under which the prescribed procedures do not have to be used and only contracts that exceed a considerably higher threshold than the usual ones must be advertised in OJEU. There are also new rules that are specific to England, which require certain contracts below the EU thresholds to be advertised on a government website.

As an outsourcing project proceeds to selection of a preferred bidder, with resources focused on the finalisation of the contract, clients often neglect the need for both parties to begin to mobilise for handover. It is essential that sufficient time and effort is devoted to this exercise; otherwise performance is likely to dip at the beginning of the operational phase, which may jeopardise the overall success of the project. Adequate time for mobilisation therefore needs to be built into the project plan and, if the procurement process is completed later than expected, handover may need to be postponed.

Contract management is a much undervalued discipline, with the result that public sector organisations often fail to recognise the levels of resources and skills that are needed on the client side during the operational phase. The client team requires a combination of commercial, financial and administrative skills in order to manage the contract effectively. It also requires good interpersonal and negotiating skills in order to manage the relationship with the supplier.

As an outsourcing contract approaches expiry, sufficient time needs to be allowed for a proper appraisal of options for future delivery and then for implementation of the chosen solution. Planning may need to commence as much as two years prior to expiry to allow time for re-tendering, should that be part of the solution. An unplanned extension of the existing contract should be avoided, not only because this may breach procurement rules, but also because the supplier may be unwilling to continue, or unable to maintain its performance, if given short notice of the client's wish to extend.

It is easy to get bogged down in the day-to-day issues of managing a contract, but it is important for the parties to carry out periodic reviews of the written contract and the relationship between them. This enables the outsourcing arrangement to be adapted to reflect changing circumstances and to meet current needs. A final review should be carried out shortly after the contract has ended; lessons learned can then be fed into the organisation's sourcing strategy and used to improve the delivery of future outsourcing projects.

When comparing an outsourcing proposal with other delivery options, clients may find it useful to consider whether the improvements that the supplier might deliver under outsourcing – such as making changes to working practices and streamlining decision-making processes – might be better delivered in house. The latter approach could enable

savings to be implemented more quickly and, by avoiding the procurement and contract management costs that an outsourcing project entails, yield a higher net saving to the client organisation.

There are various models for delivering public services other than in-house management and a straightforward outsourcing contract. These include establishing separate entities to provide services, shared services and assisting other organisations to provide services. The use of these models is becoming increasingly common in the UK and should be considered as part of the corporate sourcing strategy.

1.3 STRUCTURE OF THIS GUIDE

Section 2 describes the seemingly inexorable advance of the public sector outsourcing market in the UK, including the increasing involvement of voluntary and private sector suppliers in the provision of social care and health care. It provides an assessment of the size of the UK market and some international comparisons. It describes some of the successes and failures of outsourcing and explains that these provide useful lessons for practitioners who are trying to decide whether outsourcing is the right solution or who are planning an outsourcing project. It also provides examples of organisations that have recently brought services back in house.

Section 3 explains how a public sector organisation should go about deciding the best ways to deliver its various services: in-house management, outsourcing or alternative delivery models. It recommends a strategic approach to sourcing expressed in a corporate sourcing strategy. It describes the pros and cons of outsourcing and other delivery models. Finally it explains how market testing may be used to assess the efficiency of an in-house provider.

Section 4 describes what needs to be done to prepare for an outsourcing project. It argues that considerable upfront work is required to determine whether outsourcing is the right solution and, if a decision is taken to go ahead with outsourcing, to ensure that the project is managed properly. It explains the importance of learning lessons from other projects and consulting with end users, employees and other stakeholders. It also argues that engaging with suppliers before procurement commences is essential in order to ensure that the project is based on a sound understanding of commercial realities and what the market can deliver. Finally it describes how resources should be planned and marshalled in order to deliver a project successfully.

Section 5 sets out the key issues that clients need to consider before they commence procurement, including what their objectives are for the service being outsourced, how they will procure a supplier, the type of contractual arrangement that will be used, what the length of the contract will be, how service requirements will be expressed in the contract, what type of KPIs and other incentives to perform will be included in the contract, how the contract and the relationship with the supplier will be managed and what will happen when the contract ends.

Sections 6 to 9 explain what public sector clients need to do at each stage of an outsourcing project to maximise the chances of success.

Section 6 focuses on the procurement phase. It argues that there should be a presumption in favour of competition when services are being outsourced. It provides a summary of the revised procurement rules that came into effect on 26 February 2015, including the EU rules and additional rules that are specific to England. It explains what clients need to do in order to prepare for and manage the procurement process.

Section 7 sets out the specific issues that clients need to address during the mobilisation stage – when both the client and the supplier are preparing for the handover of the services. It stresses the importance of ensuring that sufficient time is allowed for mobilisation.

Section 8 describes the key issues for clients during the operational phase. It explains that equal importance needs to be given to managing the contract and managing the relationship with the supplier. It sets out how the in-house team responsible for managing the contract might be organised. It also recommends that there should be periodic reviews during the operational phase. Finally it describes how clients may change their contracts in response to changing circumstances and needs.

Section 9 describes the different options available to clients when an outsourcing contract is approaching expiry or being terminated early, including re-tendering the service and bringing it back in house. It also recommends that there should be a final review, after the contract has ended, to provide lessons learned and improve the organisation's sourcing strategy.

Section 10 explains that the improvements organisations seek to achieve through outsourcing can sometimes be better achieved by introducing change in house. It suggests a number of in-house solutions, which may be appropriate, depending on the problem that is being addressed.

Section 11 describes a number of alternatives to traditional in-house management and straightforward outsourcing. These include establishing new entities to provide services, collaboration with other public sector organisations and facilitating other organisations to provide services. It argues that these models should be considered as part of the organisation's corporate sourcing strategy, but that clients need to apply a similar degree of rigour to assessing the costs and benefits of these models that they would to an outsourcing proposal.

The guide ends with a **further reading** section for those interested in delving deeper on specific topics.

SECTION 2

Context

2.1 OUTSOURCING AND COMMISSIONING

2.1.1 Definition of outsourcing

There is no generally accepted definition of outsourcing. For the purposes of this guide, it is defined as having the following four characteristics:

- an organisation (the ‘client organisation’) purchases services from a third party (the ‘supplier’)
- the client organisation has previously performed the services itself
- the services are provided for a specified period under a contract between the two parties
- the supplier is responsible for managing the services on behalf of the client organisation.

This definition excludes:

- the purchase of goods, such as stationery
- the supply of utilities, such as water, gas and electricity
- the commissioning of works, such as construction or refurbishment of an office building
- the purchase of services on an ad hoc basis, eg advice from consultants relating to a specific issue or project
- other purchases of services, eg legal or accountancy services, where there is no transfer of management responsibility.

The suppliers of outsourced services to public sector organisations include private sector organisations, voluntary organisations and other public sector organisations.

2.1.2 Commissioning

In recent years, the term commissioning has been increasingly used in relation to public services in the UK, often in connection with outsourcing. It is a general term that is applied to supplies and works, as well as services, and covers the whole process of defining requirements, identifying the best methods of meeting them and ensuring they are met. Outsourcing is one delivery model that may be used to meet requirements.

The Deanne Julius report (see section 2.3) defined commissioning as:

... the process which defines strategic outcomes and seeks to create relationships to ensure these outcomes are delivered ... it covers everything from defining the objectives of a particular procurement, the formal bidding process, project implementation and post project monitoring and evaluation.

Commissioning therefore has a broader meaning than outsourcing; it is best understood in terms of a public sector organisation's role as a commissioner, as distinct from a provider, of services. The part of the organisation that is responsible for commissioning (the 'client') may commission services from various providers, including other parts of its own organisation, as well as well as from third parties. This only counts as outsourcing where a contract is let to a third party for services that the client organisation has previously performed itself.

2.2 DEVELOPMENT OF PUBLIC SECTOR OUTSOURCING IN THE UK

Public sector outsourcing is not a new phenomenon. Colin Cram, an expert on the subject, gives an example from about 100AD, when the Roman army occupying Britain outsourced pottery making to a local manufacturer. However, it is only in recent decades that outsourcing, both by the private and the public sectors, has become prevalent in the UK and elsewhere. While the USA has been at the forefront of this development, the UK has followed closely behind.

Outsourcing of public services in the UK began on a significant scale in the 1980s, when the government under Margaret Thatcher introduced compulsory competitive tendering (CCT) in local government. This was rolled out incrementally and was first applied to services that were provided using mainly manual labour and that were relatively easy to specify. At the time, many local authorities were hostile to outsourcing and so the introduction of CCT caused tension between central and local government. Table 1 sets out the services covered by CCT.

Table 1: Roll-out of CCT across different services

Year	CCT extended to:
Manual services – UK-wide	
1980	■ New construction
	■ Building maintenance
	■ Some highways work
1989	■ Refuse collection
	■ Building cleaning
	■ Street cleaning
	■ Schools and welfare catering
	■ Other catering
	■ Grounds maintenance
	■ Repair and maintenance of vehicles
	■ Management of sports and leisure facilities

Year	CCT extended to:
1994	<ul style="list-style-type: none"> ■ Management of vehicles ■ Security work
Professional services – England only	
1994	<ul style="list-style-type: none"> ■ Housing management ■ Legal services ■ Construction-related professional services
1995	<ul style="list-style-type: none"> ■ IT services ■ Financial services ■ Personnel services

Authorities were required to expose all their existing work for each manual service to CCT, but only a percentage for each professional service.

The NHS and Community Care Act 1990 and certain government policies at the time, such as restrictions on capital expenditure, resulted in local authorities in England transferring care homes to the voluntary and private sectors and outsourcing care services generally. Since then there has been a massive shift in the way local authority funded home care has been provided, with the proportion provided directly by local authorities falling from 95% in 1993 to 8% in 2014. The shift in the pattern of provision of residential care, where the voluntary sector has always had an important role, has been less dramatic, but still very significant. The proportion of local authority funded residential care provided directly by local authorities fell from approximately 27% in 1996 to 4% in 2014, although the reduction was partly a result of changes in methods of providing care, rather than being due simply to outsourcing.

In 1992 the government launched the private finance initiative (PFI). Although the main purpose was to get public construction projects delivered on time and within budget, the PFI model also required the supplier to provide facilities management services, such as security and cleaning; where such services had previously been provided in house, therefore, PFI included an element of outsourcing. The model was initially used by central government departments and the NHS; in October 1996 it was extended to local government through changes to the capital finance regulations. The PFI model is described in section 5.6.5.

The Labour government, elected in 1997, abolished CCT and replaced it with a 'best value' regime. By this time the idea of private sector involvement in the provision of public services was becoming more accepted and many local authorities that had not previously done so were outsourcing services voluntarily.

The Labour government also embraced PFI and took steps both to provide more funding for construction projects to be delivered through this model and to remove blockages in the market. PFI soon became the main method for procuring new school buildings, as well as prisons, hospitals, defence establishments and waste management facilities.

The Labour government was clearly committed to extending the role of the private sector in the provision of public services, but the advent of the Conservative–Liberal Democrat coalition government in 2010 marked a new phase. In July 2011, the government published a white paper on open public services, which was announced in a speech by Prime Minister David

Cameron; he signalled that public services would be opened up to competition except where there was a compelling case for the state to remain a monopoly provider.

The Health and Social Care Act 2012 reorganised the NHS in England with effect from 1 April 2013 and introduced clinical commissioning groups (CCGs). It has encouraged, and to some extent required, the outsourcing of clinical services. The regulator, Monitor, has the power to intervene if it considers that commissioners are acting against patients' interests in restricting competition. Opinions differ about the long-term impact of this on the proportion of NHS expenditure spent on outsourced services. The results of a survey by the *British Medical Journal* (BMJ), published in December 2014, showed that of 3,494 contracts awarded by 182 CCGs since they came into being, 55% were awarded to NHS providers, 33% to the private sector and 12% to the voluntary sector and other providers. However, further evidence, based on a smaller sample who provided information about the value of the contracts in question, indicated that those awarded to private sector suppliers tended to be smaller, accounting for only 5% of the total by value.

Table 2, published by the BBC as part of a report about the BMJ investigation, shows that the proportion of the NHS budget spent on commissioning private sector suppliers increased only from 5.5% to 6.1% between 2012/13 and 2013/14.

Table 2: Proportion of NHS budget spent on commissioning private providers

Year	%
2006/07	2.8
2007/08	3.4
2008/09	3.9
2009/10	4.4
2010/11	4.9
2011/12	5.3
2012/13	5.5
2013/14	6.1

Source: BBC News website, 10 December 2014

Recent developments in the organisation of state-funded schooling in England could be seen as a partial outsourcing of education provision. A large proportion of secondary schools and a significant proportion of primary schools are now academies or free schools. Their governing bodies are appointed by trusts, rather than by the local authority, which means that control of them is transferred to voluntary sector entities. While they remain subject to intervention by central government in certain circumstances, this could be seen as analogous to the client's right to terminate under an outsourcing contract if the supplier fails to perform or becomes insolvent.

One step that the UK government has not yet taken towards the outsourcing of education is to allow state-funded schooling to be provided at a profit. Local authorities and/or central government could let contracts for voluntary and private sector providers to manage existing

schools, provide state-funded places at independent schools and set up new schools funded and regulated by the state. This would be highly controversial, but in the light of recent developments in the social care and health care sectors, it is not difficult to imagine it happening.

The onward march of public sector outsourcing in the UK is confirmed by a survey of 267 local authority chief executives carried out by the *Local Government Chronicle*, in partnership with the Hay Group, in 2014. This showed that 51% expected that their authorities would outsource more services in future and 58% said their authority was moving towards being a 'commissioning council'.

At the time of writing, shortly after the general election of May 2015, it is not yet clear how high a priority outsourcing will be for the new Conservative government. It can be expected, however, that the new government will continue to drive forward the open public services agenda set out in the White Paper of 2011.

2.3 SIZE OF PUBLIC SECTOR OUTSOURCING MARKET IN THE UK

In 2008 the government appointed Dr Deanne Julius CBE to carry out a review of the public services industry in the UK. As part of the review, Oxford Economics was commissioned to carry out research. Using data from 2007/08, they estimated that the annual value of the industry in terms of turnover from outsourced public services was £79bn. With the UK population at the time standing at about 61.5m,¹ this was equivalent to about £1,285 per capita. The report also estimated that the industry accounted for 5.7% of GDP and employed over 1.2m people. Furthermore, it estimated that in the previous 12 years the industry had grown from £42bn to £79bn in real terms.

The figures in the Deanne Julius report are broadly consistent with estimates that Oxford Economics produced for the Business Services Association in November 2012. These were based on data from 2010 and showed that the annual value of outsourced activity was £72bn for the public sector, compared with £126bn for the private sector. Public sector outsourcing represented nearly two-fifths of the value of all public sector procurement, including goods as well as services. The figures in the report imply that the public sector outsourcing market accounted for around 3% of GDP and employed around 4% of the workforce at the time.

Both of the above sets of figures are consistent with those contained in a report *The Role of Major Contractors in the Delivery of Public Services* published by the National Audit Office in November 2013, which was based on data from 2011/12 and 2012/13. This estimated that the total public sector spend on goods and services with third parties was £187bn and that around half of that was for contracted-out services, implying a value for the latter of about £93bn.

The estimates based on the three reports are summarised in table 3.

1. *Revised Annual Mid-Year Population Estimates, 2001 – 2010* (ONS, December 2013).

Table 3: Annual value of outsourced public services in the UK

Report	Based on data from	Estimate (£bn)
Oxford Economics estimates for Deanne Julius review	2007/08	79
Oxford Economics estimates for Business Services Association	2010	72
National Audit Office report	2011/12–2012/13	93

The Oxford Economics report for the Business Services Association also provided a breakdown of public sector outsourced activity. This is replicated in table 4.

Table 4: Breakdown of public sector outsourced activity in the UK

	£bn
IT and data-related services	4.1
Catering	1.6
Combined facilities management	1.6
Property repair and maintenance	15.7
Other property services including cleaning	1.8
Security services	1.2
Warehousing and storage	0.1
Employment services	4.7
Call centre operations	0.1
Other office and admin support services	1.8
Business consultancy	0.4
Technical consultancy	3.7
Waste management	6.1
Public transport services	5.3
Frontline educational services	1.5
Frontline health services	6.9
Residential care and social work	15.6
Total	72.2

Source: UK Outsourcing across the Private and Public Sectors (report by Oxford Economics for the Business Services Association, 2012)

The National Audit Office report focused on four of the biggest suppliers of outsourced public services: Atos, Capita, G4S and Serco. Figures in the report indicated that in 2012 these four companies accounted for about £4.3bn of total public spending on outsourced services in the UK, which was about 5% of the total.

2.4 INTERNATIONAL COMPARISONS

The Deanne Julius report stated that the UK's public services industry was second only to that of the USA in terms of absolute size. An appendix to the report, based on research by Oxford Economics, provided a comparison of the proportion of GDP which the public services industry constituted in selected countries. These figures are replicated in table 5.

Table 5: Public services industry as a proportion of GDP in selected countries

Country	%
Sweden	6.1
Australia	6.1
Spain	2.8
UK	5.7
France	2.9
USA	5.3

Source: The Market for Public Services: International Comparisons (appendix by Oxford Economics to Deanne Julius report, Department for Business, Enterprise and Regulatory Reform, 2008)

A report published by the Organisation for Economic Co-operation and Development (the OECD) in 2011, *Government at a Glance*, provided a comparison of 'expenditures on general outsourcing' by the public sector as a proportion of GDP for OECD member countries. It showed that in 2009 the UK had the third highest proportion (approximately 13%) after the Netherlands and Finland, compared with an average of 10% for all member countries. These figures, which include goods as well as services, are broadly consistent with equivalent figures in the appendix to the Deanne Julius report.

2.5 THE SUCCESSES AND FAILURES OF OUTSOURCING

2.5.1 The limitations of evidence

It would be useful for policy makers and practitioners to have reliable evidence, based on comprehensive statistical analysis, about the effects of outsourcing, including the frequency of successes and failures and how the performance of outsourced services compares with that of similar services under in-house management. However, as in many areas of public policy, it is extremely difficult, and probably impossible, to obtain definitive evidence of this kind. Decisions about outsourcing must therefore be based on a common-sense judgement, taking into account the client's particular circumstances, lessons learned from the client's own experience and from elsewhere and the alternative delivery options that are available.

While it is essential to learn lessons from other outsourcing projects, clients should be sceptical of claims that are made about the successes and failures of such projects because:

- clients, suppliers and advisers all have an interest in claiming that the projects they have been involved in have been successful

- outsourcing is a highly controversial and politicised issue and even researchers and commentators with no axe to grind are subject to bias
- a straightforward before-and-after comparison does not necessarily show the impact of outsourcing, because what is assumed to be an effect, positive or negative, of outsourcing may be due to other factors
- there may be a trade-off between cost and quality, so that an improvement in one is accompanied by a deterioration in the other and vice versa, making it more difficult to determine whether there is a net benefit
- failures may be due to weaknesses in the client organisation and/or the drafting of the contract rather than a problem with the principle of outsourcing.

There are numerous factors that may make a simple before-and-after cost comparison invalid including:

- changes in demand for the service
- changes in the quality of the service provided
- legislative and regulatory changes that affect the cost of providing the service.

While it may be possible to isolate the effects of any one of these changes, it is likely to be difficult or impossible to make a proper assessment of the impact of outsourcing where there are multiple factors at play, which is invariably the case in the real world.

Claims about savings achieved under outsourced arrangements are sometimes exaggerated because:

- some or all of the savings are due to external factors, such as a reduction in energy prices, rather than to anything that the supplier has done
- costs outside the contract, including the cost of procurement and the cost of managing the contract, are ignored or underestimated
- they are based on the contract price at the time the contract is signed, but for various reasons – including claims by the supplier for additional costs and client variations – this may have increased significantly by the time the contract ends.

Benchmarking – comparing the cost of the outsourced services with the cost of similar services provided elsewhere – is in principle a good way of judging the success of an outsourcing arrangement, particularly where the primary objective is to make savings. However benchmarking is fraught with difficulties because:

- third parties are often reluctant to provide information and may cite commercial confidentiality as a reason for withholding it
- where information is obtained from third parties, there is no guarantee of its accuracy
- while the scope of services provided elsewhere may be similar, the specification, performance standards and other contractual issues that affect price may differ markedly
- there may be good reasons why the cost of providing a particular type of service varies between client organisations.

Another measure of the success of outsourcing is user satisfaction. This can also be unreliable because:

- the framing of questions is difficult to get right and affects the results
- response rates may be low and therefore the respondents may be unrepresentative of end users generally
- respondents are often influenced by extraneous factors, such as their overall attitude to the organisation or to the principle of outsourcing
- it is inherently more difficult to achieve a high level of user satisfaction for some types of public service than for others.

That is not to say that the evidence should be ignored, but that a healthy scepticism is needed when drawing conclusions from the data and the claims made by others. Judgements about the success of an outsourcing arrangement are more likely to be accurate if they draw on evidence from a variety of sources, which may include before-and-after comparisons, benchmarking and user satisfaction surveys.

2.5.2 Claims about the overall success of outsourcing

The Deanne Julius report included a review of the academic literature on the benefits achieved from tendering public services. It stated:

The evidence shows that there are clear benefits, to both users and taxpayers, in subjecting incumbent service providers to competition. The academic literature typically found the cost savings from competitive tendering to be between 10 per cent and 30 per cent (including when the in-house team won the bid) with no adverse effect, and sometimes an improvement, in service quality.

However, the report acknowledged that this referred mainly to research based on the early experiences of contracting following the introduction of CCT. It quoted the following sources:

- a report by Domberger et al in 1987, which found that costs in the health sector were reduced by ‘as much as 34%’ by introducing competitive tendering
- a report by the Confederation of British Industry (CBI) in 2003, which showed that the prison sector had experienced cost savings of over 20%
- an Australian Industry Commission report in 1996, which showed savings of 10%–30% across sectors
- similar results from more recent UK experience in contracting alternative providers of medical services.

A report published by the CBI in September 2012 showed that savings ‘from productivity improvements generated by competitive pressure’ in a sample of public sector outsourcing contracts averaged 11% and ranged from 10% to 20%. The size of the sample, at £24.5bn, represented a considerable proportion of the entire public sector outsourcing market.

The Deanne Julius report and the CBI report are cited here because they both attempt to provide an overview of savings achieved from subjecting public services to competition. However, for the reasons set out above, the conclusions of neither these reports nor those of other researchers or commentators can be considered to be compelling. The Deanne Julius

report itself acknowledged that the evidence it cited was out of date. Since both of these reports were published, outsourcing has continued apace; in organisations that have already outsourced considerable proportions of their services, the ability to achieve further savings without compromising quality may have diminished.

2.5.3 Critiques of outsourcing

The Institute for Government has produced a number of publications that provide an analysis of the reasons why various outsourcing initiatives in the UK have failed, or have not been as successful as they might have been, and which recommend how improvements could be made to current and future commissioning and outsourcing arrangements. These publications are written from the standpoint of a think tank promoting more effective government and do not take sides in the debate for and against the principle of outsourcing.

Challenges to the prevailing assumption in favour of outsourcing have come mainly from trade unions, campaign groups and independent researchers. A report by the Association of Public Service Excellence (APSE) for the trade union Unison, published in 2011, argued that the belief that private contractors are cheaper and more efficient than the public sector is misplaced. It provided a number of case studies where, it claimed, local authorities had achieved savings and improvements in quality through bringing services back in house.

APSE, which is a not-for-profit membership organisation working with local authorities, has also produced its own publications arguing that assumptions about the benefits of outsourcing should be challenged.

Social Enterprise UK, a campaigning organisation with a *'vision of a world where social enterprise is the usual way of doing business'* has also published reports critical of outsourcing, particularly the dominance of a small number of large companies in some areas and a lack of transparency and accountability.

These publications are a useful contribution to the debate; they show that outsourcing is by no means guaranteed to deliver benefits, that markets do not always develop in a way that serves the public interest and that central government has sometimes made mistakes in the way it has pursued outsourcing. What they do not do is prove that outsourcing is generally contrary to the public interest, nor do they purport to do so.

Criticism of the way outsourcing has been pursued in recent years by the UK government is by no means confined to those who might be expected to be hostile to outsourcing in principle. In January 2015, following Circle's withdrawal from its contract to run Hinchingsbrooke Hospital in Huntingdon (see the appendix), John Tizard, an independent strategic advisor and commentator who was a senior executive at Capita from 1997 until 2008, called for a wide-ranging inquiry into public service outsourcing. *'The worst possible government response would be to continue to contract out, outsource and franchise without any lessons being learned from events in Huntingdon'*, he said.

