



4ps PROCUREMENT PACK

Developing Joint Service Centres through NHS LIFT, PFI & BSF

June 2005

Version 1

PREFACE



Jim Fitzpatrick MP
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

I am pleased to introduce this Joint Service Centre Procurement Pack which has been produced jointly by the Office of the Deputy Prime Minister and the 4ps. The Pack will help Authorities assess their options for developing Joint Service Centres and speed up the procurement process for projects, whether developed under the Private Finance Initiative (PFI), the NHS Local Improvement Finance Trust scheme (NHS LIFT) or the Building Schools for the Future programme (BSF). It provides a useful guide to the various stages of the process for each option as well as containing templates for the documents that will be required along the way.

I am grateful to everyone who has contributed to the production of this Pack. In particular I would like to thank Stoke on Trent City Council and Newcastle City Council for their major contributions to the development of this Pack, and their willingness to help other Authorities to benefit from their experiences.

ODPM will expect all Joint Service Centre schemes to adhere to the Standardisation of PFI Contracts (SoPC) and this Pack. The Project Agreement within the Pack has been approved by the Private Finance Unit at HM Treasury as mandatory for use on all Joint Service Centre projects procured through the PFI. Similarly approved documentation for use on NHS LIFT and BSF projects is also available with further details available in this Pack.

I commend this Procurement Pack to you as a valuable tool that will contribute to the development of Joint Service Centres as a means of improving the face-to-face element of access to public services and information; and of facilitating joint working with other public agencies.

Yours Sincerely


Disclaimer

This Joint Service Centre Procurement Pack has been procured by the 4ps, in consultation with Pinsent Masons (the 'Advisers') to provide assistance to Local Authorities in the procurement of Joint Service Centre projects through a public private partnership or through the Private Finance Initiative. This Procurement Pack has been published in good faith by the 4ps with the help of its Advisers, and neither the 4ps nor its Advisers shall incur any liability for any action or omission arising out of any reliance being placed on this Procurement Pack by any Local Authority or organisation or other person. Any Local Authority or organisation or other person in receipt of this Procurement Pack should take their own legal, financial and other relevant professional advice when considering what action (if any) to take in respect of any initiative, proposal, or other involvement with any public private partnership, or before placing any reliance on anything contained therein.

4ps PROCUREMENT PACK - DEVELOPING JOINT SERVICE CENTRES

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Model Documents – PFI

TITLE

Model 1 - OJEU

Model 2 - PQQ

Model 3 - PQQ Evaluation Methodology

Model 4 - PQQ and ITN Correspondence

Model 5 - ISOP

Model 6 - ISOP Evaluation Methodology

Model 7 - Payment Mechanism

Model 8 - Output Specification

Model 9 - ITN

Model 10 - BAFO

Model 11 - Preferred Bidder Appointment Letter

Model 12 - Project Agreement

Model 13 - Direct Agreement

Model 14 - Local Government (Contracts) Act 1997 Certificates

Model 15 - Stakeholder Agreement

Model Documents – NHS LIFT

Note: Standard NHS LIFT documentation including the Strategic Partnering Agreement, Lease Plus Agreement and Shareholders Agreement can be obtained from the [Partnerships for Health](#) website and have not been reproduced in this pack.

Procurement documents for establishing LIFT Co can be obtained by contacting Partnerships for Health directly.

TITLE

Model 15 - Standard NHS LIFT OJEU

Model16 - Soft FM OJEU

DEVELOPING JOINT SERVICE CENTRES

PART A1

Introduction

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Section 1: Forward and Acknowledgements