2.5.4 The cross-government review of 2013/14

In November 2013 the National Audit Office published *The Role of Major Contractors in the Delivery of Public Services*. It referred to several high-profile allegations of poor performance, irregularities and misreporting in the preceding months. This followed the Ministry of

Justice's discovery in July of that year that there had been significant overbilling in its contracts with G4S and Serco for electronic monitoring of offenders. This and other high-profile cases, including accommodation for asylum seekers and the cancellation of the West Coast rail franchise competition, resulted in the initiation of a cross-government review of contract management.

As part of the review, 73 contracts were examined; 343 out of 584² areas of contract management were assessed as weak. The results are detailed in a further National Audit Office report, published in September 2014. Table 6 gives a summary.

Table 6: Results of 2013/14 reviews of central government contracts

Area	Number of contracts with weaknesses in this area	Proportion of contracts with weaknesses in this area
	No.	%
Planning and governance – lack of visibility of contract management at board level and lack of senior-level involvement	38	52
People – not having the right people in place for contract management; gap between the number and capability of staff allocated to contract management and the level actually required	40	55
Administration – contract management not operating as a multidisciplinary function; interaction between finance, commercial and operational contract management functions often limited	39	53
Payment and incentives – commercial incentives to improve public services not being fully used; levels of payment deductions allowed by contracts often insufficient to incentivise performance; open book clauses rarely used	48	66
Managing performance – contractual performance indicators often weak; clients too reliant on data provided by the suppliers	50	68
Risk – clients not having sufficient understanding of the risks they are retaining on contracted-out services; no sharing of risk registers with suppliers to ensure all understood who was managing what	47	64
Contract development – clients paying insufficient attention to the impact of contract change, eg making changes at operational level in isolation from other service areas; weak systems for maintaining up-to-date versions of contracts	50	68
Managing relationships – lack of a strategic approach to managing supplier relationships; senior management engagement with suppliers not widespread, shared approaches to problem solving and service improvement inhibited by lack of meaningful incentives for innovation	31	42

Source: *Transforming Government's Contract Management* (National Audit Office, 2014)

2. Eight aspects of contract management were assessed for each contract: $8 \times 73 = 584$.

The report identified four root causes of poor contract management by central government:

- failure to recognise the value of contract management
- senior managers not taking contract management seriously
- senior managers not demanding visibility over their contracts
- government having a permanent disadvantage in commercial capability.

The report also found that the issues that had prompted the review were similar to issues that had been identified previously, notably in reports published by the National Audit Office in 2008 and by the Public Accounts Committee in 2009.

The problems that were identified in 2013 occurred despite previous reforms, such as the establishment of the Office of Government Commerce in 1999. It remains to be seen if further reforms following the review, such as the establishment of the Crown Commercial Service in April 2014, will achieve the desired improvement.

2.5.5 Examples in the appendix

The appendix provides summary information about the contracts mentioned above and other public sector outsourcing contracts that have experienced difficulties or attracted negative publicity to varying degrees. They provide useful lessons that may assist practitioners to achieve success in their own projects, whether they opt for in-house, outsourced or alternative solutions.

2.6 EXAMPLES OF SERVICES BEING BROUGHT BACK IN HOUSE

Despite the general trend for public sector organisations in the UK to outsource more and more, there are numerous examples where services have recently been brought back in house.

The survey of 267 local authority chief executives, referred to in section 2.2, while showing that 51% expected to outsource more in future, also showed that 16% expected to bring more services back in house.

The City of London (see the following case study) is one example of a public sector organisation that has brought a service back in house because circumstances have changed since the original decision was taken to outsource.

Case study – City of London council tax and business rates

The City Corporation has recently brought the billing and collection of council tax and business rates back in house, following the expiry of a successful outsourcing arrangement dating back 20 years.

The rationale for outsourcing was to pre-empt the expected introduction of CCT to a proportion of local authority finance functions. The corporation considered that it would obtain better value for money if it went to the market early and outsourced voluntarily rather than under the rules of the CCT regime.

The original five-year contract was awarded to CSL and commenced in October 1994. As the outsourcing was deemed a success, the corporation extended the contract by five years and re-tendered the services on expiry of the extended contract. The new ten-year contract was won by the existing supplier, CSL, which had in the meantime changed its name to Liberata.

Performance continued to be good throughout the duration of the second contract but the corporation decided to bring the services back in house when it expired in October 2014. Changing circumstances, including new powers of local authorities to retain 50% of the growth in income from business rates, were the key factors in the corporation's decision.

In recent years there has been a trend for housing management to be brought back in house from arm's-length management organisations (ALMOs). This has occurred in local authorities ranging from London boroughs to small district councils. The reasons for this trend are many and varied, but include the decline of the Decent Homes Programme, the completion of objectives set for the ALMOs, a desire to reduce overall costs, and duplication and changes in political control. A few new ALMOs have been set up, however, and many of the 69 that remain have long-term agreements with their local authorities, who are outsourcing other housing services to them, such as homelessness and waiting list management.

It was reported in *Construction News* in November 2014 that an increasing number of providers of social housing had been bringing housing repairs and maintenance back in house. Examples cited of organisations that had done so were Islington Council and two housing associations: Peabody and One Housing. The factors mentioned as having influenced these decisions were:

- financial pressures
- consolidation among suppliers
- dissatisfaction with the performance of suppliers.

The advantages and disadvantages of in-house solutions are discussed in section 3.5.3.

Choosing the right delivery model

3.1 INTRODUCTION

The decision to outsource should follow an appraisal of different options including in-house solutions and alternative delivery models, which are discussed in sections 10 and 11. Equally, there should be a similar appraisal before a decision is made to bring services back in house or to move to an alternative delivery model.

This section describes the approach that public sector organisations may take in order to reach such decisions. It then outlines the pros and cons of the different models.

3.2 BENEFITS OF A STRATEGIC APPROACH

Public sector organisations are likely to make better decisions if they adopt a strategic approach to the selection and implementation of delivery models (a 'sourcing strategy'), rather than simply deciding on a case-by-case basis how services are to be delivered. It is useful to think in terms of 'sourcing projects', which include projects to:

- outsource services that are currently under in-house management
- repocure services under outsourced contracts that are due to end
- bring services back in house
- move to alternative delivery models and replace such arrangements that are due to end.

A sourcing strategy enables the organisation to:

- develop criteria for determining how different services are to be delivered
- improve its planning of sourcing projects
- develop better plans for improving services that are to remain in house
- ensure that capital investment is targeted appropriately depending on how services are to be delivered
- ensure the right resources are available to manage sourcing projects and that these resources are used efficiently
- co-ordinate the timing of different procurement projects so that the client can allocate sufficient resources to each one and so that suppliers' bidding teams can respond effectively to each opportunity

- ensure that lessons learned from successive projects are disseminated across the organisation so that there is an accumulation of knowledge and continuous improvement.

The sourcing strategy may be set out in a stand-alone document or contained in a wider document, along with the procurement strategy. Irrespective of which is the case, it should be reflected in relevant corporate and departmental documents, such as:

- the corporate strategy, ie the document that sets out corporate priorities
- the capital investment strategy
- the procurement strategy
- the medium-term financial strategy
- service plans.

It is recommended that the sourcing strategy should, as a minimum, cover:

- the organisation's policy on outsourcing and retention of services in house, including core functions that the organisation would not consider outsourcing
- what criteria the organisation will use to determine the delivery model for each service: in-house management, outsourcing or alternative delivery model
- which services will be reviewed and when, to determine whether the current delivery model should be changed
- summary of decisions that have already been made to change the delivery model for particular services
- summary of plans for improving services that are to remain in house or to be brought back in house
- how sourcing projects will be resourced, eg the extent to which project management will be centralised
- the skills and capacities that the organisation needs to retain in order to oversee in-house and outsourced services effectively
- how the organisation will measure the success of sourcing projects
- how lessons learned from sourcing projects will be disseminated across the organisation.

3.3 REVIEWING THE CURRENT DELIVERY MODEL

A good starting point when considering how services are to be delivered is to identify any key issues that are causing poor performance or preventing improvement under the current delivery model. Where the services are currently being provided in house, for example, the following issues may be relevant:

- the quality of management
- the ability to recruit and retain people with the skills and motivation to deliver a high-quality service
- the ability to overcome bureaucratic barriers, restrictive practices and other obstacles to improvement

- how the cost of performing the services in the client organisation compares with the cost of providing similar services elsewhere
- any challenges that the client organisation may face in the immediate future and in the longer term, which would affect the services in question.

Three different examples of issues with a service under in-house management are set out in the following box.

Example 1: Problem with individual manager

Performance has historically been good and costs still compare favourably with similar operations in other organisations, but the quality of the service has deteriorated recently following the appointment of a new manager. There have been no other changes that could account for the deterioration.

Example 2: Chronic poor management

The service suffers from weak management; this is not a recent development, but a long-term issue. Various attempts have been made to deal with this problem, including paying higher salaries and using different recruitment methods, but they have all failed. As a result performance is poor in terms of both quality and cost.

Example 3: Reduction in the client organisation's budget

The service is competently managed and up until now performance in terms of both quality and cost has been viewed as satisfactory. However, the organisation's financial position is deteriorating and it must reduce its budget drastically over the next two years. Having already carried out market soundings about the possibility of outsourcing the service, the client has realised that any savings that external suppliers could make, it could make itself.

Identifying the problem should help to inform the appraisal of the benefits and costs of different delivery options. The solution in each of the above examples might be:

- example 1 – appoint a new manager to improve the quality of service in house
- example 2 – consider outsourcing in order to reduce cost and improve quality
- example 3 – reorganise the service in house in order to reduce costs.

However, before jumping to conclusions about the best solution, clients should carry out a proper evaluation of the various delivery options.

3.4 FRAMEWORK FOR EVALUATING DELIVERY MODELS

3.4.1 Cost, quality and resilience

When considering outsourcing, or any other change of delivery model, the client may have a primary objective to achieve savings, to improve quality or to do both. Whichever is the case, the impact on both quality and cost must be considered in order to assess the net benefit of the proposed delivery model and compare it with other options.

‘Quality’ is used in this guide to mean all aspects of service outcome including:

- the frequency of service provision, eg how often domestic waste is collected
- hours of service provision, eg a library’s opening hours
- waiting times, eg how long a patient must wait for a hospital operation
- response times, eg how long it takes for callers to get through to a tax enquiry line
- quality of personal care, eg in looking after elderly and infirm people in a care home
- quality of an end product, eg the accuracy and clarity of a translation service.

The costs that need to be taken into account include not only the recurrent costs of providing the services, but also the project management, procurement and other costs incurred in the transition from one sourcing model to another. The cost of managing an outsourcing contract and the relationship with the supplier, which are discussed in section 8.2, should not be underestimated.

Clients also need to consider the resilience of the service to change under the different delivery models. In other words, they need to look ahead to the changes and risks that may affect the service in the medium and longer term and ensure these are taken into account when delivery options are being compared.

3.4.2 Comparing the net benefits of different delivery models

The costs and benefits of different delivery options should be compared on a like-for-like basis. Where outsourcing is being proposed, for example, comparison with the in-house solution should be based not on the current position, but on the expected position, taking into account any savings and improvements in quality that can be achieved under in-house management.

It is beyond the scope of this guide to describe option appraisal techniques in detail. Suffice to say that the degree of sophistication applied to the evaluation of costs and benefits should be related to the size and complexity of the project. A full cost–benefit analysis may be appropriate in some cases, but only where monetary values can sensibly be assigned to the benefits. As a minimum the client should make a qualitative assessment of all the benefits and compare them with an estimate of the costs in order to make an informed judgement.

Discounted cash flow analysis may be used to compare the cash flows under different options, eg where it is expected that savings will be achieved more quickly under an in-house solution, but that outsourcing will eventually bring a higher level of savings.

The issues that clients need to consider when comparing delivery options are illustrated in the example in the following box.

Example – comparison of three delivery options

The client organisation is considering three options for a service that is currently managed in house:

- **Option 1** – keep the service in house and introduce a programme of change to improve efficiency.
- **Option 2** – tender the service on the open market.
- **Option 3** – set up a wholly owned company and award it a contract to provide the service without competition.

It is expected that there would be savings and improvements in quality under all three options, but that they would be highest under option 2, because the contract would be won by a private sector supplier, who would introduce more efficient management and a less bureaucratic decision-making process. In particular, the supplier would be better able to recruit and retain specialist staff, which is a problem for the client organisation. However, the gross savings under this option would be offset by the supplier's profit and the costs of the procurement process. Also, because of the time taken to procure a supplier, savings would not be achieved as quickly as under option 2. Option 3 is an intermediate solution that would bring some of the advantages of option 2 and avoid some of the disadvantages. The key issues in comparing the three options are summarised in table 7.

Table 7: Comparison of three delivery options

Issues	Comments
Tangible costs:	
Project management costs	Lowest under option 1, highest under option 2
Cost of external advice	Minimal under option 1, significant under options 2 and 3
Procurement costs	Only incurred under option 2
Contract management costs	Incurred under options 2 and 3
Supplier's profit	None under option 1, paid to shareholders under option 2, re-invested in the service under option 3
Intangible costs:	
Disruption/uncertainty	Risk of negative impact on employees and end users is greatest under option 2 because the procurement process prolongs the period of uncertainty and there is a bigger change in methods of delivery
Benefits:	
Savings and improvements in quality	<ul style="list-style-type: none"> ■ Lowest under option 1, highest under option 2 ■ Achieved most quickly under option 1, least quickly under option 2
Resilience and flexibility:	
Resilience	<ul style="list-style-type: none"> ■ Worst under option 1, because of the client organisation's problems with recruiting and retaining specialist staff ■ Best under option 2, because the supplier can offer an attractive career structure for specialist staff
Flexibility	<p>Best under option 1, because the client is not tied into a contract or other arrangement with a third party and can therefore:</p> <ul style="list-style-type: none"> ■ introduce further change more easily, eg reduce levels of service if it needs to achieve further savings in a year's time ■ move to another delivery model at any time, whereas under the other options there is less flexibility, eg under option 2 the client is tied into the contract, unless it terminates early, which is difficult

More information about option appraisal techniques can be found in *Option Appraisal: A Practical Guide for Public Service Organisations* (CIPFA, 2011).

3.5 PROS AND CONS OF DIFFERENT DELIVERY MODELS

3.5.1 Pros and cons of outsourcing

Outsourcing may deliver benefits as result of either or both of the following:

- the client's use of a contract to specify requirements and ensure performance
- the ability of a third party to manage the services more efficiently than the client is able to do.

Table 8 summarises the advantages that a third party may have over the client in terms of being able to manage a service more efficiently.

Table 8: Advantages a third party may have in delivering a service

Area	Potential advantages
Staffing	<ul style="list-style-type: none"> ■ Ability to offer more attractive career opportunities ■ More flexibility over terms and conditions ■ More flexible recruitment procedures
General efficiency	<ul style="list-style-type: none"> ■ Better management skills ■ Better commercial acumen ■ Simpler processes and procedures for governance and internal control ■ Better ability to take and manage risks
Other	<ul style="list-style-type: none"> ■ Ability to purchase specialist supplies and equipment in bulk

Public sector organisations are subject to a variety of pressures that can hinder their ability to operate as efficiently as commercial companies. These include:

- public scrutiny
- criticism from the media
- regulation and legislative controls
- interference from central government
- the political dimension to governance.

While private sector organisations, particularly large companies, are by no means free from these pressures, they tend to be affected by them to a lesser degree. They are able to focus on a single key objective, which is to make profits. Provided they are in a competitive market, they must operate efficiently to survive.

Other types of supplier – voluntary organisations (including social enterprises and co-operatives) and other public sector organisations – are not driven primarily by the profit motive and have a mixture of social and financial goals, but may nevertheless be able

to operate more efficiently than the client organisation can. They may also have other advantages that private sector suppliers do not have, such as:

- expertise in a particular area of public service provision that private sector suppliers tend not to provide
- financial advantages, eg exemption from business rates if the supplier is a charity
- dedication to a particular public service objective, if the supplier is a voluntary organisation
- strong links to and understanding of particular communities or stakeholders.

The client organisation may operate inefficiently simply because it is badly managed. The symptoms of this may include:

- excessive aversion to risk
- excessively bureaucratic processes and procedures for governance and internal control
- weak decision-making
- a blame culture.

While inefficiency might be a reason why outsourcing would deliver improvements, it does not necessarily follow that outsourcing is the right solution. It may be better to address the inefficiencies in house. The key issue is whether the client has the capacity to improve and whether there is a fundamental reason why the services are better performed by a third party.

If poor management is the problem, then the client is likely to be poor at procuring and managing contracts, as well as poor at managing in-house services. This may result in outsourcing arrangements at best failing to achieve their full potential benefits and at worst failing completely. Where this is the case it may be necessary to address the root causes of the problem, ie to take steps to improve the quality of internal management, before any outsourcing project can be contemplated.

The beneficial features of outsourcing tend to have corresponding disadvantages and risks. Outsourcing may, for example, give the client organisation access to external expertise that it otherwise would not have, but this has a downside in terms of a loss of internal expertise and capacity, which may result in the client being unable to manage the contract properly. Table 9 summarises the disadvantages and risks against the corresponding advantages.

Table 9: Summary of pros and cons of outsourcing

Advantages	Disadvantages	Risks
<ul style="list-style-type: none"> ■ A third party may be able to achieve savings that the client organisation cannot achieve itself ■ Savings can be built into the contract price and any gain-sharing arrangements 	<ul style="list-style-type: none"> ■ The time taken to procure a supplier will delay the achievement of savings ■ The cost of the procurement process will reduce the net saving to the client ■ Any profit margin required by the supplier will reduce the net saving passed on to the client ■ The cost of managing the contract will reduce the net saving to the client 	<ul style="list-style-type: none"> ■ The supplier is unable to achieve expected savings – performance may decline as the supplier cuts other costs and the supplier may wish to pull out of the contract ■ Savings higher than expected – possible windfall gain to the supplier, which may make the supplier less sensitive to payment deductions and therefore complacent about performance ■ The client's ability to make further savings if the organisation's overall financial position worsens constrained by the contractual arrangement ■ Savings that should accrue to the client are kept by the supplier, as a result of poor procurement, contract drafting and/or contract management
<ul style="list-style-type: none"> ■ A third party may be able to improve quality in a way that the client cannot ■ The client is able to specify quality in the contract and to use contractual mechanisms to ensure performance 	<ul style="list-style-type: none"> ■ Client loses direct control over quality 	<ul style="list-style-type: none"> ■ Contractual mechanisms do not create the right incentives to ensure performance ■ The client manages the contract poorly so that the supplier does not perform ■ The ability to make further improvements in quality is constrained by the contractual arrangement
<ul style="list-style-type: none"> ■ Introduction of external expertise 	<ul style="list-style-type: none"> ■ Loss of in-house expertise 	<ul style="list-style-type: none"> ■ The client is unable to manage the contract properly ■ It is more difficult for the client to bring the services back in house should it wish to do so in future ■ The client organisation is unable to understand its own responsibilities, including statutory functions

It is important for clients to be aware of the disadvantages and risks when they are considering outsourcing. If the primary aim is to achieve savings, for example, then outsourcing may not be the right solution unless the gross savings under outsourcing

considerably exceed those that could be achieved in house; otherwise the client may be able to achieve a greater net saving by avoiding the costs of a procurement process, implementing savings more quickly and avoiding the costs of managing a contract.

3.5.2 Strong and weak reasons for outsourcing

Public sector organisations sometimes embark on an outsourcing project without having a clear rationale for choosing this option. Where there is a rationale, it often makes sense up to a point but is not a sufficient reason for outsourcing.

Table 10 provides examples of strong and weak reasons for choosing to outsource.

Table 10: Strong and weak reasons for outsourcing

Strong	Weak
Management of the service requires commercial acumen, which the client does not have, and is unable to acquire	Performance is unsatisfactory under the existing in-house arrangement because the client has failed to take action to deal with internal weaknesses, such as poor management, excessive bureaucracy and general inefficiency
People looking to make a career in this area of work are unlikely to choose to work in the public sector	The client organisation has difficulty in recruiting good managers and specialist staff because the salaries it offers are below market rates and its recruitment procedures are inflexible
There is a healthy market of suppliers who, unlike the client organisation, specialise in performing this type of work and have knowledge and skills that are not available to the client	Suppliers' marketing persuades the client that outsourcing is the way forward
Third parties can achieve economies of scale that the client cannot	
There is clear evidence to suggest that outsourcing of this type of service by other public sector organisations has delivered benefits	Others have outsourced similar services, so outsourcing must be a good idea

An outsourcing project with a well thought-through, clearly articulated and convincing rationale is more likely to succeed because:

- outsourcing is more likely to be the right solution
- employees, end users and other stakeholders will be more inclined to support the project
- the project can be planned, procured and managed in a more focused way that supports the client's objectives.

3.5.3 Pros and cons of in-house solutions

The pros and cons of retaining services under in-house management are the obverse of those that apply to outsourcing. The advantages, disadvantages and risks of in-house solutions, compared with outsourcing, are summarised in table 11.

Table 11: Pros and cons of retaining services in house

Advantages	Disadvantages and risks
■ In-house expertise is retained	■ Access to external expertise is limited
■ Client retains direct control of the services	■ The client is unable to use a contract to specify the services and ensure performance
■ Savings can be achieved more quickly as no procurement process is required	■ Savings achieved in the long run may be less than what could be achieved under outsourcing
■ The costs of a procurement process are avoided	
■ Improvements can be achieved more quickly as no procurement process is required	■ Improvements achieved in the long run may be less than what could be achieved under outsourcing
■ Risk of damage to employee morale due to outsourcing is avoided	■ The ability to deal with workforce issues may be limited
■ More flexibility to introduce further changes in house or to change to a different delivery model at any time	■ The in-house provider may not be resilient to risks, such as increasing difficulty of recruiting and retaining specialist staff in a recovering economy

If a service is brought back in house, having been outsourced, the client will incur transitional costs and the process of change may create uncertainty for the workforce and end users. The client's ability to manage the service may be better or worse than it was before it was outsourced. Otherwise the pros and cons of bringing services back in house are similar to those shown in table 11.

Various in-house solutions that may be considered as alternatives to outsourcing are described in section 10.

3.5.4 Pros and cons of alternative delivery models

The pros and cons of alternative delivery models, which are described in section 11, vary depending on the features of each model. Table 12 sets out general principles that apply.

Table 12: Pros and cons of alternative delivery models

Key features of the particular model	Advantages	Disadvantages
■ Services are provided by a third party	■ Potential benefits of a third party provider as under outsourcing, eg more efficient management, better ability to recruit specialist staff, etc	■ Loss of in-house expertise
■ Services are provided under a contract	■ Contractual mechanisms can be used to enforce performance ■ Potential benefits of partnership working	■ The client loses direct control of the services ■ Costs of managing the contract and the relationship with the supplier
■ The provider does not have to compete with other bidders or competition is restricted	■ The client determines the provider or type of provider	■ Risk of worse outcome in terms of value for money
■ The provider must compete for a contract	■ Potentially better value-for-money outcome as a result of competitive pressure	■ Abortive costs if the client has set up a new entity to provide the services, which does not win the contract

3.6 MARKET TESTING

The efficiency of in-house operation may be tested by tendering the service and allowing the in-house provider to compete with other bidders, as was the case with CCT. Provided a fair comparison can be made between the bids, this has the advantage that it enables the decision as to whether the service should continue to be managed in house to be based on evidence of whether this arrangement is providing value for money rather than on a preconception that one delivery model is always better than another for the service in question.

A key risk with market testing is that suppliers are deterred from bidding because they think the incumbent in-house provider has an advantage. This can be mitigated by:

- putting robust procedures in place to ensure that the in-house provider cannot influence the tendering and evaluation process
- carrying out effective market engagement (see section 4.4) before procurement commences
- ensuring that all bidders are given all relevant information to which the in-house provider has access
- building up the client organisation's reputation for even-handed treatment of in-house and external bidders.

Wandsworth Council has a policy of routinely market testing services wherever it considers that there is a market of suppliers able to provide the service in question. The council, which was one of the first local authorities to tender services voluntarily in the early 1980s, believes it can do this without incurring the risks set out above because it has a reputation among suppliers as an efficient organisation that is ready to outsource services wherever it considers this will provide value for money. On the other hand, services that are market tested sometimes remain with the in-house provider. Highways maintenance functions other than major works, for example, have remained under in-house management.

Preparing for an outsourcing project

4.1 INTRODUCTION

A common mistake that public sector clients make in outsourcing projects, as in projects generally, is to prepare inadequately. ‘Outsource in haste, repent at leisure’ is a motto that should perhaps be emblazoned on the wall of every senior public sector manager’s office.

The planning phase is the most important in any outsourcing project and therefore merits considerable input of time and effort, so that all the key issues have been thought through before procurement commences. These issues, which are discussed in section 5, include:

- the client’s objectives for the service being outsourced
- any social objectives that the client is seeking to achieve through the outsourcing project
- the extent to which the outsourcing arrangement and the way it is procured will be innovative or based on a tried-and-tested approach
- the type of procurement process that will be used
- the type of supplier that the client envisages will provide the service
- the type of contractual arrangement that will be used
- the length of the contract
- the extent to which service requirements will be expressed as inputs, outputs or outcomes
- what incentives to perform will be included in the contract
- whether the arrangement will include any profit sharing or a not-for-profit approach
- what information the supplier will be required to disclose under the contract and the extent to which there will be an open-book approach
- what the provisions will be for terminating the contract
- how the contract will be managed.

When planning outsourcing projects, clients should learn lessons from their own and others’ experience, use tried-and-tested methods where appropriate and make use of existing documentation wherever possible. This should enable them to focus on project-specific issues and maximise the chances of success.

4.2 LEARNING LESSONS FROM OTHER PROJECTS

Learning lessons from other projects is essential if an outsourcing project is to succeed. Sources of information include:

- the client's own previous experience
- other departments within the client organisation with experience of similar projects
- other public sector organisations who may be willing to share information, eg neighbouring local authorities
- consultants who have worked on similar projects
- suppliers of the relevant services.

It is worth putting significant time and effort into obtaining information from others. This may save further time and effort in the long run, particularly if existing project and contract documentation can be obtained from elsewhere.

Clients who consider their projects to be innovative may think there is little point in trying to learn lessons from others. However, it is very rare indeed that a project is unique. Where the proposed project does not follow a well-established pattern, it may be more difficult to find relevant comparable projects, but this makes it all the more important to do so and to learn from such projects in order to build on what others have achieved and to avoid repeating their mistakes. Section 5.3 considers the pros and cons of innovative approaches to outsourcing.

Learning lessons is likely to be more effective if it is co-ordinated at a corporate level, as part of the strategic approach described in section 3.2. This helps to avoid duplication of effort and enables a body of knowledge to be built up and disseminated to practitioners across the organisation.

4.3 CONSULTATION WITH END USERS AND OTHERS

Consultation with interested parties, or stakeholders, is essential in an outsourcing project, as it is in any project that involves major change. It is beyond the scope of this guide to describe in detail how consultation should be conducted, but clients should be aware of the key points set out below.

Consultation should commence before procurement commences so that:

- the client gains a proper understanding of the needs of end users, which can then be fed into the formulation of service requirements
- the impact of the outsourcing process and the change of provider on end users and other stakeholders can be assessed and plans made accordingly to ensure a smooth transition.

The process of consultation should of course continue through the key stages of the project into the operational phase to ensure that the outsourcing arrangement continues to meet the needs of end users and that the supplier is performing.

The parties who may need to be consulted include:

- end users and, where relevant, their parents or carers
- staff and trade unions

- other people within the client organisation
- politicians
- local residents
- professional bodies
- other agencies who may be affected, eg NHS bodies if a local authority is considering outsourcing social services functions.

In addition, the client needs to engage with potential bidders for the outsourcing contract. This is discussed in the next section.

4.4 MARKET ENGAGEMENT

Engagement with suppliers is essential in all except the most straightforward outsourcing projects and should commence before a decision is taken to proceed. This enables the client to test its assumptions about the capability of suppliers to meet its objectives and informs the decision about whether outsourcing is indeed the right course of action. Clients need to dedicate sufficient resources to this exercise to ensure that it is thorough, fair and meaningful.

How market engagement should be conducted depends on various factors including the degree of uncertainty about the proposed project, the complexity of the project and the time available before procurement must commence.

Market engagement can take varying forms including:

- exchanges of written information
- meetings with a number of suppliers together
- separate meetings with individual suppliers.

All of these may be used as part of a strategy of market engagement and may complement each other. Individual meetings are time-consuming for the client, but they are by far the most effective way of eliciting meaningful feedback from suppliers, so this is time well spent.

Under the EU rules, which are described in section 6.2, contracting authorities must ensure competition is not distorted and comply with the principles of non-discrimination and transparency. Irrespective of whether the proposed outsourcing exercise is subject to the rules, it is essential that market engagement is carried out in accordance with these principles; otherwise, should the project proceed to procurement, suppliers who believe they have been disadvantaged may:

- decide not to bid, and/or
- take legal action against the client organisation.

Although legal action may be what clients fear most, the loss of a potential bid, which the client may never know about, is in fact the more serious risk in terms of its probability and impact. The reduction in competitive pressure at the bidding stage may result in a significantly worse long-term outcome in terms of value for money achieved from the outsourcing project.

Table 13 provides some tips on how the risk of distorting competition can be minimised without meaningful engagement being hindered. Practitioners should, however, obtain advice from their lawyers about the legal risks.

Table 13: Minimising risk in market engagement

What	How
<ul style="list-style-type: none"> ■ Invite a wide range of suppliers to participate ■ Ensure that any supplier who wishes to participate is able to do so 	<ul style="list-style-type: none"> ■ Check the organisation's supplier lists and consult internally to ensure that a wide range of suppliers are invited to take part ■ Keep meticulous records of any enquiries from suppliers about the project and invite such suppliers to take part ■ Where the contract will need to be advertised in OJEU, publish a prior information notice (PIN) before commencing market engagement ■ Consider separately advertising the opportunity to take part in market engagement, but where the contract will need to be advertised in OJEU, only where a PIN has already been published
<ul style="list-style-type: none"> ■ Provide all potential bidders with the same information 	<ul style="list-style-type: none"> ■ Provide written information during market engagement and ensure the same information is provided to all participants ■ Ensure any information provided during market engagement is included in information packs sent to prospective bidders once procurement commences
<ul style="list-style-type: none"> ■ Conduct meetings in a way that ensures equal treatment for all participants 	<ul style="list-style-type: none"> ■ Ensure that if different client staff attend meetings with different suppliers, they are equally well informed and equally able to engage with the suppliers ■ Have the same staff attending all the meetings if possible
<ul style="list-style-type: none"> ■ Avoid being influenced by particular approaches or solutions that may favour particular suppliers 	<ul style="list-style-type: none"> ■ Be aware of this issue during market engagement and when formulating the requirements issued to bidders during the procurement process ■ Express requirements as outputs and/or outcomes rather than inputs so that bidders are able to propose different methods

Clients should be aware that under EU rules there are prohibitions on advertising prior to publication of an OJEU notice. Publishing a PIN is therefore a sensible option where the opportunity to take part in market engagement needs to be advertised and a contract notice is subsequently to be published. The invitation to take part in market engagement may then

be included in the PIN or in a separate advertisement published subsequently. Furthermore, if as a result of the feedback the client changes its position from that in the PIN, this should not be communicated to those who have taken part in market engagement until the contract notice is published, so as to ensure they do not gain an unfair advantage over other potential bidders.

When considering when and how to engage with the market, it is useful to distinguish between market soundings, the purpose of which is to obtain information from potential bidders, and market warming, the purpose of which is to provide information to potential bidders and encourage them to bid. The two processes cannot be divorced from each other and may be carried out in a single exercise. Where there is a decision to be made about whether or not to go ahead with outsourcing, however, it may be appropriate to engage with the market at two stages: the first stage, prior to the decision to outsource, being primarily focused on market soundings; and the second stage, after the decision to outsource, being primarily focused on market warming. For the purposes of this guide it is assumed that there is indeed a two-stage process; the rest of this section is concerned with market soundings, while market warming is discussed in section 6.4.

The ideal time for market soundings to take place is when the client has developed its thinking sufficiently to have meaningful discussions with suppliers, but early enough for the information that is obtained from them to be taken into account in the decision whether or not to proceed with outsourcing.

In order to obtain meaningful feedback, the client needs to provide participants with clear information, including as a minimum:

- what the client's objectives are for the service in question
- why the client is considering outsourcing the service
- what stage the client has reached in its thinking and decision-making
- why the client is now carrying out market soundings and how feedback from participants will be used to inform its decision-making
- the client's thinking on key issues such as type of procurement process, type of contract, scope of contract and length of contract, and how far these issues are open to discussion
- when the client expects to proceed to procurement.

Information may be provided to participants in written format prior to the meetings, but it cannot be assumed that they will have read and understood it all; it is essential therefore to get the key points across in the face-to-face meetings.

Clients need to be clear about what information they are seeking to obtain from participants. This should include as a minimum:

- whether the participant could meet the client's objectives through an outsourcing arrangement
- how the outsourcing arrangement would benefit the client, ie how the participant would reduce the cost of the services to the client and/or improve quality
- what special skills, experience and resources the participant can offer to meet the client's objectives

- the participant's views on key issues such as type, scope and length of contract
- what would encourage the participant to bid, and discourage it from bidding, for the contract.

While market warming may be carried out mainly in a separate exercise at a later stage, clients need to be mindful that participants' first impressions are critical and affect their decisions whether or not to bid. It is therefore essential that the client uses the opportunity to build confidence and promote itself as good to do business with. This is discussed in more detail in section 6.4.

4.5 DECISION TO PROCEED

The decision to proceed with outsourcing and the decision to proceed to procurement are important milestones. They affect:

- the budget made available to the project
- the time that in-house staff dedicate to the project
- the external resources dedicated to the project
- the information given to potential bidders.

For smaller and more straightforward projects, it is likely that there will be a single decision to proceed with outsourcing and to proceed to procurement. Where significant resources are needed to plan and develop a project before procurement can commence, however, it may be appropriate to take a decision to proceed with outsourcing in advance of a decision to proceed to procurement. Resources can then be made available to enable the project to be planned properly and for requirements for the procurement stage to be estimated more accurately.

It is essential that there is clarity about whether and when these decisions have been taken, so that all relevant players, including potential bidders, can respond accordingly. In communicating progress to stakeholders, clients should be careful to distinguish between an informal decision taken by officers, which may amount to no more than a working assumption, and a formal decision taken in accordance with the client organisation's constitution.

4.6 PLANNING AND MARSHALLING RESOURCES

Once a decision has been made to proceed with outsourcing, the resources required to complete the planning stage, so that procurement can commence, need to be put in place. The resources required at later stages, to bring the project through procurement to contract signature and beyond, also need to be identified and plans made to assemble them.

The principles of good project management of course apply to an outsourcing exercise as to any significant project, but it is beyond the scope of this guide to describe these in detail. It is assumed, however, that a project manager will be appointed as soon as the decision to proceed with outsourcing is taken, ie that a person will be made responsible for planning the project and ensuring it progresses to the next stage. This may or may not need to be a full-time role initially.

The planning and marshalling of resources are key tasks for the project manager. For an outsourcing project, the following specialist skills and resources are likely to be required:

- project management
- procurement
- financial
- legal
- human resources
- technical, eg expertise in catering, if this is being outsourced.

On the whole it is better to use in-house skills and resources, where they are available, because this enables:

- the project to be planned and delivered in a way that better reflects the client's objectives and the culture of the organisation
- the client to engage directly with bidders, thus laying the foundation for a stronger relationship with the future supplier
- continuity to be maintained between the planning, procurement and operational stages
- lessons learned to be disseminated more easily within the organisation.

This also applies to other types of projects, but is particularly true for outsourcing, because relying on external resources to deliver an outsourcing project means that the client is at two removes from delivery, especially if responsibility for managing the project and then for managing the contract, once it has been procured, is delegated to consultants or temporary employees.

Where in-house staff with the required skills are in short supply, however, difficult decisions may need to be made about how such individuals are deployed, eg about whether the organisation's best project manager should be allocated to a particular project or to another that is running concurrently. This is a question of weighing up priorities and risks. One of the risks is that by being overly dependent on consultants, the client will lose control of the project. As a minimum there needs to be an in-house manager with responsibility for ensuring that external project managers do what the client organisation requires and provide value for money.

Table 14 sets out issues that may need to be considered when planning and marshalling the resources required to deliver an outsourcing project.

Table 14: Planning and marshalling resources

Type of resource	Issues
Project management	<ul style="list-style-type: none"> ■ Extent to which the project management function can be performed in house ■ Performance management of consultants ■ Co-ordinating the work of in-house staff and consultants and avoiding duplication ■ Where significant reliance is placed on external project managers, ensuring there is continuity through to the operational stage
Procurement	<ul style="list-style-type: none"> ■ Need for expertise both to procure consultants and to procure a supplier ■ Possible need to bring in external procurement expertise and resources if the project is particularly large and complicated
Financial	<ul style="list-style-type: none"> ■ Financing – specialist external advice may be needed if financing of the project is innovative ■ Pensions issues – specialist advice may be required if staff may transfer from the client organisation to the supplier
Legal	<ul style="list-style-type: none"> ■ External legal support may be needed if there are complicated legal issues ■ Counsel's advice may be needed on specific legal issues
Human resources	<ul style="list-style-type: none"> ■ Where staff are being transferred and the in-house human resources team does not have the relevant expertise or capacity, external support may be needed
Technical	<ul style="list-style-type: none"> ■ Specialist external advice may be required in relation to outsourced solutions, eg for outsourcing IT

The resources required to bring the project to contract signature and beyond will depend on the decisions that are taken about key issues such as the type of procurement process that will be used, the contractual arrangement that will be put in place and the scope of services for which the supplier will be responsible. Taking such decisions as early as possible facilitates better project planning, including more accurate estimation of the timescales and resources required. Even if final decisions are not taken until later, working assumptions about key issues need to be made reasonably early in the planning stage so that:

- the project can be planned accordingly
- the client can have a more focused dialogue with suppliers during market engagement.

4.7 MAINTAINING EMPLOYEE MORALE

The continuing role of existing employees in the provision of the service being outsourced and how the process of outsourcing will affect them should be a key consideration for clients when they are planning an outsourcing project because:

- the law – notably the TUPE regulations – requires it
- the morale of the workforce is a critical factor, perhaps the most critical factor, in the performance of the services
- it would be inhumane to disregard the impact of major organisational change on people.

Outsourcing has frequently been criticised, sometimes justifiably, for its adverse effect on employees. Although the TUPE regulations give some degree of protection, in that employees' terms and conditions are protected at the time of transfer, they do not prevent the new employer from doing anything that the client could have done previously, including:

- restructuring the workforce
- filling vacant posts with new employees on different terms and conditions
- applying existing rules, such as sickness and capability procedures, more rigorously.

Under revisions to the TUPE regulations, which took effect on 31 January 2014, suppliers may renegotiate terms and conditions provided for in collective agreements one year after the transfer provided that, overall, the change is no less favourable to the employee.

It is therefore quite possible that over time employees' terms and conditions will change significantly as a result of outsourcing.

Maintaining employee morale during a period of uncertainty and transition is essential because otherwise there may be an exodus of staff, and a consequent deterioration in performance, prior to transfer due to:

- insufficient numbers of staff remaining in post to maintain existing levels of service
- the loss of experts who are critical to the provision of the service and who are difficult to replace.

This may also result in the new employer inheriting a workforce that is inferior in terms of numbers, skills and experience to what it was before the project commenced. The supplier may therefore be unable, at least during the early part of the operational period, to achieve the levels of service that the client expected when it took the decision to proceed with outsourcing. It is, however, incumbent on bidders to make realistic assumptions about the workforce that will transfer; their bids should therefore reflect this.

Outsourcing can sometimes appear to be the most convenient option when there are difficult workforce issues that need to be addressed, but which in-house managers are reluctant to tackle directly. However, for outsourcing to be the right solution in these circumstances:

- there must be a good reason why a third party is better able to resolve the workforce issues than in-house managers can
- the advantages of passing responsibility for resolving these issues to a third party, along with any other advantages of outsourcing, must outweigh the disadvantages, such as the cost of the procurement process and the loss of in-house expertise.

SECTION 5

Key issues

5.1 INTRODUCTION

Section 4.6 explains that the resources required to deliver an outsourcing project depend on the decisions that are taken about key issues. These therefore need to be considered as early as possible during the planning stage. In any case, decisions should be taken about most, if not all, key issues by the time procurement commences and communicated to prospective bidders, so that they are aware of what they are bidding for and bids can be compared on a like-for-like basis.

Bidders should be left to make their own proposals about key issues only in exceptional circumstances, where innovative solutions are being sought, and there is a clear rationale as to why the specific issue should be left open. Exploring such issues with potential bidders during market engagement may, however, provide the answers and obviate the need for any of them to be left unresolved when procurement commences.

The key issues are discussed in the following sections.

5.2 OBJECTIVES

5.2.1 Service objectives

The client must be clear about what its objectives are for the service in question before it commences procurement.

Section 3.4 explains that in order to determine if outsourcing is the right delivery model for the service in question, clients must consider the impact on both cost and quality. Quality is defined as covering all aspects of service outcome, including the frequency of service provision, hours of service provision, waiting times, response times, quality of personal care and/or quality of the end product. The desired outcomes therefore need to be defined, so that the net benefit of outsourcing can be compared with that of other delivery options.

At the planning stage, outcomes may be defined in broad terms; they can then be refined as the project proceeds. Table 15 sets out the level of detail that is required at key stages.

Table 15: Refinement of service outcomes at key stages of a project

Stage	Level of detail
Market soundings	Sufficient for meaningful discussion with potential bidders
Before the decision is taken to proceed with procurement	Sufficient to make an assessment of whether outsourcing will achieve a net benefit
By the time procurement commences	Expressed in detail in the draft specification either directly or via inputs and/or outputs and reflected appropriately in the contract award criteria
Contract signature	Expressed in detail in the final specification either directly or via inputs and/or outputs

While the client needs to define outcomes, whether requirements should be expressed in the contract as outcomes rather than inputs or outputs is a different matter; this is discussed in section 5.7.2.

5.2.2 Social objectives

In addition to the service objectives that drive an outsourcing project, public sector clients often seek to achieve additional social objectives, such as:

- supporting local employment
- improving the general economic well-being of the local area
- promoting equality
- protecting the environment.

In seeking to achieve social objectives from an outsourcing project, it is important to ensure that this is done in compliance with procurement rules, particularly those that encourage competition; otherwise the award of contract may be subject to legal challenge and the value for money of the overall project may be undermined.

The importance of social objectives in public sector procurement has, however, been recognised both by the UK government in the Social Value Act and by the EU in recent changes to its procurement rules. These are both explained below.

The Social Value Act

The Public Services (Social Value) Act 2012, known as the Social Value Act, came into force on 1 January 2013 and applies in England and Wales. It requires a contracting authority, when planning the procurement of a services contract that exceeds the OJEU threshold, to consider:

- *‘how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area’* and
- *‘how, in conducting the process of procurement, it might act with a view to securing that improvement’.*

In September 2014, the government announced a review of the Act, focusing on:

- whether it should be extended to cover contracts for goods and works as well as services
- how it might be extended in a way that continued to support small businesses and voluntary organisations to bid for public contracts.

Consultation responses were invited by the end of November 2014. CIPFA submitted a response, which said that:

- the Act was encouraging public bodies to think differently about how they commissioned public services
- the Act complemented existing guidance on value for money, which encouraged decision-makers to consider environmental and social value, as well as economic value, when reviewing and procuring services
- further time should be allowed for innovative approaches to be developed before the Act was extended
- the measurement and reporting of social value should be further developed.

Lord Young of Graffham submitted a report to the Cabinet Office in February 2015 with recommendations following the review. As a result, steps have been taken to ensure that the thresholds above which the Act applies remain the same for services that benefit under the revised EU rules from the new light-touch regime (see section 6.2.3) as for other services.

When the government announced its review, it gave two examples, which are shown in the following box, of how the Act was being successfully implemented.

Example – successful implementation of the Social Value Act

Wakefield Council wanted a new milk supplier in local schools. They selected Fresh Pastures, which delivers milk and provides local schoolchildren with lessons on healthy living and food miles. Fresh Pastures also provides work opportunities for the long-term unemployed.

The University of Northampton launched the £1bn University Challenge. It encourages the UK's higher education sector to spend at least £1bn (of the £7bn it spends) on procuring goods and services from social enterprises.

There was nothing prior to the implementation of the Act, however, that would have prevented the organisations in these examples from doing the same things or indeed prevented other public sector organisations from doing similar things. It is important to understand that the Act only requires them to 'consider' social value. This is not an onerous obligation; it does not require any specific changes to be made to procurement processes or to contracts in order to achieve social objectives, as the example in the following box illustrates.

Example – compliance with Social Value Act without changes to the procurement process or contract

A local authority is planning its procurement process to outsource grounds maintenance. It considers whether it should include any special requirements in the contract to ensure that the supplier's method of delivery does not harm the environment, but takes the view that this is adequately covered by legislative requirements with which any supplier would have to comply. It also considers whether the supplier should be required to provide subsidised apprenticeships to young people in the area, but decides that this would not achieve value for money.

The authority has complied with its duty under the Act to consider social value, but this has not resulted in any changes being made to the procurement process or the contract.

Recognition of social value in the EU rules

The EU rules support the inclusion of social objectives in the criteria for contract award. Relevant provisions of the revised rules include:

- more clarity that social, as well as environmental, objectives may be taken into account
- allowing contracting authorities to take into account externalities, such as the impact on carbon emissions, as part of the evaluation of the life-cycle costs of bidders' proposals
- allowing some scope for equality issues, eg access for the disabled, to be built into specifications
- a new duty placed on contracting authorities to investigate tenders that appear to be abnormally low and to reject those that are in breach of international environmental or social law.

5.3 INNOVATIVE VERSUS TRIED-AND-TESTED APPROACH

Over time the public sector as a whole must innovate in order to adapt to changing circumstances and respond to new challenges. This applies to outsourcing as well as to other areas of public administration. In the vast majority of cases, however, outsourcing projects can be delivered more cheaply and efficiently if they use standard procurement methods and standard types of contract and specification.

An outsourcing project that attempts to do something different from anything that has been attempted before may correctly be described as innovative. Projects are, however, sometimes promoted as being innovative for dubious reasons such as:

- a mistaken belief that:
 - the project is unusual or unique, or
 - suppliers will be attracted to bid for a project that is innovative
- motives other than what is in the interests of the project, such as:
 - a desire to generate favourable publicity for the client organisation
 - individuals involved in the project wishing to further their own careers.

This can have pernicious consequences in that the client then treats the project as if it were innovative, failing to learn lessons from past experience and developing new processes and

documentation that are unnecessary, thus wasting its own and bidders' time and money and increasing the risk of failure.

Innovative approaches are inherently risky and are likely to:

- require the client to incur significantly higher costs in developing and procuring the project
- significantly increase the time needed to develop and procure the project before it begins to yield benefits
- make the client more dependent on specialist advice, which it may need to procure externally
- increase the costs of bidding and deter potential bidders who are risk averse.

Clients should therefore carefully consider whether the potential rewards justify these additional costs and risks.

An innovative approach is more likely to be appropriate where:

- the client organisation is large enough to bear the risk of failure
- the client organisation has specialist skills available in house that make it less dependent on external advisers
- the client organisation is well managed and efficient
- the client organisation has a good reputation in the market for delivering large and complex projects
- the project has the support of central government.

Before embarking on an innovative approach, clients should ensure that:

- there is a clear rationale for innovation
- market soundings have indicated that the project will be deliverable
- thorough research has been carried out to identify any similar projects from which lessons may be learned (see section 4.2)
- the project is consistent with any corporate policy the organisation has in relation to innovation and risk
- key players within the organisation, including the director of finance and the director of legal services, are aware of the risks and their advice has been obtained.

5.4 TYPE OF SUPPLIER

5.4.1 Introduction

The types of organisation that may provide services under contract to a public sector client fall into the following three broad categories:

- commercial organisations
- voluntary organisations
- other public sector organisations.

When considering services for outsourcing, the client may have a particular type of supplier in mind. This could influence the choice of solution and how it is procured, but, as section 6.1 explains, restricting competition to a particular type of organisation, even where procurement rules allow it, may result in poorer value for money. Clients should therefore keep an open mind about the types of supplier that might meet their requirements. It is, however, important that clients think about what types of supplier are likely to bid, especially when they are planning market engagement.