Section 2: Government Policy

Section 3: Preliminary Considerations

Section 4: Key Issues for Collaboration

Section 5: Investment Options

Section 6: Introduction to Delivery Options

Section 1: Foreword and Acknowledgements

Foreword

1. This Procurement Pack is one of a series of practitioner procurement manuals produced by the 4ps for the assistance of local authorities and others who are intending to procure facilities for the better performance and delivery of their services. Although this Procurement Pack mainly examines issues surrounding the development of what have become known as 'Joint Service Centres' by local authorities, there is no reason why the approach suggested herein should not be adapted to meet any specific authority accommodation requirements. The attraction of Joint Service Centres is their flexibility to accommodate a mix of different service providers within a single facility, and the spur they provide for facilitating "joined-up" service delivery amongst a range of Service Providers. Authorities considering any proposals for procuring their accommodation requirements are encouraged to consult this Procurement Pack.
2. Procurement practice within local government has undergone enormous development over the last few years, with a considerable increase in the range of options available to local authorities seeking to develop new and refurbished facilities. Whilst previously local authorities were largely left to their own devices to design, construct and manage premises, today options such as the Private Finance Initiative have been supplemented by complimentary approaches such as the NHS Local Improvement Finance Trust initiative ("NHS LIFT") and the Building Schools for the Future programme ("BSF") both of which seek to combine efficiency, strategic planning and "joined up" working amongst major public sector partners to deliver better co-ordinated and improved levels of service delivery. Such developments combined with the increased responsibility and flexibility enjoyed by local authorities to determine their capital borrowing limits pursuant to the prudential code¹, presents local authorities with a wide spectrum of choices for delivering their accommodation needs. This Procurement Pack seeks to assist authorities to identify the most appropriate path for their individual requirements from amongst their main procurement options.
3. Building upon the core documentation developed for a number of pilot Joint Service Centre Pathfinder schemes closely supported by the Office of the Deputy Prime Minister ("ODPM") and 4ps, this Procurement Pack contains model template as well as highlights some of the key lessons emerging from such schemes for the benefit of other local authorities.
4. Local authorities procuring Joint Service Centres through the PFI must adhere strictly to HM Treasury's "Standardisation of PFI Contracts" 2004 ("SoPC"). This Procurement Pack reflects this requirement and also the advice contained in the Local Government Supplement to SoPC issued in July 2004. The model PFI Project Agreement contained in this Procurement Pack has been approved by HM Treasury as sector specific guidance for use on Joint Service Centre schemes.
5. Authorities procuring Joint Service Centres or other facilities through NHS LIFT or the BSF programme are required to adopt the standard documentation developed by Partnerships for Health and Partnerships for Schools respectively and details for obtaining such documentation are set out in this Procurement Pack.

4ps

6. 4ps is the local government procurement expert, providing advice, guidance and skills development to local authorities undertaking projects, procurement and partnerships.

¹ Introduced on 1 April 2004 pursuant to Part 1 of the Local Government Act 2003

This includes PFI schemes, strategic service partnerships, NHS LIFT, BSF and all other forms of partnership working

Acknowledgements

7. The 4ps would like to thank the following organisations for their help and assistance in the publication of this Procurement Pack:-

Pinsent Masons
Newcastle City Council
Stoke on Trent Council

The 4ps would also like to thank HM Treasury and Partnerships UK for their assistance and approval of the contractual guidance contained in this Procurement Pack included as Model 12 Project Agreement.

Abbreviations

8. The following abbreviations have been used throughout this Procurement Pack:-

4ps	Public Private Partnerships Programme
ASB	Accounting Standards Board
BaFO	Best and Final Offer
BSF	Building Schools for the Future
BVPI	Best Value Performance Indicator
CPA	Comprehensive Performance Assessment
DBFO	Design, Build, Finance and Operate
DCMS	Department for Culture Media and Sport
DFES	Department for Education and Skills
DSO	Direct Service Organisation (or Direct Labour Organisation)
FBC	Final Business Case
FSS	Formula Spending Share
FRS5	Financial Reporting Standard 5 – Accounting for the Substance of Transactions – The PFI
IRR	Internal Rate of Return
ISOP	Invitation to Submit Outline Proposals
ITN	Invitation to Negotiate
LEP	Local Education Partnership
LIFT	Local Improvement Finance Initiative
LIFT Co	Lift Company
LPI	Local Performance Indicator
NPV	Net Present Value
OBC	Outline Business Case
ODPM	Office of the Deputy Prime Minister
OJEU	Official Journal of the European Union
OGC	Office of Government Commerce
PFI	Private Finance Initiative
PIN	Prior Information Notice
PPP	Public Private Partnership
PQQ	Pre-Qualification Questionnaire
PRG	Interdepartmental Project Review Group chaired by HM Treasury
PSC	Public Sector Comparator
SoPC3	Standardisation of PFI Contracts 2004
SPV	Special Purpose Vehicle
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 1981

Terminology

9. The following terminology has been used throughout this Procurement Pack:-

Bidder – means a candidate, consortium, contractor, private sector partner, SPV or tenderer bidding for the project.

Contract or Project Agreement – means the Contract or Project Agreement between the parties for the provision of the contracted works and services associated with the Joint Service Centre.

Information Pack – means the Information Memorandum, Memorandum of Information or Information Pack issued to Bidders expressing an interest in the project in response to the OJEU Notice.