5.4.2 Voluntary organisations

The terms ‘voluntary sector’ and ‘voluntary organisation’ are used in this guide to refer to organisations whose primary objectives are social, rather than profit-making, and who are independent of government. These include charities, community groups, social enterprises, co-operatives and public service mutuals.

Most public sector outsourcing contracts in the UK are awarded to commercial organisations, but voluntary organisations also play a significant role, especially in providing publicly funded social care and health care. The *British Medical Journal*’s survey of clinical commissioning groups (referred to in section 2.2) showed that 10% of contracts were awarded to voluntary organisations and social enterprises.

The role of the voluntary sector as a supplier of publicly funded social care and health care is encouraged by EU rules under which:

- These services:
 - were until recently classed as Part B services and therefore outside the scope of the full procurement regime
 - now benefit from a light-touch regime, which means that although they are exposed to competition, less stringent procedures apply and a wider range of circumstances may be taken into account than is the case for most services.
- Bids for contracts may in certain circumstances be restricted to public service mutuals and similar enterprises and to sheltered workshops and sheltered employment training programmes.

A recent example of a contract awarded to a voluntary organisation is Wandsworth Council’s Youth Services.

Example – Wandsworth Council’s youth services

In accordance with its policy of market testing in-house services (see section 3.6), Wandsworth Council put its youth services out to tender in 2014. The contract was advertised in OJEU and procured using the competitive dialogue procedure. 4Children won the contract in competition with two other bidders. The contract, for a period of four years with provision for two years’ extension, commenced on 29 June 2015.

4Children is a national charity that provides childcare and family support services, as well as youth services, to a variety of clients including schools, local authorities and government departments.

The other two bidders were also voluntary organisations: one was a community interest company set up by staff in another local authority and the other a social enterprise set up by two other local authorities. No in-house bid was submitted on this occasion.

Other examples include:

- Test Valley Community Services, which provides clinical services to the NHS in Eastbourne.
- Turning Point, which has various contracts to provide services across England and Wales, such as a five-year contract with Public Health Suffolk, which commenced on 1 April 2015, for the provision of integrated drug and alcohol treatment services.

The Social Value Act does not allow public sector organisations to discriminate in favour of a particular type of supplier, although it may enable a procurement to be structured in a way that encourages voluntary organisations to bid for a contract. As explained above, however, the client should keep an open mind about what type of supplier is best suited to meet its requirements.

5.4.3 Other public sector organisations

The ability of a public sector organisation to provide services to another public sector organisation depends on two things:

- the powers of the public sector organisation that may be providing the services
- the procurement rules that apply to the proposed arrangement.

The powers of public sector organisations to provide services to others vary between different types of public sector organisation. Local authorities in England, Wales and Scotland, for example, may provide services to other local authorities and to certain other public sector organisations under the Local Government (Goods and Services) Act 1970.

The Localism Act, which applies only in England, gives local authorities a general power of competence, which means (among other things) that they have power to provide services to organisations other than those specified under the Local Government (Goods and Services) Act. Where they do so on a commercial basis, they must establish a trading company. They do not, however, have to establish such a company if they provide services to organisations specified under the Local Government (Goods and Services) Act.

Where public sector organisations provide services to each other on a commercial basis, these arrangements are subject to the same procurement rules that apply to the provision of services by any other type of organisation. However, there are many examples of non-commercial arrangements between public sector organisations that are not subject to procurement rules and may therefore be entered into by agreement between the parties without there being a competitive procurement process. Agency and shared service arrangements, which are discussed in section 11.3, are examples of these.

The recent reforms to EU rules explicitly exempt certain arrangements where public sector organisations co-operate to achieve shared objectives from the rules requiring competition.

Where public sector organisations establish separate entities to provide services to themselves (see section 11.2.1), these often provide services to other public sector organisations too. Examples include NPS and Thamesway.

5.5 TYPE OF PROCUREMENT PROCESS

5.5.1 Introduction

The procurement process that is used for outsourcing needs to suit the size and complexity of the services in question. It must also comply with internal and public procurement rules. The EU rules are explained in section 6.2. These stipulate that contracts that exceed certain thresholds must normally be advertised in the EU's official journal, OJEU, and procured in accordance with one of five prescribed procedures.

More generally, subject to the procurement rules that apply to the contract in question, the key issues for the client to decide are:

- whether the contract should be advertised
- whether a pre-qualification process should be used to select a shortlist or whether all prospective bidders should be invited to submit tenders
- whether bidders should be required to meet minimum standards of financial standing, experience and ability
- whether negotiations should be allowed with bidders
- what criteria should be used to determine the winning bid.

It is beyond the scope of this guide to explore all of these issues in detail, but the issue of whether the contract should be advertised is discussed in the next section.

5.5.2 Whether the contract should be advertised

In most cases, public sector outsourcing contracts must be advertised, because the client organisation's own rules or public procurement rules require it. The requirements to advertise under EU rules and under the additional rules that apply in England are explained in sections 6.2.1 and 6.3.

Contracts procured under a framework agreement, however, do not have to be advertised, because a procurement process has already been carried out to select a supplier or a number of suppliers. Framework agreements are described in section 5.5.3.

The client organisation's own rules may set lower thresholds for contracts to be advertised than those set in public procurement rules. Internal rules may also specify how contracts are to be advertised; otherwise the client needs to make a decision about where the contract in question is best advertised. Public sector organisations are increasingly using tender portals, such as the London Tenders Portal. Where specialist services, such as IT services, are being outsourced, it may also be beneficial to advertise in a relevant journal. However, where the contract is required to be advertised in OJEU, then it must be advertised there first and any other advertisement must not contain additional information.

Where there is no requirement to advertise under either public procurement rules or the client organisation's own rules, the client may nevertheless opt to do so for reasons including:

- an inability to identify the minimum required number of potential bidders without advertising
- the failure of a previous attempt to attract the minimum required number of bids without advertising
- a desire to attract a large number of bidders.

The disadvantages of advertising, especially where the contract is of low value, are:

- if many bids are received, the time and cost taken to evaluate them may be excessive in relation to the value of the contract
- potential bidders may not wish to bid for a low-value contract that is advertised, because they consider their chances of winning it to be too low to justify the cost of bidding
- if only a small number of suppliers, who are all known to the client, are in a position to submit bids of reasonable quality, then advertising could be a waste of time and money for both the client and bidders.

If the client considers that there are special reasons why advertising is not in the organisation's best interests and public procurement rules do not require it, but internal rules do, it may be possible to obtain a waiver of the internal rules. The internal rules should be reviewed from time to time to ensure the thresholds and advertising requirements are reasonable.

5.5.3 Framework agreements

Use of an existing framework agreement, procured either by the client organisation or by another public sector organisation, can significantly reduce the time and cost of procuring a contract that would otherwise have to be advertised, especially if it would have to be advertised in OJEU.

Where use is made of an existing framework agreement, a separate advertised procurement process is not required, because the procuring organisation has already carried out such a process to select a supplier or a number of suppliers with which it has entered into the agreement. This set out the terms and conditions under which work may be offered to these suppliers under call-off contracts awarded during the period of the agreement. Under EU rules, the period of the agreement must not normally exceed four years. Where there is more than one supplier on the framework, the terms and conditions may require the client to hold a mini-competition to select the supplier that is awarded the contract.

Even where there would otherwise be no requirement to advertise the contract, use of a framework agreement may be beneficial for the client because:

- it saves having to identify potential bidders
- the contractual terms and conditions have already been agreed.

The use of framework agreements has become more prevalent in the UK in recent years. Most public sector organisations now have access to a number of such agreements, set up by others, that are specifically designed for procuring services. The Crown Commercial Service, for example, maintains framework agreements that are available to central government and other public sector organisations for a variety of services including:

- information and communications technology
- printing
- transport-related engineering advice and research
- legal services
- market research.

There are three key issues to be aware of when considering the use of framework agreements:

- the client organisation should obtain its own legal advice on whether it may use a framework agreement established by another organisation
- call-off contracts must be awarded in accordance with the procedures set out in the framework agreement, eg to hold a mini-competition.

The rules of each framework agreement are different, so it can be a time-consuming exercise for the client to familiarise itself with frameworks that it has not used before, but this can save time in the long run. The use of framework agreements may therefore be best co-ordinated at the corporate level as part of the sourcing strategy.

5.6 TYPE OF CONTRACTUAL ARRANGEMENT

5.6.1 Introduction

The contractual arrangement that is used for outsourcing needs to suit the size and complexity of the service in question. Generally, the lower the value of the contract, the simpler the contractual arrangement should be. As explained in section 5.3, suppliers will find it easier to accept a contract based on a template with which they are familiar. Introducing a form of contract that is unfamiliar to them and appears to be complicated is likely to result in one or more of the following:

- fewer bids being received
- more time being taken to conclude the contract
- higher bidding costs, passed on to the client through the contract price
- a risk premium being added into the contract price.

It is therefore in the client's interest to keep the contractual arrangement as simple as reasonably possible and to use a form of contract, preferably one based on a standard template, that will be familiar to potential bidders.

Various contractual arrangements may be used for outsourcing. These are described in the following sections.

5.6.2 Traditional services contracts

Under a traditional services contract, the client specifies at the outset all the services that the supplier is to provide. This type of contract is suitable where all the services that the client intends the supplier to perform can be specified at the procurement stage. While there may be some scope to vary the contract at a later stage, this will be limited by procurement rules. Section 8.6 describes how contracts may be changed and the limits on this set by EU rules.

5.6.3 Strategic partnering agreements

The term ‘strategic partnering agreement’ is a broad one that is used in this guide to refer to longer-term contractual arrangements that allow significant flexibility over the services that the supplier provides. This enables the client organisation to offer a range of different services to the supplier at different stages during the contract period. Under EU rules, where the contract must be advertised in OJEU, the full scope of services that might be transferred to the contractor must be set out in the OJEU notice.

Strategic partnering agreements often provide for closer co-operation between the client and the supplier than under a traditional services contract. The client may seek to achieve this through:

- establishing a strategic partnering board that brings together senior representatives of the two parties so that they can jointly consider strategic issues, such as the transfer of further services to the supplier
- mechanisms for sharing risks and rewards, eg profit-sharing arrangements (see section 5.7.4).

The UK government established a strategic partnering taskforce in 2001 to advise and support local authorities entering into strategic partnering arrangements. By 2008, when the Audit Commission published its report *For Better, For Worse: Value for Money in Strategic Service-delivery Partnerships*, the use of strategic partnering for the delivery of services had become common in local government. More recently, however, the popularity of this model seems to have waned, perhaps because the expected benefits have not been realised and because there has been a growing recognition that giving one supplier the exclusive right to deliver a wide range of services for a long period brings risks that can sometimes be excessive in relation to the potential benefits.

A recent example of a strategic partnering agreement is provided in the following box.

Example – Defence Infrastructure Organisation's agreement with Capita

The Defence Infrastructure Organisation entered into a ten-year strategic partnering agreement with Capita in June 2014 to improve the management of its estate. Capita works with two sub-contractors: US engineering firm URS and PA Consulting. The purpose of the agreement is to bring in private expertise to:

- develop a strategic plan to help identify potential savings and commercial opportunities
- improve access to market-competitive knowledge and skills
- provide better access to private funding for key efficiency improvements
- improve how change is managed across the organisation.

During an initial 18-month period, Capita is required to produce a blueprint for the future strategic asset management of the estate and then, during the remaining ten years of the contract, to ensure it is delivered.

5.6.4 Concessions

Services may also be outsourced through certain types of concession arrangements. The key features that distinguish concession arrangements from traditional contracts, where they involve the provision of public services, are that the supplier:

- has the right to charge for access to the service
- bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs.

EU rules distinguish between works concessions and service concessions, which are also known as franchises. Under works concessions, the supplier is responsible for developing or upgrading the infrastructure assets used in the provision of the services, whereas under service concessions, the infrastructure already exists or is provided for separately.

Works concessions may be used to secure a supplier to invest in infrastructure – such as roads, bridges, tunnels, airports, energy distributions networks, prisons and hospitals – and then operate the assets. The client organisation controls or regulates what services the supplier must provide using the assets, to whom it provides the services, and at what price it provides them; it also controls any significant residual interest in the assets at the end of the term of the arrangement. A good example is the M6 toll road.

One example of service concessions in the UK is rail franchises under which train operating companies provide rail services using infrastructure provided by Network Rail.

Works concessions have hitherto been subject to EU rules but service concessions have been exempt. However, a concession directive issued in 2014 will require all concessions to be procured; this has not yet been implemented into UK law but must be by April 2016.

It is beyond the scope of this guide to explain all the technical detail of concessions and franchises. Service concession arrangements are defined in IFRIC 12, issued by the International Accounting Standards Board.

5.6.5 PFI and PF2 contracts

The private finance initiative (PFI) refers to a particular form of design, build, operate and finance contract. This is primarily a means of procuring investment in buildings and infrastructure used to provide public services.

In the UK, the original PFI model has been replaced with a modified version known as PF2, but the vast majority of PFI contracts that are now operational were procured under the original model. Under either version, the supplier is responsible for maintenance of the relevant facilities for the duration of the operational period, which is typically 25 to 30 years. Under the original PFI model, the range of services transferred to the contractor is usually much wider, typically including premises management and cleaning. Where services have previously been performed in house, the transfer to a PFI contractor is a form of outsourcing.

Public sector organisations in the UK have tended to use the PFI model only where central government has provided funding for capital projects on condition that they use it. Partly as a result of the 2008 financial crisis, which led to an increase in margins on bank lending, the use of this model has decreased dramatically. It is therefore unclear if PFI/PF2 will continue to play a significant role in the delivery of new projects. A large number of existing contracts will, however, remain operational for some time to come.

5.6.6 Joint ventures with the supplier

Public sector organisations sometimes enter into joint venture arrangements with suppliers to deliver outsourced services. This involves the client and the supplier setting up a joint venture company in which they each hold shares. The client organisation then enters into a contract with the joint venture company for the supply of the service.

The setting up of a joint venture company does not itself require a procurement exercise, but the client organisation's contract with the company is subject to internal and public procurement rules, which may require competition. Usually in such a case the client procures the supplier to deliver the service, indicating at the start of the procurement process that the joint venture will be part of the delivery solution.

Joint ventures have advantages and disadvantages, which are summarised in table 16.

Table 16: Advantages and disadvantages of joint ventures

Advantages	Disadvantages
<ul style="list-style-type: none"> ■ Embed partnership working ■ Client has direct influence over the company responsible for performing the services 	<ul style="list-style-type: none"> ■ Potential conflict of interest within the client organisation in its dual role as a party to the joint venture and as the commissioner of the service that has been outsourced to the joint venture company ■ Risk that the client organisation's involvement in the company responsible for performing the service will give the supplier a pretext for passing risk back to the client ■ Additional costs of establishing and operating a joint venture

Clients should carefully consider these issues before opting for a joint venture rather than a straightforward contract. In any event, the service contract will normally give the client stronger control over the outcomes than an interest, particularly a minority interest, in a joint venture company; the client should therefore focus its attention on the service contract.

5.7 CONTRACTUAL ISSUES

5.7.1 Length of contract

The length of an outsourcing contract requires careful consideration, taking into account the issues set out in table 17.

Table 17: Length of an outsourcing contract – issues to consider

Issue	Comments
Bedding-in period	There may be a significant period after handover before the supplier can begin to deliver improvements, especially if there has been insufficient time allowed for mobilisation prior to handover
Recovery of upfront investment	The supplier may need to invest in the service, eg purchase a new fleet of refuse collection vehicles, in order to achieve improvements. The cost of this needs to be recovered through the contract charges over a sufficient period to make it affordable for the client
Cost of re-tendering	If it is envisaged that the services will be re-tendered when the outsourcing arrangement expires, and the cost of re-tendering is high, then it may not be cost-effective to have a short contract period
Changing service requirements	If service requirements are expected to change rapidly and the ability to accommodate this in the contract is limited, then it may be better to have a shorter contract period
Impact on incentives to perform	See section 5.7.3

The length of the contract is one of the key issues that should be discussed with potential bidders during market engagement, in order to determine:

- what the minimum contract period is that would attract bids
- the length of contract that may be required to make the contract affordable, depending on the amount that the supplier will be expected to invest in the services.

However, clients should bear in mind that suppliers are likely to have a bias in favour of a longer contract.

It is also useful for clients to find out what typical contract periods are for similar outsourced services elsewhere. It may be worth having in-depth discussions with other clients to find out why they decided on a particular contract period and whether, with hindsight, they would have decided differently.

Clients sometimes use break clauses and provisions for extension where they are unsure about the contract period. The problem with break clauses is that if they give the client the right to terminate the contract early without suffering any penalty, then the supplier is likely to manage its risk on the assumption that the client will exercise that right. This may result in the supplier either reducing its investment in the project or frontloading the contract payments to recover its investment more quickly.

Extension provisions enable the parties to extend the length of the contract by mutual agreement, but, as with break clauses, suppliers are unlikely to take a risk on something that is at the client's discretion and are therefore likely to work on the assumption that the contract will terminate at its original expiry date. Clients should also be careful to ensure that extension provisions are consistent with procurement rules, otherwise it may be unlawful to exercise them.

5.7.2 Inputs, outputs and outcomes

Clients need to consider how they specify service requirements in the tender and contract documentation. Requirements may be expressed as inputs, outputs or outcomes, or as a combination of these. Where a contract is based on payment by results (see section 5.7.3), outcomes, which are synonymous with results, need to be defined accordingly.

A paper published by Ofwat, the body responsible for regulating water companies in England and Wales, provides a good explanation of what inputs, outputs and outcomes mean for the water industry. This is summarised in table 18.

Table 18: Inputs, outputs and outcomes in the water industry

Measure	Definition	Examples
Outcomes	The things that customers and society value	<ul style="list-style-type: none"> ■ Providing safe drinking water ■ Providing sewerage services consistent with maintaining public health
Outputs	Specific things that the companies deliver to (help to) achieve those outcomes	<ul style="list-style-type: none"> ■ Compliance with regulations relating to safe drinking water ■ Reducing the instances of sewer flooding
Inputs	The resources the companies use to deliver those outputs	<ul style="list-style-type: none"> ■ Building a reservoir ■ Number of people employed to operate a sewage treatment works

Source: Inputs, Outputs and Outcomes – What Should Price Limits Deliver? A Discussion Paper (Ofwat, 2011)

Another way of defining inputs, outputs and outcomes is in terms of objectives. Outcomes may be seen as the client's ultimate objectives, outputs as intermediate objectives and inputs as the method by which the objectives are to be achieved.

The greater the extent to which requirements are expressed in terms of inputs, the less scope the supplier has to innovate and thereby deliver improvements. In the extreme case, with inputs specified in detail and reflecting the way things have been done in house, a supplier would have little scope for doing things differently and the potential benefits of outsourcing would be considerably reduced.

Since outcomes are the client's ultimate objectives for the services, requirements are best expressed in terms of outcomes, provided they can be defined in such a way that they can be measured, and the supplier accordingly held to account for performance under the contract. It can sometimes, however, be difficult or even impossible to define outcomes in this way.

In practice, the way that requirements are best expressed depends on the nature of the service in question. A hybrid approach may be appropriate in some cases. A good example is school cleaning. Although the desired outcome is a specified standard of cleanliness, it is impossible for the school to be kept clean throughout the school day. It may therefore be necessary to specify cleaning frequencies, eg that classrooms must be cleaned once or twice a day.

Careful thought therefore needs to be given to how requirements are formulated, so that they reflect the desired outcomes as far as possible, while enabling performance to be measured and enforced.

The requirements set out in the specification should be consistent with the key performance indicators, which are discussed in the next section. Indeed, the key performance indicators should be derived from the specification; the draft specification and the draft key performance indicators should therefore be considered together when planning an outsourcing project.

5.7.3 Incentives to perform

Key performance indicators

Key performance indicators (KPIs), backed up by the client's right to make deductions from the contract payments if KPIs are not met, are usually the main contractual mechanism for ensuring performance in an outsourcing contract. KPIs are at the heart of the contractual relationship as they:

- encapsulate what is really important to the client in terms of service priorities
- determine the allocation of responsibilities and risks between the parties.

Subject to the type of service being outsourced, a great deal can depend on KPIs, ranging from important, but relatively mundane issues, such as whether household bins are emptied on time, to matters of life and death, such as ambulance response times. It is therefore worth putting in a lot of effort to make sure the KPIs are fit for purpose.

There are two key challenges with KPIs:

- ensuring they cover everything that needs to be covered without being excessive in number
- ensuring they are clear and unambiguous.

The acronym SMART (specific, measurable, achievable, realistic and time-related) is frequently applied to KPIs, but a better one might be ACME, denoting the following desirable features:

- **Achievable:** the supplier is able to achieve the KPI targets without the need for excessive expenditure that would make the contract unaffordable.
- **Clear:** the wording of each KPI is legally unambiguous and the meaning is clear to operational staff on both sides.
- **Measurable:** each KPI can be measured at a reasonable cost and it is clear when and how it is to be measured.
- **Efficient:** the KPIs cover everything that needs to be covered without being excessive in number.

A real example of a KPI that is consistent with these criteria is provided in the following box.

Example – key performance indicator that is consistent with ACME criteria

Title	Population from which the KPI is to be measured	What is to be measured	Target (%)
User satisfaction	All projects that reached practical completion in the quarter before the previous quarter.	Proportion where users gave an average score of at least 7.5 out of 10 in response to user feedback forms issued after practical completion.	86

The 'Population from which the KPI is to be measured' column was introduced during a revision of the KPIs. The original document specified percentage targets for each KPI but did not make clear what denominator should be used to calculate the percentage.

There are explanatory notes attached to each KPI, which in the above example include:

- an example of what 'the quarter before the previous quarter' means in practice
- the definition of user feedback form, which refers to an attached template
- the definition of users
- how the average score should be calculated
- the records that the supplier is required to keep in order to measure performance under the KPI.

It is also specified that the supplier will be deemed to have failed the KPI if it does not obtain any completed user feedback forms. The purpose of this is to prevent the supplier from circumventing the KPI by failing to issue feedback forms on time and to chase up responses.

Where the service being outsourced and the form of contract that is being used both follow a familiar pattern, then it makes sense to adapt KPIs from similar projects rather than to draft them from scratch. Where these KPIs are tried and tested, it should be possible to adopt them with little or no amendment. While mistakes and ambiguities should be corrected, the temptation to tinker with KPIs that have worked elsewhere should otherwise be resisted because:

- suppliers will be readier to accept KPIs they are familiar with
- making changes may have knock-on effects on other parts of the contract
- in-house staff may not have the skills to write good KPIs and buying in expertise to rewrite KPIs that are already fit for purpose is unlikely to be good value for money.

In innovative projects, such as the outsourcing of services that have rarely or never been outsourced previously, it may be necessary to formulate entirely new KPIs, or at least to make significant changes to existing templates. In such cases, considerable time and effort needs to be put into this exercise and external advice may be needed.

Short contract period

The importance of setting an appropriate contract period is discussed in section 5.7.1.

A longer contract can make a supplier complacent and therefore encourage poor performance, especially if other incentives to perform are weak. The client may therefore

consider that a shorter contract period is desirable because it increases the incentive to perform. However, this will only be the case if the supplier:

- expects that the client will let a new contract for the service, rather than bringing it back in house, when the existing contract expires
- wishes to win the new contract
- believes it will have a reasonable chance of winning the new contract if it performs well under the existing contract
- is able to perform well under the existing contract.

The client cannot be confident at the planning stage of a project that these conditions will in due course apply. Incentivising the supplier to perform is not therefore a compelling reason for making the contract period short. It is better to rely on other incentives, especially KPIs.

Early termination due to poor performance

The incentives to perform may include provisions for early termination if performance is very poor. These are discussed in section 5.7.6.

Payment by results

Payment by results is not a new idea, but is one that has recently been promoted by the UK government. It is based on the rationale that suppliers should be incentivised to achieve outcomes. The difference between inputs, outputs and outcomes is explained in section 5.7.2.

The coalition government's *Our Programme for Government* and the *Open Public Services* White Paper signalled a move towards payment by results in the following areas:

- troubled families
- welfare to work
- rehabilitation of prisoners
- public health.

According to the progress report on open public services published by the government in March 2014, payment by results was being used in health, employment, drug recovery, housing, immigration and services for troubled families. One example is the new arrangements, which commenced on 1 February 2015, for the provision of rehabilitation services for prisoners in England under the Transforming Rehabilitation programme. The services are provided by community rehabilitation companies, which are a partnership of the private and voluntary sectors, and are overseen by new probation trusts. The suppliers will be paid more if ex-prisoners do not commit further crimes.

The key issue for clients when they are considering including payment by results provisions in an outsourcing contract is the extent to which the supplier is able to manage the relevant risks. The less control that the supplier has over the specified outcomes, the greater the risk premium it is likely to include in its contract price. A payment by results approach may not therefore achieve value for money. The approach is more likely to be successful where the scope of services provided by the supplier is wide and the supplier is given the freedom to provide the services in the way it wishes.

Another issue for clients to consider is what proportion of the payments should be dependent on results. The greater the proportion, the higher the risk premium that the supplier will charge if it does not have full control over the outcomes in question.

The commercial reality of payment by results systems may sometimes be essentially the same as payment deductions related to KPIs. This is illustrated by the example in table 19.

Table 19: Two ways to structure the incentive system in a contract

	Option 1: payments by results	Option 2: payment linked to KPIs
	£	£
Basic contract price	1,000,000	1,100,000
Maximum additional payment due to achievement of results	100,000	N/A
Maximum deduction if KPIs not achieved	N/A	100,000
Payment if none of results/KPIs achieved	1,000,000	1,000,000
Payment if all results/KPIs achieved	1,100,000	1,100,000

In this example, the commercial drivers under the two options are the same; they are merely dressed up in different ways.

5.7.4 Profit sharing and not-for-profit models

Profit sharing

Public sector organisations often favour the inclusion of profit sharing arrangements in outsourcing contracts for a variety of reasons, including:

- embedding partnership working
- making the outsourcing more palatable to themselves and/or others who are uncomfortable with the profit motive in the provision of public services
- reducing the risk of adverse publicity due to the supplier's profit margin being seen as excessive
- for financial reasons, eg to provide an additional budget for the client.

Clients should be aware, however, that commercial companies require a minimum profit margin and that the greater the risks they are required to assume, the greater this margin will tend to be. A provision that simply requires the supplier to pay a percentage of its profits to the client is therefore likely to result in an increase in the contract price, as the example in table 20 illustrates.

Table 20: How a profit-sharing mechanism may increase the contract price

	Without profit sharing	With profit sharing
	£	£
Supplier's costs	1,000,000	1,000,000
Required profit (5%)	50,000	50,000
Net receipt required	1,050,000	1,050,000
Profit share (nil/50%)	nil	50,000
Contract price	1,050,000	1,100,000

Alternatively, the profit share might only apply above a threshold reflecting the supplier's required profit margin. This is less likely to result in an increased contract price. Still, clients need to be aware that the greater the risks they wish to pass to the supplier, the higher the supplier's required profit margin is likely to be and the less likely it is that the supplier will accept a mechanism that restricts its profits, unless the threshold is set at a high level, in which case it is less likely that the client will ever receive a share of profits.

Clients also need to be aware that profit levels may be affected by the supplier's accounting methods. For example, a supplier providing services to two different clients could apportion overheads between the two contracts in different ways, affecting the levels of profit on each contract. It is therefore important that there is transparency and clarity about cost allocation, supported by robust contractual provisions requiring an open-book approach and giving the client the right to inspect supporting documents and accounts.

A profit-sharing arrangement is most likely to work effectively where there is a genuine spirit of partnership on both sides and the supplier is happy with such an arrangement, rather than in an adversarial environment where the arrangement is forced on the supplier.

Not-for-profit model

Not for profit is another model that public sector organisations sometimes favour for similar reasons to those set out above for profit sharing.

When pursuing this model, clients must ensure that they comply with procurement rules prohibiting discrimination and, even where the contract is not subject to such rules, that they do not undermine value for money by restricting competition. Clients should therefore think of the not-for-profit model in terms of the contractual arrangement they will enter into with the supplier, rather than the type of supplier to whom the contract will be awarded.

Where the successful bidder is a profit-making company, it may establish a special-purpose company to deliver the project. The client organisation then enters into a contract with the special-purpose company, which does not make a profit. This could, however, add to the complexity of the contractual arrangement without affecting the underlying commercial reality, in which case the benefit of this approach would be highly questionable.

On the other hand, the not-for-profit model may encourage voluntary organisations and others with public service objectives to submit bids. If one of these wins the contract in competition with other bidders, this may result in an outsourcing arrangement that is driven by a genuine public service ethos and yet delivers value for money.

Non-profit-distributing model

The Scottish Futures Trust's non-profit-distributing model was developed and introduced as an alternative to, and has since superseded, the traditional PFI model in Scotland. Its key features are:

- there is no dividend bearing equity
- private sector finance is provided purely through debt
- private sector returns are capped and rates bid in competition.

The trust's description of the model explicitly states that it is not a not-for-profit model. It may, however, be seen as a variant on that model. The key difference is that it is acknowledged that there must be an element of profit in order to attract commercial companies to invest in or to provide public services.

Network Rail is another example of the non-profit-distributing model, describing itself as a 'not-for-dividend' company. It was established by the government in 2002 as a private sector organisation without shareholders who earned dividends. This remains the case, although it was reclassified as a public sector entity in September 2014 following a change in European accounting rules.

Although in the above two examples this model is primarily a method of delivering infrastructure investment, aspects of it could be applied to an outsourcing arrangement.

5.7.5 Information requirements

Outsourcing contracts invariably include provisions requiring the supplier to provide information to the client. As a minimum, such information should be sufficient to enable the client to monitor the supplier's performance under KPIs and its compliance with its other contractual obligations. This should include requirements for the supplier to provide appropriate evidence, such as copies of source documents, and for the client to inspect the supplier's books of account.

Where the contract includes profit-sharing arrangements, as discussed above, these will need to be supported by requirements for the supplier to provide the information necessary for the client to verify the level of profit that the supplier has achieved.

There is an increasing move in the UK towards open-book accounting, which puts more onerous requirements on the supplier to share cost information with the client and assumes that the client will take a more active role in scrutinising the supplier's costs. This supports an open-book contract management approach, under which the client and the supplier share savings and increased costs. Although this approach is more common in works contracts, it may also sometimes be appropriate in service contracts. More information about this subject can be found in *Open Book Accounting: How to Deliver and Demonstrate Value for Money in the Public Sector* (CIPFA, 2013).

It is, however, important to ensure that the information requirements are not excessive, especially for smaller contracts; otherwise potential bidders, especially small to medium enterprises, may be deterred from bidding and the cost of meeting the requirements may be out of proportion to the value of the contract.

Information requirements relating to termination of the contract are discussed in the next section.

5.7.6 Termination provisions

The provisions relating to early termination or expiry of the contract and what will happen as the end of the contract approaches are also key issues that should be considered before procurement commences. As with other key contractual issues, the starting point should be what has worked elsewhere. Anything that is significantly different from what suppliers are familiar with risks deterring bids, increasing the price of the contract due to the inclusion of a risk premium and lengthening the contract negotiations.

Information requirements

Some thought needs to be given to what information, such as TUPE information, may be required from the supplier in order for services to be brought back in house or for a re-tendering exercise to be carried out. Appropriate clauses should be included in the draft contract requiring the supplier to provide the necessary information.

Early termination provisions

Early termination provisions fall into the following three broad categories:

- voluntary or no fault termination by either party
- termination due to client default
- termination due to supplier default.

Clients need to be aware that their right to terminate a contract voluntarily will normally be subject to payment of compensation that leaves the supplier no worse off. Any attempt to amend standard wording to make it easier for the client to terminate is likely either not to be accepted by potential bidders or to result in the inclusion of a considerable risk premium in the contract price. The greater the upfront investment required of the supplier, the higher the compensation payment that will be required if the client terminates early under these provisions.

Clauses relating to client default are fairly standardised. The main client default event is failure to make contract payments. These clauses usually allow for plenty of warning before the supplier has the right to terminate. Clients need to check that the provisions are reasonable, so that there is no significant risk that they will ever be in default.

Supplier default falls into the following broad categories:

- poor performance of the service
- persistent and material breach of other contractual obligations
- corruption

- insolvency.

The provisions relating to early termination due to poor performance of the service are the most important of the early termination clauses that clients need to consider, because they are likely to be related to the KPIs and to depend on the type of service being outsourced, and on other project-specific factors. Such factors may include the levels of performance achieved under in-house management prior to the outsourcing. If previous performance was very poor, then it may be unreasonable to expect the supplier to achieve a much higher level of performance, especially during the early part of the operational period.

Termination for poor performance should be a last resort and it is therefore important that the KPIs are fit for purpose and are backed up by a carefully calibrated payment mechanism, so that early termination will only occur if things go badly wrong, eg the relationship between the parties breaks down.

The dilemma for clients is how to ensure they are able to terminate if performance is so poor that any reasonable person would expect them to be able to do so, while avoiding putting excessive risk on the supplier and thereby deterring bids and/or paying a significant risk premium as part of the contract price. The safe option therefore is to find similar outsourcing projects and to adapt their termination clauses with minimal amendments.

Persistent and material breach clauses relate to breaches of contract terms and conditions, particularly those that are not covered by the KPIs. Clients need to ensure that the provisions relating to termination due to poor performance fit with these clauses.

Clauses relating to termination due to supplier insolvency and corruption are the most standardised and therefore are not normally a key issue for the client to consider prior to procurement.

5.8 HOW THE CONTRACT WILL BE MANAGED

The management of an outsourcing contract during the operational phase is discussed in detail in section 8. It is essential, however, that this issue is given serious consideration during the planning phase, because:

- neither the client nor potential suppliers will be able to understand properly how the outsourcing arrangement is going to work without understanding how the client will manage the contract
- time and time again public sector clients underestimate the resources required to manage contracts
- maintaining a client team to manage the contract and the relationship with the supplier has a significant cost, which must be factored in when comparing the proposed outsourcing arrangement with other delivery options
- the interface between the supplier's and the client's responsibilities needs to be thought through to ensure there are no significant gaps or overlaps and that the allocation of responsibilities and risks makes sense.

These are all issues that merit discussion with potential suppliers during market engagement.

Procuring a supplier

6.1 PRESUMPTION IN FAVOUR OF COMPETITION

The key issues that clients need to consider before they commence procurement include what types of supplier are expected to bid, what type of procurement process will be used to procure a supplier and what type of contractual arrangement the client organisation will enter into with the supplier. These are all discussed in section 5.

Clients may wish to restrict competition for an outsourcing contract or to award the contract directly, without competition, for a variety of motives including:

- the absence of a market for the provision of the service in question
- a desire to retain a degree of control that the client would not have under a traditional outsourcing arrangement
- a desire to mollify stakeholders who are hostile to outsourcing
- a desire to achieve social objectives (see section 5.2.2).

In most cases, however, restricting competition is likely to result in a worse outcome in terms of value for money. If a local authority restricts bids to local suppliers, for example, this may reduce the number of bids, weaken competitive pressure and exclude the best potential bids; it may even result in the procurement process being halted due to an insufficient number of bids being received.

If the restriction of competition breaches procurement law or internal rules, the client organisation is at risk of legal challenge.

Clients should therefore consider restricting competition only where procurement law allows them to do so and there is a good reason why this course of action is likely to achieve better value for money than a competitive process open to any interested party.

6.1.1 Procurement rules

The internal procurement rules of public sector organisations are typically set out in their constitution, financial regulations and/or contract procedure rules.

The public procurement rules, consisting of EU rules and additional rules that are specific to England, have recently been amended. These are both described in the following sections.

6.2 EU RULES

6.2.1 Introduction

The award of contracts by public sector organisations in the European Union is subject to fundamental principles set out in treaties. These principles are equal treatment, non-discrimination, transparency, mutual recognition and proportionality.

More detailed rules are set out in procurement directives and implemented through national law. These require that contracts above specified thresholds must normally be advertised in OJEU and procured in accordance with one of five specified procedures set out in section 6.2.2. Different thresholds apply to supplies and services and to works contracts. The thresholds that apply to services contracts from 1 January 2014 to 31 December 2015 are:

- £111,676 for central government organisations
- £172,514 for other public sector organisations, such as local authorities.

The thresholds for works contracts are considerably higher.

Specified services, notably in social care and health care, benefit from a light-touch regime, under which only contracts that exceed €750,000 must be advertised in OJEU. The light-touch regime is described in section 6.2.3.

Contracts below the relevant thresholds do not have to be advertised in OJEU, but must be procured in accordance with the fundamental principles set out above. If a contract is likely to attract cross-border interest, it must be advertised in such a way that suppliers in other member states have the opportunity to bid. Furthermore, the additional rules that apply in England (see section 6.3) impose separate requirements to advertise certain contracts below OJEU thresholds.

A new public contracts directive issued in 2014 introduced significant reforms to the rules. The deadline for it to be implemented throughout the EU is 17 April 2016, but it has already been implemented in England, Wales and Northern Ireland through the Public Contracts Regulations 2015 (the 'new regulations'). These came into effect on 26 February 2015 with the following exceptions:

- the new regulations will not apply to NHS healthcare commissioning in England until April 2016
- requirements in relation to obligatory e-procurement will not come into force until 18 April 2017 for central purchasing bodies (these are defined in the regulations and include bodies such as the Crown Commercial Service and the Yorkshire Purchasing Organisation) and 18 October 2018 for other contracting authorities.

Key provisions of the new regulations that are relevant to outsourcing arrangements are set out in the following sections. Those derived from the new public contracts directive are described in sections 6.2.2 to 6.2.6; additional provisions that are specific to England are described in section 6.3.

A separate new directive on concessions (see section 5.6.4) was also issued in 2014, but has not yet been implemented in the UK. Under the existing rules, service concessions are not subject to competition requirements, but they will be once the new directive is implemented,

which it must be by 17 April 2016. The competition requirements are similar to those that apply to public service contracts, but differ in detail, eg the thresholds are different.

6.2.2 Contract award procedures

Contracts that are above the relevant threshold, other than those that are subject to the light-touch regime, must be procured in accordance with one of five specified procedures. These are summarised in table 21.

Table 21: OJEU contract award procedures

Procedure	Summary	Comments
Open	<ul style="list-style-type: none"> ■ All those interested may respond to the advertisement in OJEU by submitting a tender for the contract ■ Contract negotiations are not allowed 	<ul style="list-style-type: none"> ■ Suitable for simple procurements where the requirement can be clearly defined, especially where bids will be judged purely on the basis of price ■ A large number of bids may be received
Restricted	<ul style="list-style-type: none"> ■ A pre-qualification process is used to select a shortlist of bidders that are invited to tender ■ Contract negotiations are not allowed 	<ul style="list-style-type: none"> ■ Suitable for relatively simple procurements where the requirement can be clearly defined so that bidders can submit fully priced bids in response to the invitation to tender, without the need for any negotiation
Competitive dialogue	<ul style="list-style-type: none"> ■ A pre-qualification process is used to select a shortlist of bidders that are invited to undertake a dialogue process during which any aspects of the project may be discussed and solutions developed ■ The contracting authority continues the dialogue until it identifies one or more solutions that are capable of satisfying its requirements; it then closes the dialogue and invites tenders ■ Only limited discussion and clarification is permitted once the dialogue stage has closed, which does not amount to 'negotiation' 	<ul style="list-style-type: none"> ■ In simple terms, these two procedures may be used only where it is not possible for the contracting authority's requirements to be met without discussions with bidders. The wording in the regulations is, however, somewhat complicated. Practitioners should therefore obtain legal advice, as they should in relation to use of the OJEU procedures generally ■ The difference between the two procedures is that under competitive dialogue, discussions with bidders take place before they submit their bids, whereas under the competitive procedure with negotiation, negotiations take place after bidders have submitted their bids; then they submit final bids. In some circumstances under the latter procedure, the contracting authority may award a contract on the basis of the original bids, without negotiation
Competitive procedure with negotiation	<ul style="list-style-type: none"> ■ A pre-qualification process is used to select a shortlist of bidders that are invited to submit tenders ■ Negotiations take place with all bidders regarding their tenders, then negotiation is closed and final tenders are invited 	

Procedure	Summary	Comments
Innovation partnership procedure	<ul style="list-style-type: none"> ■ A pre-qualification process is used to select a shortlist of bidders that are invited to negotiate ■ The contracting authority uses a negotiated approach to invite bidders to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market ■ The supplier bids to enter into a partnership with the contracting authority 	<ul style="list-style-type: none"> ■ Additional procedure introduced under the new regulations ■ May only be used in limited circumstances where a unique solution is required

The restricted procedure and competitive dialogue are most likely to be used in outsourcing projects: the restricted procedure for straightforward projects and competitive dialogue for more complicated projects. However, some public sector organisations may start to use the new competitive procedure with negotiation as a mid-point between the two.

6.2.3 Light-touch regime

The new regulations have introduced a light-touch regime, which replaces the distinction between Part A and Part B services under the previous directives.

Services to which the light-touch regime applies include:

- social care and health care services
- education and training services
- recreational, cultural and sporting services
- services related to the detention and rehabilitation of criminals
- legal services.

Contracts for these services have to be advertised in OJEU only if they exceed €750,000, which is fixed at £625,050 until 31 December 2016. Contracting authorities have the freedom to choose their own procedure that is suitable for the services in question, provided this complies with fundamental EU principles. The OJEU notice may be either a prior information notice (PIN) or a contract notice. These are defined in the glossary.

Implementation of the new regulations in relation to NHS-funded services procured by NHS England and clinical commissioning groups is delayed until 18 April 2016, however. In the meantime, these services remain treated as Part B services under the previous procurement directives rather than being subject to the light-touch regime. This is because these services are subject to the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 and the government considers that commissioners need time to adapt to the new requirements of the light-touch regime.

Any other services, which, along with the above services, were previously classed as Part B services and did not have to be advertised in OJEU, are not covered by the light-touch regime; they are therefore now subject to the full requirements to advertise, as for the majority of services that were previously classed as Part A.

Further guidance on the light-touch regime is provided in *Guidance on the New Light Touch Regime for Health, Social, Education and Certain Other Service Contracts*, published by the Crown Commercial Service.

6.2.4 Exemption for in-house contracts (the Teckal exemption)

The EU rules allow a contracting authority in certain circumstances to award a contract to a company wholly or mainly owned by that authority without running a competitive procurement process. This is commonly known as the Teckal exemption, named after a landmark case heard by the European Court of Justice, or as the exemption for in-house contracts. The exemption, which already existed by virtue of case law throughout the EU, has been enshrined in the new regulations.

The exemption provides that where one or more public sector organisations set up a company to perform works or services on their behalf, they may enter into contracts with the company for those works or services without having to run a competitive procurement process, provided all of the following conditions are met:

- they exercise a degree of control over the company concerned similar to that which they exercise over their own departments
- more than 80% of the activities of the company are carried out for them
- there is no direct private capital participation.

The services performed under the relevant contracts are in effect treated as being performed in house. In the case of a company owned by more than one public sector organisation, there are some additional restrictions to ensure there is genuine co-operation between them, rather than the arrangement being a device to circumvent the normal rules applying to commercial contracts.

6.2.5 Reservation of contracts

The EU rules also provide that in certain circumstances, where a full procurement exercise, including advertising in OJEU, is required, a contracting authority may restrict competition to a particular type of organisation.

It is important to understand that these provisions do not permit a contract to be awarded without competition. They merely restrict competition to particular types of organisation.

Sheltered workshops and sheltered employment training programmes

A long-standing provision, which has been updated in the new regulations, allows contracting authorities to:

- restrict bids for any type of contract, whether for supplies, services or works, to sheltered workshops or entities whose main aim is the social and professional integration of disabled or disadvantaged people, or

- provide for such contracts to be performed in the context of sheltered employment programmes.

In each case, the workforce must comprise at least 30% of disabled or disadvantaged people.

Public service mutuals and similar enterprises

Under a new provision secured by the UK government, contracting authorities may restrict bids for contracts relating to specified services, mainly falling within the social care and health care sectors, to public service mutuals and similar social enterprises, which may be staff mutuals or other kinds of mutual, such as those involving end users or stakeholders. The duration of such a contract must not exceed three years and an organisation is not entitled to bid under this exemption if it has already been awarded a contract under the exemption by the contracting authority in question in the previous three years. These contracts also benefit from the light-touch regime.

This provision does not extend to commissioning NHS services in England by NHS England and clinical commissioning groups. This is to avoid inconsistency with the NHS (Procurement, Patient Choice and Competition) Regulations 2013, which prohibit favouring particular types of supplier.

6.2.6 Other reforms introduced by the new regulations

Under the light-touch regime, contracting authorities have the option to use a prior information notice, rather than a contract notice, as the call for competition. Sub-contracting authorities, such as local authorities, also have this option when they are using the restricted procedure or the competitive procedure with negotiation.

Bids from smaller suppliers (known as small to medium enterprises or SMEs) are facilitated by the following provisions transposed from the directives:

- encouraging contracting authorities to break contracts into lots
- forbidding contracting authorities from requiring suppliers' turnover to be more than double the value of the contract unless there is a specific justification
- requiring contracting authorities to move towards the use of electronic tendering
- subject to the bidder providing evidence of compliance before contract award, allowing self-certification of compliance with pre-qualification requirements using a standard EU document that was still to be issued at the time this guide was published.

The additional rules that apply only in England are also intended to encourage bids from SMEs.

Engagement with the market prior to the commencement of procurement is encouraged.

Poor performance under a previous public contract is explicitly permitted as grounds for rejecting a bid, provided it led to termination or damages or the equivalent.

The relevant skills and experience of individuals may be taken into account when awarding contracts.

There are also various provisions that strengthen clients' ability to take social objectives into account when awarding contracts. These are summarised in section 5.2.2.

6.3 ADDITIONAL RULES THAT APPLY IN ENGLAND

The new regulations include provisions that are specific to England, which apply from 1 April 2015. These are intended to give small businesses better access to public sector contracts and follow the recommendations of a review carried out by Lord Young of Graffham. They require public sector organisations other than maintained schools and academies to advertise certain contracts on a government website known as Contracts Finder.

The requirements are as follows:

- where the contract is advertised in OJEU, it must also subsequently be advertised on Contracts Finder
- where the contract is below the relevant EU threshold but above £10,000 for central government departments or £25,000 for other public sector organisations:
 - if the contract is advertised, it must be advertised on Contracts Finder
 - information about the award of the contract must be published on Contracts Finder
 - no separate pre-qualification stage is permitted, although contracting authorities may still impose appropriate selection requirements (effectively making this the equivalent of the open procedure under EU rules).

6.4 MARKET WARMING

Section 4.4 explains that market engagement can be divided into two stages: the first focused on obtaining information from suppliers (market soundings), before a decision is taken to proceed with outsourcing, and the second focused on informing potential bidders about the upcoming opportunity and encouraging them to bid (market warming), after the decision to proceed has been taken.

The first prerequisite for a successful procurement process is that a sufficient number of strong bids is received to create competitive pressure. A 'strong' bid in this context means a bid that is of acceptable quality from the client's point of view and that is taken seriously by other bidders as posing a competitive challenge. As a general rule, clients should seek to obtain at least three strong bids. With only two such bids, the risk is too great that one of the bidders will withdraw at some point in the procurement process due to unforeseen circumstances, leaving only one strong bid. The risk of collusion is also significantly higher if there are only two strong bids.

Clients often mistakenly assume that they do not need to make an effort to attract bids. Sufficient competition is, however, by no means guaranteed, except in the most straightforward projects, and therefore clients will usually need to put some effort into market warming.

The purpose of market warming is to help ensure that a sufficient number of strong bids is received by:

- informing suppliers about the upcoming opportunity
- ensuring suppliers are aware of the planned timescales
- convincing suppliers that:
 - the client organisation is a good one to do business with

- the individuals employed by the client to manage the project are people they can have confidence in
- the procurement process will be run efficiently
- the contract will be a good one to win.

The cost to a supplier of taking a bid through to preferred bidder stage is high for all but the simplest outsourcing exercises. For more complicated and innovative projects, bidding costs can run into hundreds of thousands, and even millions, of pounds. Furthermore, suppliers may be constrained in terms of how many bids their bidding teams can prepare at one time. The greater these costs and competing pressures are, the more assurance suppliers will need that the opportunity is worth bidding for. To ensure they receive sufficient strong bids, therefore, clients may need to put in considerable effort to convince suppliers that:

- the client is fully committed to going through with the project
- the client understands what is required to run an efficient procurement process and has the resources in place to do this
- there is support at the highest level of the organisation, including from politicians where relevant.

It is important to keep potential bidders informed about key developments, especially any changes to procurement timescales, because bidders need to plan just as clients do. In particular, suppliers' bidding teams need to:

- plan which contracts they bid for and allocate their resources accordingly
- obtain formal approval from their boards to submit a bid.