Local Authority – means any City Council, County Council, Borough Council, Unitary Authority or County Borough Council.

Method Statement – means any method statement or service delivery plan submitted by a Bidder detailing how an aspect of the service will be delivered.

Procurement Regulations – means the statutes, regulations and legislative requirements concerning the procurement of public works, supplies or services.

Public Private Partnership – is intended to include a range of partnerships, including PFI transactions, design, build finance and operate schemes, and strategic service partnerships.

Service Provider or Contractor – means the concessionaire, consortium, contractor, private sector partner or SPV appointed to deliver the contracted services.

Unitary Charge – means the payment made by the Local Authority to the Service Provider or Contractor for the provision of the Joint Service Centre.

Section 2: Government Policy

Joint Service Centres?

10. Joint Service Centres ("JSCs"), the primary subject matter of this Procurement Pack, are defined by the Office of the Deputy Prime Minister as;

"multi-agency and multi-service premises, aimed at improving accessibility of information and services to local communities²."
11. Whilst in their simplest form JSCs are premises accommodating a range of different services, properly designed and developed JSCs are capable of embodying many key priorities for local and central government and should therefore be considered by local authorities considering ways in which to improve the discharge of their functions. From the provision of library and information, revenue collection and payment, employment and training, as well as the provision of health and social care services, in theory at least there is very little restriction on the type of services and service providers which can be accommodated within a JSC. Many of the strategies for the existing JSC projects demonstrate the contribution that such centres can make to the re-invigoration, creation and development of sustainable communities in which people want to live and work but also encourage public bodies to investigate opportunities for working with partner agencies to deliver more efficient, modern, co-ordinated and accessible services, all of which are key elements of central and local government policy.
12. The development of this Procurement Pack has not arisen because the procurement of JSCs is, or should be seen as, especially difficult. Indeed, many local authorities have procured JSCs without recourse to guidance or additional central government support. This Procurement Pack has evolved from an appreciation that recent developments such as the introduction of the prudential code granting local authorities increased flexibility to raise funds for capital projects and the emergence of procurement methods such as the PFI, NHS LIFT and BSF have meant authorities face a bewildering choice of options and there is little guidance examining in which circumstances some options might be preferable to others. This Procurement Pack attempts to bridge this gap and enable local authorities to conduct meaningful and informed options appraisals before embarking upon the procurement of their respective JSC scheme.
13. Before considering the options available to authorities considering embarking upon a JSC or a similar accommodation project, we consider the wider strategic policy framework within which JSCs sit and the nature of schemes emerging at the time of writing.

Accessibility

14. A key facet of the Government's Modernising Government³ agenda involves encouraging and enabling local authorities to act as community leaders who deliver high quality public services. Such a role can only be fulfilled through effective communication with service users. Whilst the establishment of call centres and the exploitation of electronic forms of communication such as email and use of the internet have made a significant contribution towards making public services increasingly accessible, customer satisfaction surveys regularly depict the continued need for, and value of, face-to-face

² Page 18 of the joint invitation to local authorities from ODPM, DCMS and DoH to apply for PFI Credits for joint service centres, libraries, sports centres and the delivery of social care dated 12 November 2004

³ Derived from the Modernising Government White Paper, March 1999

communication. This is particularly so in respect of the most vulnerable and disadvantaged groups in society who are often unable to travel very far and do not have easy access to alternative forms of communication, many of whom constitute key priorities for both central and local government in accordance with their 7 shared priorities (see Figure 1 below).

Figure 1

Central and Local Government 7 Shared Priorities	
•	creating safer and stronger communities
•	improving quality of life of older people, children, young people and families at risk
•	meeting local transport needs
•	promoting healthier communities and narrowing health inequalities
•	promoting the economic vitality of localities
•	raising standards across schools
•	transforming local environment

15. Many authorities have discovered the value of establishing what are sometimes known as "satellite" community centres designed to provide access to a range of public information and services including information about local employment opportunities, applying for benefit payments and tax credits, interpretation services, access to training and social care services situated within the heart of neighbourhoods and small communities. The spectrum of what can be accommodated within a JSC is very wide thereby enabling local JSCs to be specifically tailored to local needs.

Working with partners

16. The Modernising Government White Paper recognised that:-

"Too little attention has gone into making sure that policies, programmes and services across the board are devised and implemented in ways that best meet people's needs, where necessary by working across institutional boundaries".

thereby urging local authorities to explore opportunities for delivering customer focussed services by working with partners who have similar objectives.