Even if the timetable remains unchanged, it is useful to remind potential bidders of key dates. The information may be provided in the form of regular bulletins to ensure that potential bidders remain aware of the forthcoming opportunity and plan accordingly. Again, however, the restrictions under EU rules on advertising ahead of OJEU publication or of giving more information than has been published need to be borne in mind.

6.5 READINESS TO COMMENCE PROCUREMENT

Procurement commences when suppliers are formally invited to express an interest in the proposed contract. Depending on the method of procurement, this could be:

- for small contracts, an invitation to a selected number of bidders to submit tenders
- an invitation to the suppliers on a framework agreement to take part in a mini-competition
- an advertisement in OJEU, or if the contract is below the relevant threshold, an advertisement on Contracts Finder or another tender portal, eg the London Tenders Portal.

Before commencing procurement, clients should ensure that:

- they are clear about their objectives for the service
- there is a clear rationale for outsourcing
- they have considered all the key issues set out in section 5
- they have consulted with end users, employees and other interested parties

- they have carried out meaningful market engagement
- they have reasonable confidence that they will receive sufficient bids
- they have a realistic project plan in place
- they have marshalled the resources required to deliver the outsourcing project
- all the relevant documentation has been finalised or at least drafted.

The documentation that is required will depend on the type of procurement process, but is likely to include as a minimum:

- invitation to tender
- draft contract including services specification and KPIs
- background information to enable bidders to submit proposals that meet the client's requirements and to price their bids accurately without including unnecessary risk premiums or caveats.

The background information may include:

- anonymised details of employees who may be transferred from the client organisation to the supplier
- information about assets, particularly IT assets, that the client organisation proposes to transfer or make available to the supplier
- operational information about the services to be transferred, eg delivery locations and number of customers
- information about current methods of delivery
- information about current performance levels.

For larger projects, the following documentation may also be required:

- OJEU notice, along with pre-qualification criteria, selection criteria and contract award criteria
- information memorandum
- pre-qualification questionnaire.

Under the revised EU rules, for contracts that must be advertised in OJEU, the contracting authority is required to make the procurement documents available electronically to all prospective bidders as soon as the OJEU notice is published. The information that must be provided includes the draft contract terms and conditions.

The general principle that should be applied to the preparation of documentation is that all the documents required for the procurement process should be ready before procurement commences, unless there is a good reason why they can be finalised later. Except in the case of small contracts that are not advertised and contracts that are procured under the EU's open procedure or equivalent, there will be a significant gap between the commencement of procurement and the issuing of detailed documentation as part of the invitation to tender. However, the drafting of the detail can sometimes raise significant issues that have previously been missed; it is therefore good practice to have the detailed documentation in place prior to the commencement of procurement. The time between the advertisement and the invitation to tender is then available for other matters, including dealing with expressions of interest,

analysing pre-qualification responses and responding to queries. If any spare time then remains available, it can be used to make further improvements to the documentation.

6.6 MANAGING THE PROCUREMENT PROCESS

It is beyond the scope of this guide to cover the procurement process in detail. Good procurement principles, which apply to procurement processes generally, of course apply to outsourcing projects. These principles include:

- running an efficient procurement process
- scrupulously ensuring that the competition is fair and that it is seen to be fair
- adhering to the project plan unless there is a compelling reason to change it
- maintaining good communication with bidders while safeguarding commercially confidential information
- keeping stakeholders informed of progress
- ensuring that the project continues to meet the client's objectives.

Adhering to the project plan as far as reasonably possible is important because bidders need to plan how they deploy their own resources during the procurement process and it is difficult for them to do so if the project plan is subject to alteration, especially at short notice. There may be other knock-on effects from a change to the timetable, eg missing the meeting of a committee that must approve a key milestone.

However, it is sometimes necessary to be flexible about project timetables, particularly where it is clear that insufficient time was allowed for a particular stage in the original project plan. A common mistake that clients make is to allow bidders insufficient time to develop their bids. Where it becomes apparent that this has occurred, eg where the majority of bidders indicate that they have insufficient time, then there is little question that the timetable should be amended accordingly. Care needs to be taken, however, to ensure the principle of fair competition is upheld. It would be unfair, for example, to extend the bidding period in response to comments from one bidder if other bidders were happy with the existing timetable. It may be that the bidder in question was poorly prepared from the outset.

6.6.1 Proceeding to conclusion of the contract

Larger and more complicated outsourcing projects, such as those procured through competitive dialogue, will involve the appointment of a preferred bidder some time before a contract is awarded. The decision to appoint a preferred bidder should not be made until all key contractual issues have been agreed and only details remain to be discussed. That being the case, depending on the particular rules of the client organisation, the formal decisions to appoint the preferred bidder and to award the contract may be taken together, provided the decision to award the contract is conditional on no further significant commercial issues arising.

Under EU rules, following a precedent set in a case known as Alcatel, the contracting authority must allow a 'standstill period' of at least ten days for other bidders to challenge the outcome of the procurement process before the contract is awarded to the successful bidder. This needs to be built into the project plan.

SECTION 7

Mobilisation

7.1 INTRODUCTION

Mobilisation means the practical steps that the parties must take to enable the handover of responsibility for management of the service from the client organisation to the supplier to take place.

The earliest point at which the supplier will be prepared to commence mobilisation will be when it is appointed as preferred bidder, but it may be willing to carry out only limited mobilisation before the contract has been signed, especially if mobilisation costs are high.

A common mistake that clients make is to allow insufficient time for mobilisation. This can occur for various reasons, including:

- pressure for handover to take place by an arbitrary date
- slippage in the procurement timetable
- underestimation of the time and effort needed for mobilisation.

As a result, mobilisation activities that should be completed before the supplier assumes responsibility for management of the service often continue after the official handover. This can result in performance being poor at the beginning of the operational phase; the supplier is often blamed for this, providing ammunition for those who were critical of outsourcing all along. Relationships between the parties may then quickly deteriorate, jeopardising the longer-term success of the project.

It is therefore vital that the client allows sufficient time for both parties to mobilise before the handover of management responsibility to the supplier. The handover date should, if necessary, be postponed, preferably by mutual agreement. The short-term embarrassment and negative publicity of a postponement may be worth bearing in order to avoid putting the contract on the wrong footing from the outset, with the risk of adding yet another example to the litany of failed outsourcing projects.

7.2 MOBILISATION ACTIVITIES

In most outsourcing projects, both parties must put in considerable time and effort to effect a smooth transition. Table 22 sets out the key activities likely to be required of each party.

Table 22: Key mobilisation activities

Client responsibilities	Supplier responsibilities
	<ul style="list-style-type: none"> Finalise arrangements for managing the service, including recruitment and induction of managers
<ul style="list-style-type: none"> Provide information that has not been previously provided, which the supplier requires in order to perform the service 	<ul style="list-style-type: none"> Familiarise itself with information provided by the client Incorporate relevant information into its own database
<ul style="list-style-type: none"> Transfer staff engaged in the provision of the service 	<ul style="list-style-type: none"> Receive and accommodate transferred staff Induct transferred staff into the supplier organisation
<ul style="list-style-type: none"> Transfer assets, such as vehicles, equipment and IT software 	<ul style="list-style-type: none"> Receive and accommodate physical assets that have been transferred Incorporate transferred software into its own IT systems
<ul style="list-style-type: none"> Make any relevant assets that remain with the client organisation, such as office space and IT infrastructure, available to the supplier as agreed 	<ul style="list-style-type: none"> Familiarise itself with client organisation assets that it will be using Make any necessary adaptations to its own IT equipment and software required to use the client organisation's IT infrastructure
<ul style="list-style-type: none"> Inform end users and other stakeholders of the impending change 	<ul style="list-style-type: none"> Inform end users and other stakeholders that the change is occurring and provide them with new contact details
<ul style="list-style-type: none"> Hand over keys to premises that are to be managed by the supplier 	<ul style="list-style-type: none"> Change signs on buildings, vehicles, etc

7.3 PROVISION OF INFORMATION

As a general principle, the earlier information is provided to the supplier, the better.

In section 6.5, it is suggested that the background information to be provided to bidders should be assembled before the commencement of procurement. Although there is a risk of overwhelming bidders with too much information, on the whole it is better to provide too much information at that stage than too little. As long as they are able to distinguish what is relevant from what is irrelevant and absorb what is relevant, having more information enhances bidders' ability to submit high-quality and realistically costed proposals that meet the client's requirements.

By the time it is appointed as preferred bidder, therefore, the supplier should have already received much of the information that it requires in order to provide the service. This should help to prevent the supplier being overwhelmed with new information during contract finalisation and the mobilisation period. Nevertheless there will remain a considerable volume of information still to be provided, including:

- confidential information, such as the names of the employees due to be transferred
- new information, such as changes in the items of equipment to be transferred
- detailed information that was not provided at the competitive stage of procurement because it would not have affected the proposed solution or the contract price.

7.4 ESTABLISHING RELATIONSHIPS

The establishment of a good relationship between the client and the supplier is just as important for the success of an outsourcing project as the content of the contract and the specification.

The development of the relationship with the future supplier should begin before procurement commences, at the market engagement stage described in section 4.4. At that point, potential bidders are likely to have contact only with a small number of client personnel, mainly the people who will be managing and leading the procurement process. Nevertheless, bidders' impressions during this phase set the scene for how they view the client organisation as the project progresses.

Clients should be aware that the people representing the future supplier at the pre-procurement stage and the early part of the procurement phase may have a marketing role and may not be the people who will either be leading the contract negotiations or managing the service after handover.

Where the procurement process involves discussions or negotiations with bidders, once a shortlist of bidders has been selected, the client will have increasing contact with those bidders, although this is still likely to be restricted to a relatively small number of people on each side.

While the foundations for the relationship between the client and the supplier should be laid during the pre-procurement and competitive bidding stages, the appointment of a preferred bidder is the point at which the client needs to step up its effort to develop the relationship with the future supplier. This requires significant time to be spent face to face, separately from any contract negotiation or discussion of everyday business issues. It also requires different levels of client organisation and preferred bidder staff to engage with each other so that they can develop their working relationship and establish trust. The people that should be involved at this stage range from operational staff to the senior management and leaders of each organisation, who may need to step in to resolve issues at a strategic level if things are not going well at any point during the operational period.

7.5 ESTABLISHING PROCESSES AND PROCEDURES

The processes and procedures that the supplier is required to follow should be prescribed in the contract, but this will by no means cover all the processes and procedures that the parties need to maintain in order to make the outsourcing arrangement work; nor should it, because if it did, it would put the supplier in a straitjacket, severely restricting its ability to change working methods, to innovate and thereby to achieve savings and improvements in quality.

The parties therefore need to work together to develop detailed processes and procedures. Taking communication between the parties as an example, the contract terms and conditions should stipulate who the parties' formal representatives will be, where formal notices under the contract must be sent and how they must be sent. Requirements to submit reports and monitoring information, particularly those relating to KPIs, should also be covered either in the contract terms and conditions or in the specification. How operational staff communicate on a day-to-day basis, however, will not be covered in the contract and so the processes for this will need to be established during the mobilisation period and further developed during the operational period.

Operational phase

8.1 INTRODUCTION

Weak contract management is a key reason why public sector outsourcing arrangements frequently fail to deliver the intended benefits and why high-profile failures are not uncommon. The cross-government review, described in section 2.5.4, indicates how widespread this problem is.

Public sector managers often mistakenly assume that once management of the service has been transferred to a third party, they no longer need to worry about it. The contract must, however, be proactively managed and the relationship with the supplier nurtured, in order for the outsourcing arrangement to succeed. The skills and resources required to do this should not be underestimated, but they often are.

8.2 MANAGING THE CONTRACT AND THE RELATIONSHIP WITH THE SUPPLIER

The mobilisation period, described in section 7, is crucial for laying the foundations for successful delivery throughout the operational period. Putting in place processes for the contract to be managed robustly and developing the relationship with the supplier are equally important; this remains the case as the project moves into the operational phase and continues to be so until the contract ends.

Outsourcing arrangements in which the contract is enforced, but the relationship with the supplier is neglected, are unlikely to be successful, even if the contract is excellently written, with KPIs perfectly calibrated to incentivise good performance. People are not motivated simply by commercial and legal forces; they need to feel happy about the people they are working with and the environment they are working in to perform well.

On the other hand, if the client focuses exclusively on maintaining good relations with the supplier, and fails to enforce the contract, this can result in both parties becoming complacent, with everything appearing to go well on the surface for a time, but the project failing to deliver benefits to the extent that it should, resulting in poor value for money.

Clients sometimes take the view that enforcing the contract too rigorously will damage relationships. This is true beyond a certain point, but it is much more often the case that public sector clients simply fail to recognise the need to manage their contracts properly and that this encourages poor performance, even if the supplier is not deliberately taking advantage of the client's weakness. An example of this is provided in the following box.

Example – poor performance resulting from poor contract management

A local authority outsourced its construction-related professional services, but failed to put in place processes for reviewing the KPI monitoring information that the supplier was required to provide each month. For the first 18 months of the operational phase, the supplier complied with the requirements set out in the contract to submit the information, and this in turn helped to ensure that its own staff were aware of the KPIs and made an effort to meet them. However, during this period the supplier never received any comments from the client about the information that it had submitted or indeed any communication about KPIs. A key member of the supplier's staff responsible for KPI monitoring then had to take an extended leave of absence. The supplier did not make arrangements to replace this person because there seemed to be little point in doing so. Performance of the contract suffered accordingly. It was only after repeated complaints from end users that the authority took action to rectify the situation.

8.3 ORGANISING THE IN-HOUSE TEAM

As explained in section 5.8, how the contract is to be managed is a key issue that clients must consider before they commence the procurement process. Already at that point they should be thinking about the skills that will be required, the size of the in-house team and how the team will be organised. These issues need to be considered alongside the scope of the contract – where each party's responsibilities begin and end – in order to build up a realistic picture of what will be required on the client side to manage the contract and deliver any aspects of the services that remain in house. Although this guide has drawn a conceptual distinction between the role of a client and an in-house provider, these roles may sometimes overlap where the client organisation remains responsible for performing limited service delivery functions.

A distinction has also been drawn between managing the contract and managing the relationship with the supplier, but it is inconceivable that these activities should be divorced from each other. The people who are responsible for managing the contract are those that have day-to-day contact with the supplier's staff and they are therefore the people who must be responsible for maintaining the relationship with the supplier on a day-to-day basis.

Unfortunately, people who are good at dealing with contractual issues frequently do not have the skills and personal qualities required to nurture relationships, and vice versa. Clients need to be aware of this when they are establishing their in-house teams. It may be worth writing into the job descriptions of contract managers an explicit duty to develop the relationship with the supplier, as well as managing the contract, and to recruit people who are able to do both. If individuals cannot be found with the required combination of qualities, then the team needs to include people with complementary skills to fulfil both functions.

The size and structure of the in-house team will depend on a variety of factors, including the size of the contract and the type of service. A typical team of three people responsible for managing a medium-sized contract might consist of:

- team leader – responsible for strategic contract management
- assistant contract manager – responsible for operational contract management
- financial and administrative officer.

It is important to ensure that financial management of the contract is closely related to operational management, rather than being left to a remote person in another department who does not understand how the contract works and what the key issues are. This role therefore needs to be carried out either by a person employed in the core client team or by someone who can devote considerable time and effort to liaising with that team and gaining a thorough understanding of the contract.

8.4 KEY ISSUES IN CONTRACT MANAGEMENT

Contract management responsibilities can be divided into two broad categories: operational and strategic, although there is no clear dividing line between the two. Operational responsibilities relate to the day-to-day management of the contract, while strategic responsibilities relate to major issues that may arise infrequently and to longer-term issues. Table 23 highlights some of the key contract management tasks under these two headings.

Table 23: Key issues in contract management

Operational	Strategic
<ul style="list-style-type: none"> ■ Maintain files, eg copies of contractual documents and correspondence between the parties 	<ul style="list-style-type: none"> ■ Ensure the filing structure is fit for purpose and review it periodically ■ Ensure a definitive copy of the original contract is held ■ Ensure a copy of the latest version of the contract is held ■ Ensure there is fool-proof backup for all important files
<ul style="list-style-type: none"> ■ Maintain a calendar of dates when client and supplier obligations arise ■ Remind relevant individuals of dates 	<ul style="list-style-type: none"> ■ Ensure the calendar is fit for purpose and covers all key obligations ■ Be aware of dates when strategic obligations arise
<ul style="list-style-type: none"> ■ Liaise with the supplier and end users on a day-to-day basis ■ Deal with straightforward issues raised by the supplier and end users 	<ul style="list-style-type: none"> ■ Ensure the right processes are in place for liaison with the supplier and end users ■ Deal with complicated issues raised by the supplier and end users
<ul style="list-style-type: none"> ■ Review KPI monitoring information provided by the supplier ■ Provide comments to the supplier ■ Check that the supplier takes comments on board ■ Alert the strategic manager to poor performance 	<ul style="list-style-type: none"> ■ Ensure the right processes are in place to review KPI monitoring information ■ Decide what action to take if performance is poor ■ Review KPIs periodically, eg annually
<ul style="list-style-type: none"> ■ Submit minor change requests to the supplier and ensure they are implemented 	<ul style="list-style-type: none"> ■ Submit major change requests to the supplier and ensure they are implemented

Operational	Strategic
<ul style="list-style-type: none"> ■ Assist with benchmarking, market testing and/or value for money reviews 	<ul style="list-style-type: none"> ■ Oversee any periodic benchmarking, market testing and/or value for money reviews, ensuring both parties comply with their obligations
<ul style="list-style-type: none"> ■ Ensure the supplier's invoices are received on time ■ Check the supplier's invoices ■ Contact the supplier with any queries ■ Pay invoices 	<ul style="list-style-type: none"> ■ Ensure systems for dealing with the supplier's invoices are fit for purpose ■ Deal with any major issues with the supplier's invoices ■ Monitor the affordability of the contract and take action if there is a problem
	<ul style="list-style-type: none"> ■ Maintain contingency plans for business continuity in case of supplier failure or system failure

8.5 PERIODIC REVIEWS

It is easy to get bogged down in the day-to-day issues of managing a contract, but it is important to step back from these from time to time. A good way to do this is to carry out periodic reviews of the contract itself and the relationship with the supplier. The timing and frequency of the reviews will depend on a variety of factors, including the length of the contract and how innovative the outsourcing arrangement is.

The contract may prescribe that reviews should take place at specified intervals. Whether or not this is the case, it is essential that reviews are carried out. In either case, reviews are best carried out jointly with the supplier, in order to:

- benefit from the supplier's expertise
- obtain the supplier's feedback on the client's management of the contract
- help ensure that the proposed changes have the support of both parties and that the supplier co-operates in implementing them.

The first review should be carried out as soon as a reasonable period for bedding-in has elapsed. This provides an opportunity for a sanity check of the key operational provisions of the contract, such as KPIs, and the processes that have been put in place. The more innovative the outsourcing arrangements, the greater the need for such a review. Issues that should be covered in this first review are set out in table 24.

Table 24: Key issues for the first periodic review

Heading	Detail
Contract terms and conditions	<ul style="list-style-type: none"> ■ Correcting any mistakes or ambiguities that impede the smooth operation of the contract
KPIs	<ul style="list-style-type: none"> ■ Fitness for purpose in terms of number, scope and wording ■ How monitoring arrangements are working
Processes and procedures	<ul style="list-style-type: none"> ■ How arrangements set up at start of contract are working ■ Meetings – frequency, attendance and subject matter
Relationships	<ul style="list-style-type: none"> ■ How each party perceives the relationship ■ How the relationship can be improved

Section 5.7.3 explains that KPIs are at the heart of an outsourcing contract. They should therefore be a key focus of the first review.

Identifying issues at an early stage enables action to be taken before processes and behaviour become embedded and relationships deteriorate irretrievably. If problems are then resolved, they may subsequently be perceived as having been mere teething problems rather than fundamental problems with the outsourcing arrangement.

Unless the type of service is very straightforward, the contract period is short and the outsourcing arrangement operates in a static environment, it is unlikely that action taken following the first review will enable the contract to run smoothly until expiry. Otherwise, further periodic reviews will be necessary for a variety of reasons, including:

- infrequent periodic processes, such as benchmarking, will not have been tested by the time of the first review
- the client's service priorities may change over time due to factors such as a change in the client organisation's financial position or its policies
- external factors, such as changes in legislation, which may affect the service
- changes in personnel, in the internal structure of either the client or the supplier organisations, or in the ownership of the supplier organisation.

The frequency of further reviews will depend on the size, complexity and length of the individual outsourcing arrangement, but it is reasonable to have annual reviews, and contracts often require this.

While the primary objective of the reviews may be to improve the outsourcing arrangement, they should also be used for the wider benefit of the client organisation, feeding into the organisation's sourcing strategy and providing lessons learned for other outsourcing projects.

8.6 CHANGING THE CONTRACT

In a climate of public sector austerity, levels of service that were set at the time of contract signature may become unsustainable. Clients in these circumstances may have little choice but to reduce the scope of the contract and/or the quality of the specification. This is best done by negotiation with the supplier. Waste management contracts are one example of a service area where this is common at the moment.

Irresistible financial pressures should not, however, be the only reason for renegotiation of an outsourcing contract. The regular reviews described above should be used as the opportunity to consider whether the contract is continuing to meet the client organisation's requirements and, as part of each review, the client should consider whether aspects of the contract may need to be renegotiated. Reasons for renegotiation, other than deterioration in the client organisation's overall financial position, could include:

- a change in priorities, resulting in the outsourced services meriting a greater or smaller proportion of the organisation's corporate budget
- to correct significant mistakes in the original contract
- a desire to increase or decrease the scope of the contract, subject to what procurement rules allow.

Although the client will rarely, if ever, have the right to make unilateral changes to the contract, it may, if the supplier is initially unwilling to negotiate, use the formal change-control mechanism to begin a process to impose the change on the supplier. This may bring the supplier to the negotiating table. If the supplier remains recalcitrant, then the client will have an uphill struggle to get the change implemented, but should not shirk this challenge if the alternative is to continue with a contract that does not meet its current needs.

Clients need to ensure that changes they make to a contract, especially to increase the scope of services, are compliant with public procurement rules. The revised EU rules have clarified the limitations on permissible changes to contracts that must be advertised in OJEU. In some circumstances, notably where the change is not clearly envisaged in the original contract, the value of the cumulative change is restricted to 10% of the original contract value. However, where changes are needed due to unforeseen circumstances, a cumulative increase of up to 50% is permitted.

SECTION 9

Exit planning

9.1 INTRODUCTION

Public sector clients often fail to plan far enough in advance for what will happen when an outsourcing contract expires. Sufficient time needs to be allowed for considering the options, taking decisions, carrying out any procurement process that may be required and mobilising for handover. A major reprocurement exercise, especially one carried out under competitive dialogue, can take a year or more. Unless it is known that such an exercise will not be required, the client may therefore need to start considering the options up to two years before the existing contract is due to expire.

Failure to allow sufficient time for exit planning may result in:

- inadequate consideration of the options, resulting in a poor decision
- a rushed procurement process, resulting in poor value for money
- insufficient time for mobilisation, resulting in poor performance when the new arrangements commence
- an unplanned extension of the existing contract.

The risk of an unplanned extension should be avoided because:

- performance may already be poor under the existing contract
- even if current performance is good, the supplier may be unable to maintain it beyond the original expiry date, especially if the contract is extended at short notice
- the supplier may not agree to an extension, especially if it is losing money on the existing contract
- the extension may be unlawful.

9.2 OPTIONS FOR FUTURE SERVICE DELIVERY

9.2.1 No longer providing the service

The outsourced service may no longer be required after the contract expires or, if it is a discretionary service, the client may decide that it no longer wishes to provide it either directly or through an outsourcing arrangement. This is most likely to happen where the client organisation faces severe reductions in its budget.

The client organisation's decision to stop providing a service may result in that service not being provided at all. Alternatively another organisation, especially a voluntary organisation, may take over responsibility for providing it. One example is the Carn Brea Leisure Centre in Cornwall. In November 1999, Kerrier District Council closed the centre, the management

of which had been outsourced, following expiry of the contract. The council had no plans to re-open the centre and the staff were made redundant. However, the centre reopened three months later under an initiative by former staff and end users, who established a charitable company, the Carn Brea Centre Leisure Trust. The trust continues to operate the centre successfully.

Section 11.4 describes how public sector organisations may assist other organisations to provide services that they have decided no longer to provide.

9.2.2 Bringing services back in house

The original decision to outsource may or may not have been based on a sound rationale. Even if the rationale was sound at the time the decision was taken, circumstances may have changed since then to make in-house management a better option by the time the contract expires. Such changes could include:

- an improvement in the quality of management in the client organisation
- a general improvement in the efficiency of the client organisation
- ability of the client to maintain and build on improvements delivered by the supplier
- performance under the outsourcing contract having been worse than expected, through no fault of the client organisation.

The material presented in section 2.6 indicates that it is not uncommon for clients to bring services back in house when an outsourcing contract expires.

Clients should, however, be wary of jumping to the conclusion that bringing the service back in house is the right solution, simply because the existing contract has not delivered the expected benefits. The fault may lie with the client organisation rather than with either the supplier or the principle of outsourcing. The client may have made mistakes in the way that it planned, procured or managed the current outsourcing arrangement, but, by learning from these mistakes and its experience on other projects, may be able to make a success of a new outsourcing arrangement. The relative merits of in-house and outsourced solutions should therefore be considered dispassionately, according to current circumstances and making full use of lessons learned.

Clients should also ensure that they consider all the costs before they take a final decision to bring services back in house. These may include:

- internal project management costs
- the cost of any external advisers engaged to assist with the process
- the running costs of the transferred service, including employee costs and associated overheads such as accommodation and IT
- redundancy costs if the number of employees transferred back exceeds the number that the client organisation will require to deliver the service.

The transfer of employees back to the client organisation is usually the biggest issue for client organisations who are bringing, or thinking of bringing, a service back in house. There is a risk that the supplier will use the opportunity to offload surplus employees and/or retain the best employees. Clients therefore need to ensure that they obtain as much evidence as

possible from the supplier to ensure that the employees who are transferred back to them are those that are actually engaged in the provision of the service.

9.2.3 Extending the existing contract

A planned extension of the contract may be attractive to the client if the current outsourcing arrangement is successful. The client's ability to pursue this option will depend on the supplier's willingness to agree to an extension and on internal and public procurement rules.

If the existing contract is profitable and the client gives reasonable notice, then there is every reason to expect that the supplier will be willing to have the contract extended. Where the client organisation's own rules prevent an extension, it may be possible to obtain a waiver, provided the relevant decision-maker within the organisation supports the extension.

Under EU rules, the lawfulness of an extension depends on how significant it is in relation to the original contract period and what, if anything, was specified about this in the OJEU notice. Legal advice should therefore be obtained if this option is being considered.

In many cases, extension of the existing contract is a relatively short-term measure that gives the client more time to develop a longer-term solution, but sometimes the extension can be for a longer period. For example, in January 2015, Sheffield City Council decided to extend its seven-year contract with Capita for the provision of back-office functions, which was due to expire in December 2015, by six years. In the City of London example (see section 2.6), the original five-year contract was extended by five years. If performance is good under the current arrangement, the supplier is willing to have its contract extended and procurement rules allow it, then it makes sense to extend.

9.2.4 Re-tendering

As explained in section 9.2.2, the relative merits of in-house solutions and outsourcing should be considered dispassionately in the light of current circumstances. A new outsourcing arrangement should not therefore be ruled out simply because the current one has failed.

If a decision is made to re-tender the service, then lessons should be learned from the different stages of the current outsourcing project and from other projects; the good practice set out in the preceding sections of this guide should also be followed.

9.2.5 Alternative delivery model

Alternative delivery models are discussed in section 11.

The replacement of an existing outsourcing arrangement with an alternative delivery model, such as shared services, may require as much effort to plan and execute as re-tendering.

While re-tendering requires a procurement exercise to be factored into the project plan, it may be possible to replicate the documentation and processes used to procure the existing contract. Alternative delivery models, on the other hand, may be innovative and therefore take more time and effort to develop, especially for services where they have never been used before.

9.2.6 Mixed economy

Mixed solutions may often be appropriate, particularly where the scope of the existing outsourcing arrangement is wide. Experience gained within the client organisation, and from knowledge of what is going on elsewhere, may indicate that some of the services within the contract are more suited to being outsourced than others. Changing circumstances may also mean that it is better that the different services within the existing contract are now delivered in different ways. An example is Waltham Forest's school support services (see the following case study).

Case study – school support services in Waltham Forest

Waltham Forest Council outsourced its school support services in 2001 following an adverse Ofsted judgement of the authority's performance of its role as an education authority and intervention by central government.

As the contract approached expiry in 2008, the authority decided to re-tender school improvement services, to cease providing various services that schools could choose to purchase from any provider and to bring other services back in house. The changing circumstances that led to this decision to implement a mixed solution included:

- improvement in the overall efficiency of the organisation and its ability to operate as an effective education authority
- the authority no longer being required by central government to contract the services out
- increasing tendency for schools to choose alternative providers for discretionary services
- increasing tendency for education improvement specialists to work for private companies rather than directly for local authorities.

9.3 EARLY TERMINATION

Section 5.7.6 explains that the provisions for early termination of the outsourcing arrangement is a key issue that clients should consider before procurement commences.

Early termination may have all of the following negative effects:

- considerable disruption to service provision
- significant additional costs for the client
- damage to the client organisation's reputation among potential bidders for other contracts
- negative publicity.

The client should therefore consider early termination only as a last resort. Table 25 provides examples of circumstances where early termination by the client may be justified.

Table 25: Circumstances where early termination may be justified

Problem	Where termination may be justified
<ul style="list-style-type: none"> Persistent or repeated poor performance by the supplier 	<ul style="list-style-type: none"> Use of other contractual mechanisms, especially deductions from contract payments for the supplier's failure to meet KPIs, has failed to secure improvement Non-contractual mechanisms, such as meetings between senior managers from each side, have failed to secure improvement Damage to the client's reputation from continuing with the current contract is judged to exceed the damage that will result from terminating it early
<ul style="list-style-type: none"> The contract is unaffordable due to a significant worsening of the client's financial position The cost of the contract, although affordable, is considered excessive 	<ul style="list-style-type: none"> Options to reduce the cost of the current contract, eg through a reduction in the specification, have been fully explored Options to increase income, eg from end-user contributions, have been fully explored There is good reason to believe that the service can be provided more cheaply through an alternative arrangement, eg bringing the service back in house or re-tendering All the costs of termination, including compensation due to the supplier, have been thoroughly assessed and offset against the expected saving The estimated net saving is sufficient to justify any negative effects of early termination, such as service disruption
<ul style="list-style-type: none"> The supplier is insolvent 	<ul style="list-style-type: none"> The supplier is already unable to perform, or is likely soon to be unable to perform, due to the insolvency There is no one, such as a parent company, who can, legally and practically, step in to perform the supplier's obligations

Reducing the scope of the contract may be appropriate in some circumstances, eg where the client can no longer afford to pay for the levels of service that were envisaged when the contract was signed. The supplier may not find this option attractive, but may prefer it to termination and therefore may be willing to negotiate such a change.

Where the supplier's performance has been very poor, however, and other options for dealing with this have been exhausted, it would be a dereliction of duty for the client not to take steps to terminate the contract. Sometimes clients are reluctant to do so because they do not have confidence in their ability to manage the transition. This underlines the need for clients to put robust contract management arrangements in place, as discussed in section 8. Another factor for clients to bear in mind is that under EU rules they may only exclude the supplier from bidding for future contracts on grounds of poor performance under the existing contract, if the client has taken formal action, such as early termination, in response.

Of course, where early termination is being considered, the client needs to plan for how the service will continue to be provided, as it would if the contract were approaching expiry. In addition, plans need to be made to ensure continuity of service prior to the new arrangements being put in place, should the existing supplier become less willing to perform once it becomes aware that its contract is likely to be terminated early.

9.4 FINAL REVIEW

The importance of periodic reviews of both strands of the outsourcing arrangement – the contract and the relationship with the supplier – is explained in section 8.5.

A review should also be carried out after the contract has ended because:

- the final cost of the outsourcing arrangement, including contract charges and client-side costs, cannot be known until the contract has ended
- the supplier's performance may decline towards the end of the contract as the threat of early termination recedes.

Such a review cannot of course benefit the outsourcing arrangement that has now ended, but is likely to provide useful lessons for any new outsourcing arrangement for the service in question and for other outsourcing projects. The information obtained from the review should also be used to improve the corporate sourcing strategy (see section 3.2).

In-house solutions

10.1 INTRODUCTION

The improvements that organisations seek to achieve from outsourcing can sometimes be achieved more quickly and cost-effectively without outsourcing. The scale of the action required depends on the problem that is being addressed.

It may be possible for the client organisation itself to make the kind of changes that a supplier would have made under an outsourcing arrangement. The options, which are not mutually exclusive, include:

- appointing a new manager
- obtaining limited external support
- making savings in house
- changing the method of delivery
- changing working practices
- streamlining processes and procedures
- introducing quasi-contractual mechanisms
- adopting good practice from elsewhere.

Each of these options is discussed in the following sections.

10.2 APPOINTING A NEW MANAGER

If poor performance is due to poor in-house management, then the solution may simply be to appoint a new and more effective manager to run the service. This is more likely to be the right solution where:

- the problem has been with a particular individual, and/or
- there is a clear reason why the client organisation could now appoint a better manager, eg the salary has been too low to attract an individual of the right calibre and the organisation is now prepared to pay a higher salary.

Offering higher salaries is not the only way to attract better managers and, indeed, may not be sufficient, particularly where the client organisation has a poor reputation or where the service in question has been performed very poorly. In these circumstances, the client may need to make a special effort to persuade potential candidates that the organisation is determined to change things and that the new manager will be given the necessary support and the resources to effect such change.

10.3 OBTAINING LIMITED EXTERNAL SUPPORT

Where the problem is lack of specialist expertise, the appropriate solution may be to procure limited external support rather than to outsource. Most commonly this will involve employing consultants on either an ad hoc or a longer-term basis to provide advice and/or support. This approach differs from outsourcing in that the service remains under in-house management.

Bringing in limited external support has the advantage of focusing such support where it is most needed without there being any loss of in-house expertise and control. The problem with this approach, as with use of consultants generally, is that it can be difficult to specify the outputs that the consultants are required to meet and to ensure that they meet them. It can also be difficult to define the boundaries between the roles and responsibilities of the consultants and those of in-house staff.

Other means of procuring limited external support could include:

- seconding people in from other organisations
- collaboration with other public sector organisations
- partial outsourcing.

10.4 MAKING SAVINGS IN HOUSE

Where the objective is to make savings, then it may be better to do so in house rather than through outsourcing. This approach has the following advantages:

- savings can be implemented more quickly than under outsourcing, because no procurement process is required
- any savings that are made will accrue wholly to the client
- if further savings need to be made at a later stage, eg because the client organisation's overall financial position has deteriorated, it may be easier to implement them where the client is not tied into a contract.

When considering outsourcing as a means to achieve savings, it is worth thinking about whether there are any savings that a supplier could make that the client organisation could not make itself. If there are not, then outsourcing may not be the right solution.

A common way for private sector suppliers to make savings in services outsourced by the public sector is to cut staff numbers, reduce wages and/or change employees' terms and conditions. In some cases, the client organisation could introduce these changes itself, but the relevant managers are unwilling to take direct responsibility for doing so; instead they use outsourcing as a means of achieving the same thing indirectly. Again, this is not a good reason for outsourcing.

10.5 CHANGING THE METHOD OF DELIVERY

Ensuring that methods of delivery are kept up to date, in terms of the use of technology and customer expectations, is a key means of achieving both savings and improvements in quality. The move to online provision of services, or digitalisation, is the most important example of where this has been happening in recent years. Although digitalisation has

already transformed the way that many public services are provided, the process is far from complete; indeed the pace of IT development is now so fast that few people can imagine how it will continue to drive business change in both the public and the private sector.

There is no reason in principle why updating methods of delivery cannot be achieved under in-house management. Only in special cases, such as an external supplier having access to technology that it is not cost-effective for the client to acquire, is this a compelling reason for outsourcing.

10.6 CHANGING WORKING PRACTICES

Introducing changes to working practices in order to increase productivity is another way to achieve savings and/or improve quality. Where the primary aim is to achieve savings, this enables the same level of service to be provided with fewer staff. Alternatively, quality may be improved without the need to increase staffing resources accordingly. In either case the types of change that are likely to be effective are those that increase flexibility.

Depending on the client organisation's circumstances and the scale of the changes, such changes could be achieved:

- without changing staff terms and conditions
- by negotiated changes to staff terms and conditions
- by introducing changes to terms and conditions without the agreement of staff.

Of course, as with any proposal that will have a significant impact on employees, the effect on staff morale in the short term and on their motivation in the longer term need to be considered. Where changes are imposed without their agreement, it is more likely that staff will be demotivated and that the changes will be counter-productive, ie that productivity will decrease instead of increasing. The impact of outsourcing on employee morale is discussed in section 4.7.

10.7 STREAMLINING PROCESSES AND PROCEDURES

Section 3.5.1 explains that public sector organisations are often hampered by excessively bureaucratic processes and procedures for governance and internal control. Where that is the case, a third party may be able to manage the services more efficiently because:

- decisions are taken more quickly
- operational staff spend less time dealing with processes and procedures and can therefore focus more on delivery.

As custodians of public money, public sector organisations must maintain good standards of accountability and control and it would be wrong to judge these as excessively bureaucratic simply because they are more rigorous than those that apply in other sectors. However, there is scope in many organisations for processes and procedures to be simplified and made less time-consuming.

It may therefore be appropriate for clients to review processes and procedures to ensure that they provide an appropriate level of accountability and control without putting an unnecessary bureaucratic burden on in-house providers. This could include:

- ensuring processes and procedures are clearly written and communicated so that operational staff do not waste time trying to understand them
- delegating decision-making as far down the hierarchy as reasonably possible
- avoiding duplication and inconsistency
- providing user-friendly templates for reports
- listening to the views of operational staff about what does and does not work.

This should help to ensure that there is a level playing field between in-house and outsourced solutions.

10.8 INTRODUCING QUASI-CONTRACTUAL MECHANISMS

Section 3.5.1 explains that the use of a contract to specify requirements and enforce performance is one of the key advantages of outsourcing. Although an organisation cannot enter into a contract with itself, it may be able to achieve some of the benefits of outsourcing by introducing quasi-contractual mechanisms into the in-house management and monitoring of the service.

These mechanisms may include use of:

- trading accounts
- services specifications
- KPIs
- benchmarking.

It is important to understand, however, that contractual incentives and sanctions cannot work in the same way when applied to an internal provider as they would when applied to an external supplier. It is of course impossible for the client to sue an internal provider for breach of contract. Being subject to financial deductions for failure to meet KPIs could act as an incentive to an internal provider to perform, but not to the same extent as with a third party. Nevertheless, the introduction of quasi-contractual mechanisms to an in-house operation may achieve a level of rigour and discipline that would otherwise be lacking.

Another way to introduce contractual rigour without tendering is to establish an in-house company to provide the service. This option is discussed in section 11.2.1.

10.9 ADOPTING GOOD PRACTICE FROM ELSEWHERE

The client organisation may be able to achieve the desired improvement by emulating good practice in other organisations, including other public sector organisations as well as commercial operators. Good practice may include some of the options set out above: bringing methods of delivery up to date, introducing more flexible working practices, etc.

Outsourcing is a way to open up an organisation to external influences, but this can also be achieved by proactively learning lessons from other organisations, for example by:

- networking with other organisations
- keeping abreast of current developments through formal and informal research

- engaging external advisers who pass on expertise to permanent employees
- sending employees on courses run mainly for commercial clients
- recruiting staff with private sector experience
- learning from market engagement.

Section 4.4 explains why clients who are considering outsourcing should engage with the market before they take a final decision to go ahead with outsourcing. This may reveal that the changes that a supplier would introduce under outsourcing could be achieved equally well in house. Where a decision is then taken not to proceed with outsourcing, the information obtained from suppliers during market engagement may help the client organisation to improve the efficiency of its in-house operation. An example is provided in the following box.

Example – decision to keep premises management and cleaning in house

A public sector organisation needed to make substantial budget cuts. The cost of providing premises management and building cleaning, which were under in-house management, appeared to be higher than in similar organisations, many of which had outsourced these services. The client therefore decided to explore the option of outsourcing and conducted market soundings with a number of commercial suppliers. The client wished to gain an understanding of how these firms would achieve the required savings if the services were outsourced.

Following a report on the feedback obtained from the market soundings exercise, the organisation decided not to proceed with outsourcing, but instead to restructure the services in house in order to achieve the savings. This was because market soundings had shown that:

- all the changes that the suppliers indicated they would introduce, the client could achieve itself
- savings could be achieved more quickly by avoiding a procurement process
- the cost of a procurement process would be significant and reduce the net savings accruing to the client organisation.

The changes that the client then introduced in house included:

- restructuring the workforce
- introducing mobile premises managers to replace premises managers based in every building
- reducing cleaning frequencies
- getting rid of waste paper bins at every desk.

The client achieved the required savings relatively quickly, while retaining direct control of the services. Although the size of the workforce was reduced, there were no compulsory redundancies and staff morale was maintained.

Alternative delivery models

11.1 INTRODUCTION

There are various ways in which public services may be delivered other than through traditional in-house management or a straightforward outsourcing arrangement. These models, which are not mutually exclusive, include:

- establishing new entities to provide services
- agency and shared service arrangements
- assisting other organisations to provide services.

Each of these models is described in the following sections.

11.2 ESTABLISHING NEW ENTITIES TO PROVIDE SERVICES

11.2.1 Entities established by the client organisation

Public sector organisations may set up various kinds of separate entities to provide services. These take numerous legal forms including companies limited by shares, companies limited by guarantee, trusts and social enterprises. The most common forms are:

- trading companies, used to provide services to other public sector organisations (see section 5.4.3)
- in-house companies, to which contracts can be awarded directly under the Teckal exemption (see section 6.2.4)
- charitable trusts, which are independent of the client organisation.

It is unlikely to be cost-effective to set up a new entity if there is a healthy market for supply of the service in question and the entity will have to bid for a contract in open competition. It may, however, be worthwhile to do so in any of the following circumstances:

- there is a gap in the market, eg because the type of service in question is not normally outsourced
- a contract can be awarded to the entity directly under the Teckal exemption
- competition can be restricted to certain types of supplier, eg using the exemption under EU rules relating to sheltered workshops
- the client organisation will not enter into a contract with the entity, but instead will assist it to provide a service, in the ways described in section 11.4.

There should be a presumption in favour of competition, however, for the reasons set out in section 6.1. Clients who are considering either awarding a contract directly or restricting

competition should only do so where there is a good reason not to run a procurement process open to any interested party.

Where procurement rules require the service to be tendered in open competition, but there is a gap in the market, an entity set up by the client organisation may be able to provide a better solution than other suppliers. However, this can only be tested if there is fair competition between the entity and other potential bidders; there is a risk that such bidders will perceive that the entity has an unfair advantage and be deterred from bidding. The client will therefore need to make an extra effort, during market engagement, to reassure other potential bidders that the competition will be fair.

The potential advantages and disadvantages of setting up separate entities are summarised in table 26.

Table 26: Advantages and disadvantages of setting up separate entities

Potential advantages	Potential disadvantages
Specific advantages of entities established by the client organisation:	Where the entity is a profit-making company:
<ul style="list-style-type: none"> ■ may fill a gap in the market ■ reinvestment of profits in the service 	<ul style="list-style-type: none"> ■ liability for corporation tax
Specific advantages of a trading company:	Where the entity must compete for a contract:
<ul style="list-style-type: none"> ■ enables the client organisation to provide services to others on a commercial basis, where it does not have the power to do directly 	<ul style="list-style-type: none"> ■ risk that other bidders perceive that the entity has an advantage and are deterred from bidding ■ abortive costs of setting up the entity if it does not win the contract
Specific advantages of an in-house (Teckal) company:	Where the entity does not have to compete for a contract:
<ul style="list-style-type: none"> ■ client determines the provider 	<ul style="list-style-type: none"> ■ risk of poor value for money due to lack of competitive pressure on the entity and possible preclusion of better bids from others
Specific advantages of a charitable organisation:	
<ul style="list-style-type: none"> ■ exemption from business rates ■ exemption from tax on charitable activities ■ public service objectives specific to the service in question 	
Advantages that other types of supplier may also have:	
<ul style="list-style-type: none"> ■ more efficient decision-making ■ ability to focus exclusively on the provision of the service in question ■ access to grant funding to which the client organisation does not have access ■ the ability to borrow, where the client organisation does not have the power to do so ■ better ability to recruit specialist staff 	

Where a separate entity is established, its directors or trustees have a duty to act in the best interests of that entity. This means that any profit or surplus is likely to be reinvested within the entity, which should benefit the end users of the service in question. If management of the service remains in house, on the other hand, the client organisation has more flexibility to redirect resources to other services in accordance with corporate priorities. Establishing a separate entity may therefore be a way to protect particular services that require investment over the longer term against the risk of cuts based on short-term expediency.

The ability of a public sector organisation to set up a separate entity depends on the powers of the organisation in question. Local authorities in England, for example, may set up such entities under the power of general competence established by the Localism Act 2011.

The following are examples of entities that public sector organisations have established in order to provide services to themselves:

- Education Leeds – a company set up by Leeds City Council to provide its education support services, following a critical Ofsted inspection in 1999, which operated until 2011, when the services were brought back under the direct management of the council.
- Greenwich Leisure – a charitable company set up by Greenwich Council in 1993 to operate its leisure centres, which is owned by its staff and members and now runs leisure centres for many other local authorities.
- NPS Property Consultants Ltd – a company set up by Norfolk County Council to provide its construction-related professional services, which is still wholly owned by the council via a holding company and now also provides services to many other local authorities, mainly through joint venture arrangements.
- Thamesway Ltd – a company set up by Woking Borough Council in 1999 to meet its energy and environmental objectives, which now also provides a range of related services to other public sector organisations through a number of subsidiary companies and joint ventures.
- Various trading companies established by local authorities to provide adult social care, such as:
 - Optalis Ltd, set up by Wokingham Borough Council in 2011
 - Olympus Care Services Ltd, set up by Northamptonshire County Council in 2012.

11.2.2 Public service mutuals

Public service mutuals are a relatively new model for delivering public services in England. They have the following characteristics:

- they leave ('spin out of') a public sector organisation
- they take over responsibility for providing a service
- staff participation is embedded within the running of the mutual organisation.

Many client organisations regard this model favourably and central government encourages them to take the initiative in identifying service areas where mutuals would be suitable. As a result over 100 had been established by spring 2015.

Under the EU rules, the client is normally required to tender the service and the mutual must win the contract in open competition. The exemption described in section 6.2.5, which applies to contracts for certain services, mainly falling within the social care and health care sectors, still requires the service to be tendered, but allows competition to be restricted to mutuals and similar social enterprises. The implementation of this exemption in respect of NHS contracts has been delayed until April 2016.

One example of a public service mutual is 3BM, established by employees of the 'tri-borough' authorities (see section 11.3.3) in April 2013 to provide education support, building & architectural and other services to the authorities and schools. 3BM is a joint venture with Prospects, which is itself an employee mutual.

More information about mutuals can be found on the Cabinet Office's Mutuals Information Service website:

www.gov.uk/government/groups/mutuals-information-service

11.3 AGENCY AND SHARED SERVICE ARRANGEMENTS

11.3.1 Introduction

Agency and shared service arrangements are two forms of collaboration between public sector organisations. Such arrangements are not subject to competition under EU rules provided they meet specified criteria, the most important of which is that they must be driven by the public interest rather than by commercial considerations and be intended to achieve objectives that the participating organisations have in common. In simple terms, this means that their purpose must be to share costs and/or provide services more effectively rather than to make a profit. They are an alternative to outsourcing in the sense that they are another means for public sector organisations to improve quality and/or achieve savings by delegating, or partly delegating, the management of services to another body.

Services provided under agency agreements and shared service arrangements may also be outsourced. Under an agency arrangement, the organisation to which the services have been delegated by another may itself outsource performance to another organisation. In the case of shared services, the participant organisations may jointly procure a supplier to perform the services on behalf of all of them.

Commercial arrangements between public sector organisations are subject to the usual procurement rules that apply to public service contracts. Under the EU rules, public sector suppliers must therefore normally compete against other bidders before they can be awarded a contract for the provision of services to another public sector organisation.

11.3.2 Agency agreements

Under agency agreements, one public sector organisation performs a function on behalf of another. This is a long-established model used by local authorities in the UK, particularly in areas with a two-tier system of local government. A good example is the performance of certain highways functions by a district council on behalf of a county council. The delegated functions typically include maintenance of local roads, management of on-street parking, local traffic management and management of public rights of way.

Central government also delegates functions to non-departmental public bodies (popularly known as quangos) under agency agreements. The secretary of state for environment, food and rural affairs has, for example, delegated responsibilities relating to the control of pesticides to the Health and Safety Executive.

11.3.3 Shared services

Under shared service arrangements, public sector organisations pool their resources in order to operate back-office and/or frontline services jointly. Whereas under agency agreements one organisation performs a service that another organisation requires, shared service arrangements are for services that two or more organisations require.

The powers of public sector organisations to enter into shared service arrangements vary between different types of public sector organisation. Local authorities in the UK, for example, may do so under the statutory framework that determines to whom they can delegate the discharge of a function. Those in England and Wales also have the power to provide services to other local authorities and other specified types of public sector organisation under the Local Authorities (Goods and Services) Act 1970.

Shared services have been a growing trend in the UK in recent years, particularly as a means of achieving savings in response to drastic cuts in funding for many public services. The survey of 267 local authority chief executives referred to in section 2.2 showed that 80% expected that their authorities would deliver services in future through closer partnerships with other authorities.

Many local authorities in England are already sharing back-office functions with neighbouring authorities. A more radical step, which enables even greater savings to be realised, is to share frontline services. This is more difficult to achieve politically, however, particularly for an organisation that has a strong individual identity. The most well-known example in the UK of local authorities sharing frontline as well as back-office services is the tri-borough initiative (see the following box).

Case study – tri-borough shared services initiative

The tri-borough initiative was launched in 2011 when the London Borough of Hammersmith & Fulham, the Royal Borough of Kensington and Chelsea and the City of Westminster came together to share frontline and back-office services. The three authorities now share adult care, children's services and library services. They also share treasury and pensions teams. In addition, Hammersmith & Fulham and Kensington and Chelsea have a shared environment and leisure team.

It is claimed that the shared arrangements will have saved £43m by 2015/16.

Other examples of shared services are:

- the establishment by the ten local authorities in Greater Manchester of a statutory joint body, known as the Greater Manchester Combined Authority, to co-ordinate key economic development, regeneration and transport functions in the area

- South Yorkshire Police and Humberside Police, who already share IT and HR functions, and propose to share further services in future, including a specialist operational service covering areas such as firearms and roads policing
- West Yorkshire Joint Services, a shared service arrangement between the five metropolitan councils in West Yorkshire, which has delivered a range of services, including trading standards, since the abolition of the metropolitan county council in 1986
- Norfolk Museums Service, a shared service between Norfolk County Council and the seven district councils in the county
- a partnership known as 'orbis' between Surrey County Council and East Sussex County Council to share back-office functions including HR, property services, procurement, information management, finance services and legal services with effect from April 2015; these two authorities have had a shared procurement team and transactional service provision since April 2013
- an internal audit service hosted by Hertfordshire County Council for itself and seven district councils in the county.

Shared service arrangements among local authorities in England are being encouraged because central government is agreeing to devolve additional powers to combined authorities like the one in Manchester. Other examples of where this had already happened or was being proposed at the time this guide was written include Sheffield City Region and West Yorkshire Combined Authority.

Sharing services is not of course guaranteed to achieve the intended objectives. The integration of social care, mental health services and learning disability services, which has been common since the late 1990s, has not always worked as well as hoped for various reasons, including inadequate planning for risks, poor specifications and poor monitoring arrangements. Collaboration between NHS bodies and local authorities is more challenging than it is between two local authorities or two NHS bodies because of differences in culture, structure, governance arrangements and financing. However, there is now a cross-party consensus that there needs to be a more integrated approach to the provision of social care and health care. This is being encouraged by central government, which has established the Better Care Fund, under which access to additional funding is conditional on the establishment of joint commissioning arrangements and pooled budgets.

11.4 ASSISTING OTHER ORGANISATIONS TO PROVIDE SERVICES

There are various ways in which public sector clients, rather than outsourcing services, can assist other organisations, particularly voluntary bodies, to provide them. The organisations that they assist in this way could include entities that they have established themselves and public service mutuals, as described in section 11.2.2.

Clients may decide to assist other organisations to provide services because:

- the client believes that another organisation is better able to provide the service and so the client takes the initiative either to set up a new organisation or to work with an existing organisation to secure the future of the service

- another organisation takes the initiative in proposing to take over responsibility for providing a service that the client organisation currently provides or has recently ceased to provide.

In either case, it makes sense for the client to work in partnership with the other organisation to ensure a smooth transition and secure the best outcome for the end users of the service in question. The concrete ways in which the client may provide ongoing assistance include:

- providing a grant to the other organisation
- leasing a facility to the other organisation.

Provided the client organisation does not enter into a contract with the other organisation, the arrangement will not be subject to procurement rules requiring competition. Clients should, however, obtain legal advice to ensure this is the case.

In the absence of a contract, the client must rely on other means to achieve its objectives. Such means may include:

- the terms of the lease
- the grant conditions
- choosing an organisation that has specific objectives consistent with the client's objectives for the services in question.

An example of how this might be done is provided in the following box.

Example – leasing a leisure centre to a voluntary organisation

A local authority, faced with severe budget cuts, decides to lease a leisure centre to a voluntary organisation with a specific mission to provide community leisure facilities. The authority also pays a grant to the organisation to provide subsidised activities for target groups, eg exercise classes for the over 50s.

The authority does not have a service contract with the voluntary organisation and cannot therefore specify the services to be provided at the centre. It does, however, have the assurance that the facility will continue to be run as a leisure centre for the benefit of the community because:

- that is the objective of the voluntary organisation to which the lease has been granted
- the organisation has a track record of successfully running leisure centres in facilities transferred from local authorities
- the lease has a key condition that the facility may only be used as a leisure centre for the benefit of the community
- the grant conditions stipulate that the monies must be used to subsidise specified activities for target groups.

A real example of a public sector organisation assisting others to provide services is Northampton Borough Council's transfer of its 21 community centres to local voluntary organisations. Another example is Waddington Community Library, where Lincolnshire County Council worked with Lincolnshire Co-operative Society to move the library into the Co-op's combined post office and pharmacy in November 2012. Volunteers now help to run the library and it is claimed that running costs have been reduced by 50%.

The history of the Carn Brea Leisure Centre (see section 9.2.1) illustrates that even where a public sector organisation considers that a service no longer has a future, a voluntary organisation may be able to successfully operate that service under a different governance and management structure.

Appendix

This appendix provides examples of outsourcing arrangements which, to varying degrees, have experienced problems or adverse publicity. It is often difficult to determine the extent to which the client or the supplier is responsible when things go wrong or indeed if problems are the result of outsourcing. This guide does not attempt therefore to make a judgement about these issues in any of the cases described in this appendix.

WORK CAPABILITY ASSESSMENTS

Client:	Department for Work and Pensions (DWP)
Supplier:	Atos
Services:	Carrying out work capability assessments for Employment and Support Allowance claimants
Period:	2008–2015, but terminated six months early

The contract was due to end in August 2015, but the DWP announced in March 2014 that it had reached a settlement with Atos to exit its contract early following problems with the performance of the contract and criticism from MPs and campaigners. A report by the Work and Pensions Select Committee in July 2014 indicated that at least part of the fault for the problems with the outsourcing arrangement lay with the client, the DWP.

A new supplier, MAXIMUS, was appointed to replace Atos, and its contract commenced in March 2015.

LANGUAGE SERVICES

Client:	Ministry of Justice (MoJ)
Supplier:	Awarded to Applied Language Solutions (ALS), which was acquired by Capita one month before the commencement of the operational period
Services:	Provision of translation and interpretation service to courts and tribunals throughout England
Period:	2012–2016

An NAO report in November 2013 about the role of major contractors quoted this as an example of a problem with a small contractor. ALS had previous experience only of providing police interpreters in one part of the country and the MoJ's due diligence process during the procurement process indicated that it would be risky to award the contract to such a small company.

In the first three months of the operational period, the supplier provided insufficient interpreters, resulting in delays and rescheduled trials. Capita then took action to address these problems and performance improved. However, the NAO published a specific update

report about the contract in January 2014, which found that there were a number of areas where both the MoJ and Capita needed to improve. According to the report, Capita had failed to meet the target to fulfil 98% of bookings and performance fell temporarily by 8% between December 2012 and April 2013 as a result of Capita reducing mileage payments to interpreters.

ELECTRONIC MONITORING OF OFFENDERS

Client:	Ministry of Justice (MoJ)
Suppliers:	G4S and Serco
Services:	Electronic monitoring of offenders (electronic tagging)
Period:	2005–2013, but extended to 2014

When re-tendering in 2013, the MoJ found significant overbilling in its contracts with G4S and Serco for the electronic monitoring of offenders. The MoJ then commissioned the accountancy firm, PwC, to carry out a forensic investigation of the contracts. The Serious Fraud Office also carried out an investigation into the contracts. The contracts were the subject of an NAO report in November 2013. The government eventually negotiated repayments of £104.4m from G4S and £68.5m from Serco relating to these contracts.

The contracts were due to expire in 2013, but were extended to 2014 due to the postponement of the re-tendering process. The process was eventually completed in July 2014, when it was announced that contracts had been awarded to four suppliers, with Capita managing the overall service under a six-year contract.

HINCHINGBROOKE HOSPITAL

Client:	Hinchingbrooke Healthcare NHS Trust
Supplier:	Circle Holdings
Services:	Management of the hospital
Period:	2012–2022, but terminated early in 2015

This franchise agreement with Circle, which commenced in February 2012, was the only example at the time of an NHS hospital being managed by a private company, although this had been done previously at the Good Hope Hospital in Sutton Coldfield. Circle withdrew from the contract three years into the ten-year contract period.

A report published by the NAO in December 2012 about the client's procurement of the franchise found (among other things) that:

- the trust had assessed risk in a limited way when evaluating bidders' proposals
- the trust selected the bid that allowed it to pay off the entire cumulative deficit, rather than the bid with a guaranteed payment
- the franchise agreement transferred demand risk and up to £5m of financial risk to Circle
- Circle's projected savings of £311m over ten years as a percentage of annual turnover were unprecedented in the NHS.

A report published by the Public Accounts Committee in February 2013 criticised the lack of strategic oversight by the NHS that led to separate decisions to build a new PFI hospital in Peterborough and to let a franchise for Hinchbrook when these hospitals were only 24 miles apart in the East of England, an area where there was an over-provision of healthcare. The report said that this left two hospitals whose financial viability was in doubt and whose value for money had not been secured.

In January 2015, the Care Quality Commission published the results of an inspection carried out in September 2014 that had found the hospital to be ‘inadequate’ and recommended that it be put in special measures. In the same month, Circle announced that it was withdrawing from the contract, citing funding cuts and increased demand on accident and emergency services. Under the terms of the contract, Circle was able to withdraw if its losses exceeded £5m.

ACCOMMODATION FOR ASYLUM SEEKERS

Client:	Home Office
Suppliers:	Cleareil, G4S and Serco
Services:	Provision of accommodation and transport services for asylum seekers under six regional contracts
Period:	2012–2017 with provision for a two-year extension

Six contracts, known as COMPASS contracts, for the provision of accommodation for asylum seekers were let in 2012, replacing 22 smaller contracts. The new arrangements were expected to achieve significant savings for the Home Office. Following representations from individuals and MPs, the contracts were the subject of a report published by the NAO in January 2014.

The NAO’s report found that two of the three suppliers failed to meet the original deadline for the new contracts to become operational, resulting in delays of up to three months before all the contracts became operational in January 2013. During the first six months of full operation, suppliers failed to meet KPIs and the Home Office recovered service credits from them accordingly. The standards of accommodation were found not to meet those specified under the contracts. However, the report indicated that some of these failures might have been partly the client’s fault.

LONDON UNDERGROUND TRAINS

Client:	Transport for London (TfL)
Supplier:	Metronet
Services:	Maintenance of two-thirds of London Underground’s network
Period:	2003–2033, but terminated early in 2008

This contract was part of a public–private partnership to improve and maintain London Underground’s network. Metronet was awarded a contract covering two-thirds of the network. The contract for the remainder of the network was awarded to Tubelines. In July 2007,

Metronet announced that it was no longer able to meet its obligations due to spiralling costs and it went into administration in July of that year. When the company came out of administration in May 2008, the services were brought back in house by TfL.

An NAO report in 2009 estimated that there was an overall direct loss to the taxpayer of between £170m and £410m in 2007 prices arising from the collapse of Metronet.

OLYMPIC GAMES SECURITY

Client:	London Organising Committee of the Olympic and Paralympic Games (LOCOG)
Supplier:	G4S
Services:	Recruit, train and manage security staff for the 2012 Olympic and Paralympic Games
Period:	2010–2012

G4S was the principal security contractor for the 2012 Olympic and Paralympic Games. Two weeks before the opening ceremony, it announced that it would be unable to provide the required number of staff. The total number of security personnel required for the Games was 23,700. During the Games period, G4S only supplied 81% of the required number. In order to fill the gap, the government had to deploy thousands of additional troops and police officers.

WEST COAST RAIL FRANCHISE COMPETITION

Client:	Department for Transport (DfT)
Suppliers:	Virgin, First Group
Services:	Operation of intercity rail services on the West Coast mainline
Date:	2012

In October 2012, the DfT cancelled its provisional decision to award the West Coast rail franchise to First Group and, with it, the franchise competition. The existing franchise holder, Virgin, which was also one of the bidders, had challenged the provisional decision and was taking legal action. The DfT found that there were technical errors in the way that financing proposals had been evaluated and problems with the procurement process including a lack of transparency and failure to treat bidders consistently. Virgin's franchise was then extended.

The cancellation of the franchise competition was the subject of an NAO report in December 2012, which found that there was likely to be a significant additional cost to the taxpayer, which was unknown at that time. The report of the Laidlaw Inquiry was published in the same month. This found (among other things) that:

- responsibility for the flawed process for evaluating the financing proposals rested with the DfT rather than with its external advisers
- the lack of transparency meant that bidders were unable to predict the amount of risk capital they would need to commit

- the errors in the way the financing proposals were evaluated included failure to take account of inflation, so that numbers were understated by nearly 50%
- planning and preparation for the process were inadequate
- roles and responsibilities on the client side during the franchising process were not set out clearly
- the resources of the DfT were excessively stretched due to the government's spending review and competing pressures of other projects
- the quality and robustness of the process was subordinated to an overriding pressure to complete the procurement on time.

SOUTHERN CROSS HEALTHCARE

Client:	Various local authorities
Supplier:	Southern Cross Healthcare
Services:	Provision of local authority funded nursing and care homes, mainly for the elderly
Date:	2011

Southern Cross Healthcare was the largest independent care home operator in England, with over 750 nursing and care homes with approximately 31,000 residents. Between 2008 and 2011, the value of the company's shares fell by 98%. In 2011, the company went into administration and its care homes were transferred to other operators so that continuity of care could be maintained.

SOUTHWEST ONE

Clients:	Somerset County Council, Avon and Somerset Police Authority and Taunton Deane Borough Council
Supplier:	Southwest One
Services:	Provision of back-office services including ICT, finance and HR/payroll
Period:	2007–2017

Southwest One is a joint venture company established in 2007 in which IBM is the majority shareholder and the three client organisations are also shareholders. The company provides back-office services to Somerset County Council and two other public sector organisations in the area.

Following a re-negotiation of the contract, a number of strategic functions were returned to Somerset County Council. The director of finance of Somerset County Council submitted a report about lessons learned from this experience to the council's audit committee in February 2014. The report found, among other things, that:

- the contract, which was over 3,000 pages long, was too complicated
- the relationship between the supplier and the three clients had at times been adversarial

- the supplier had experienced financial difficulties early in the contract and this had affected its ability to meet client expectations
- the client team responsible for managing the contract had been inadequately resourced
- there were problems with agreeing the KPIs, which may have been too complicated, and this may have diverted attention away from nurturing the relationship with the supplier.

Further reading

SECTION 2: CONTEXT

2.2 – Development of public sector outsourcing in the UK

Outsourcing – PASS Consultant Colin Cram answers some common queries regarding outsourcing (Government Opportunities, April 2009)

Prime Minister David Cameron's speech on *Open Public Services* (delivered on 11 July 2011)

Open Public Services White Paper (HM Government, July 2011)

Choice and Competition Fact Sheet (Department of Health, 2012)

Exclusive: Further staff cuts and more outsourcing predicted (article in the *Local Government Chronicle* on 16 October 2014 about results of a survey of 267 local authority chief executives)

2.3 – Size of public sector outsourcing market in the UK

Public Services Industry Review (report by Dr Deanne Julius CBE for the Department for Business, Enterprise and Regulatory Reform, 2008)

UK Outsourcing across the Private and Public Sectors (report by Oxford Economics for the Business Services Association, 2012)

The Role of Major Contractors in the Delivery of Public Services (National Audit Office, 2013)

2.4 – International comparisons

The Market for Public Services: International Comparisons (report prepared as part of Deanne Julius review by Oxford Economics for Department of Business, Enterprise and Regulatory Reform, 2008)

Government at a Glance 2011 (OECD, 2011)

2.5 – The successes and failures of outsourcing

Sources quoted in Deanne Julius report:

- *The determinants of price and quality in competitively tendered contracts* (article by Simon Domberger, Christine Hall and Eric Ah Lik Li in *The Economic Journal*, Volume 105 No. 433, November 1995)
- *Competition: A Catalyst for Change in the Prison Service* (CBI, 2003)
- *Competitive Tendering and Contracting by Public Sector Agencies* (report by the Australian Industry Commission published by the Australian Government Publishing Service, 1996)

Open Access – Delivering Quality and Value in our Public Services (report by Oxford Economics for the CBI, 2012)

Beyond Big Contracts: Commissioning Public Services for Better Outcomes (Institute for Government, 2014)

Choice and Competition in Public Services: Learning from History (Institute for Government, 2012)

Making Public Service Markets Work: Professionalising Government's Approach to Commissioning and Market Stewardship (Institute for Government, 2013)

Insourcing: A Guide to Bringing Local Authority Services Back In-house (APSE, 2009)

Insourcing Update: The Value of Returning Local Authority Services In-house in an Era of Budget Constraints (report by APSE for Unison, 2011)

The Shadow State – A Report about Outsourcing of Public Services (Social Enterprise UK, 2012)

Out of the Shadows? The Fall and Rise of Social Value in Public Services: A Progress Report (Social Enterprise UK, 2013)

The Role of Major Contractors in the Delivery of Public Services (National Audit Office, 2013)

Transforming Government's Contract Management (National Audit Office, 2014)

2.6 – Examples of services being brought back in house

Taking back power: the battle for repairs and maintenance (article in *Construction News*, 19 November 2014):

www.cnplus.co.uk/news/analysis/taking-back-power-the-battle-for-repairs-and-maintenance/8672550.article#.VPiVkRuzXIU

SECTION 3: CHOOSING THE RIGHT DELIVERY MODEL

3.4 – Framework for evaluating delivery models

Option Appraisal: A Practical Guide for Public Service Organisations (CIPFA, 2011)

SECTION 4: PREPARING FOR AN OUTSOURCING PROJECT

4.7 – Maintaining employee morale

2014 Changes to TUPE (Acas, 2014)

SECTION 5: KEY ISSUES

5.2 – Objectives

Public Services (Social Value) Act 2012 – A Brief Guide (Social Enterprise UK, 2012)

The Social Value Guide – Implementing the Public Services (Social Value) Act (Social Enterprise UK, 2012)

The Public Services (Social Value) Act 2012 – One Year On (HM Government, 2014)

Government web page about the Social Value Act:

www.gov.uk/government/publications/social-value-act-information-and-resources/social-value-act-information-and-resources

Government Consultation on the Social Value Act – Consultation Response (CIPFA, 2014)

Social Value Act Review (Report by Lord Young of Graffham for Cabinet Office, 2015)

5.4 – Type of supplier

Voluntary organisations

Results of the Competitive Tendering Exercise for Youth Work Services (report by Director of Education and Social Services to Wandsworth Council's Executive, 23 February 2015)

Other public sector organisations

Enterprising Councils – Getting the Most from Trading and Charging (Local Government Association, 2012)

5.6 – Type of contractual arrangement

Strategic partnering agreements

For Better, For Worse: Value for Money in Strategic Service-delivery Partnerships (Audit Commission, 2008)

Concessions

European Commission web page on concessions:

http://ec.europa.eu/internal_market/publicprocurement/partnerships/concessions/index_en.htm

IFRIC 12 *Service Concession Arrangements*

Register for eIFRS Basic on <http://eifrs.ifrs.org/eifrs/Menu>

then log in, select 'IFRIC Interpretations' and then select IFRIC 12

PFI and PF2 contracts

A New Approach to Public Private Partnerships (HM Treasury, 2012)

5.7 – Contractual issues

Inputs, outputs and outcomes

Inputs, Outputs and Outcomes – What Should Price Limits Deliver? A Discussion Paper (Ofwat, 2011)

Incentives to perform

Local Payment by Results (Audit Commission, 2012)

Open Public Services 2014 (HM Government, 2014)

Profit sharing and not-for-profit models

NPD Model Explanatory Note (Scottish Futures Trust, 2011)

Information requirements

Open Book Accounting: How to Deliver and Demonstrate Value for Money in the Public Sector (CIPFA, 2013)

SECTION 6: PROCURING A SUPPLIER

6.2 – EU rules

A Brief Guide to the New EU Public Contracts Directive (2014) (Crown Commercial Service, 2014)

Consultation Document – UK Transposition of New EU Procurement Directives (Cabinet Office, 2014)

Government Response to the Consultation on UK Transposition of new EU Procurement Directives (Cabinet Office, 2014)

Guidance on the New Light Touch Regime for Health, Social, Education and Certain Other Service Contracts (Crown Commercial Service, 2015)

6.3 – Additional rules that apply in England

Growing Your Business: A Report on Growing Micro Businesses (Lord Young of Graffham, 2013)

SECTION 8: OPERATIONAL PHASE

Good Practice Contract Management Framework (National Audit Office, 2008)

Central Government's Management of Service Contracts (National Audit Office, 2008)

Central Government's Management of Service Contracts (House of Commons Public Accounts Committee, 2009)

Transforming Government's Contract Management (National Audit Office, 2014)

SECTION 9: EXIT PLANNING

9.3 – Early termination

Failed Outsourcing Relationship? 10 Steps to Getting Out Safely and Quickly (Best Practice Group)

SECTION 10: IN-HOUSE SOLUTIONS

Avoiding the Road to Nowhere: Transforming Front Line Service Delivery through Efficiency and Innovation (APSE, 2011)

SECTION 11: ALTERNATIVE DELIVERY MODELS

11.2 – Establishing new entities to provide services

Public service mutuals

Public Service Mutuals: The Next Steps (Mutuals Taskforce, 2012)

11.3 – Agency and shared service arrangements

Shared services

Surrey County Council and East Sussex County Council Partnership (report to Surrey County Council's Cabinet, 24 February 2015)

11.4 – Assisting other organisations to provide services

Northampton Borough Council Community Centres Programme (Northampton Borough Council, 2013)

APPENDIX

Employment and Support Allowance and Work Capability Assessments (House of Commons Work and Pensions Committee, 2014)

The Role of Major Contractors in the Delivery of Public Services (National Audit Office, 2013)

The Ministry of Justice's Language Services Contract: Progress Update (National Audit Office, 2014)

The Ministry of Justice's Electronic Monitoring Contracts (National Audit Office, 2013)

The Franchising of Hinchingbrooke Health Care NHS Trust (National Audit Office, 2012)

The Franchising of Hinchingbrooke Health Care NHS Trust and Peterborough and Stamford Hospitals NHS Foundation Trust (House of Commons Public Accounts Committee, 2013)

COMPASS Contracts for the Provision of Accommodation for Asylum Seekers (National Audit Office, 2014)

Department for Transport: The Failure of Metronet (National Audit Office, 2009)

Olympics Security (House of Commons Home Affairs Committee, 2012)

Lessons from Cancelling the InterCity West Coast Franchise Competition (National Audit Office, 2012)

Report of the Laidlaw Inquiry: Inquiry into the Lessons Learned for the Department of Transport from the InterCity West Coast Competition (House of Commons, 2012)

Lessons Learnt to Inform Future Commissioning from the Experience of the South West One Contract (Director of Finance report to Somerset County Council's Audit Committee, 13 February 2014)



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