17. Collaboration may be between local authorities – whether they can be neighbouring authorities or different tiers of local government – or with other local, regional and national public bodies, the voluntary sector, or commercial organisations. The need to work with partner agencies to exploit synergies and benefit from the potential cost, time and resource efficiencies available has been recognised and encouraged for some time as evidenced through the introduction of community strategies⁴, local strategic partnerships, local area agreements and more recently the work of the ODPM's Strategic Partnering Taskforce on strategic service delivery partnerships.
18. JSCs provide a valuable opportunity through which partners can be encouraged to devise co-ordinated strategies which exploit the benefits of collaboration, and provided this is done appropriately, enjoy the benefits that derive therefrom. This may involve disseminating best practice, exchanging internal expertise and know-how and devising new ways of delivering more user focussed services; or go further to streamlining back office corporate services through the introduction of new systems across authority boundaries or jointly providing care services for the elderly or children.

⁴ Section 4 of the Local Government Act 2000

Service Integration

19. Local Authority customer satisfaction surveys regularly reveal the need for more co-ordinated and strategically aligned service delivery structured around the needs of the end user and not dictated accordingly to service origin or Contractor. For example, why should patients leave health centres with a prescription that can only be dispensed at a pharmacy situated 3 miles away? From the patient's perspective being able to obtain diagnosis, treatment and medication at the same place provides a better and more convenient solution. Similarly for a single parent, the ability to pay council tax, report required housing repairs and attend an ICT class to improve their employment opportunities whilst their child is taken care of at a children's centre on the same site provides a helpful solution which appreciates the various constraints within which such a family reside. Consequently, many JSC schemes capitalise upon the value of co-working and co-location between partners by developing effective service integration strategies which are designed to meet the needs of users, thereby assisting Contractors to make their services more relevant and accessible.
20. We set out below some of the ways in which authorities have tried to ensure the needs of service users are catered for. It is often a useful exercise to chart the life experiences of individuals to determine what sorts of services they require. See Figures 2-5 for some examples.

Figure 2

A Death in Mary's Family

Following the death of her brother, the doctor has issued a medical certificate and formal notice, which Mary has brought to the JSC with her. She knows that she needs to register the death and wants a private meeting with the Registrar who is based in the JSC. The receptionist issues Mary with a green form, which enables her to arrange the funeral. She also gives her a form for Social Security purposes and a death certificate.

Mary needs to make the funeral arrangements and goes to the Council's Cemetery and Crematoria Service, also based in the JSC. She does not have much money and she was able to access information about the Municipal Funeral Service (a service provided at low cost). The Crematoria staff arrange for Mary to meet the Funeral Director, who will help her with all the arrangements.

Mary is able to talk via a video link with a member of staff in the Council's Housing Department to inform them that her brother has died and that the Council house he occupied is vacant. Using the same technology link she speaks to Social Services and arranges for the home aids, which they had issued, to her brother, to be returned. She then walks through the JSC to the Health Zone, where she has an appointment with her GP. If necessary, she will also be able to access pharmaceutical and counselling services, both of which are also provided at the JSC.

Figure 3

Person with Disabilities

Any person seeking services for the disabled may enter the JSC and an appointment can be made to speak to an officer, either face to face or via a video link. The information communication network within the JSC provides information on benefits and other state entitlements. The JSC has links to the Citizen's Advice Bureau, the Benefits Agency and the Inland Revenue as well as details of carers and groups and organisations to help disabled persons. The provision of a GP surgery, counselling and healthy living services are also available, together with a wide range of health care provision. Rehabilitation services, including physiotherapy and adaptations to the home are also available, together with information on employment opportunities available through the Job Centre Plus Service whilst additional training can be accessed through the Lifelong Learning Services.

Figure 4

Parents

A mother arrives new to the area with three children. She visits the JSC because she wants to select the right school for her two older children and requires nursery provision for her youngest child. The JSC provides information on all

Figure 5

Entrepreneurs

For anyone considering establishing a business, the JSC provides a host of information on matters such as business opportunities, financial support, grants,

nursery and primary schools, high schools and special schools. Information is also available on school holidays and term times, grants and benefits information, including free school meals and clothing vouchers.

The JSC provides information on benefits provided by the Social Services Department and the homework club in the Children's Centre, together with the Library which is a good resource for kids.

One of the children has special education needs and an appointment is made via video link with a special educational advisor.

Since the mother is working, she needs information on after-school care provided by childminders, out of school clubs, playgroups etc. She gets this information together with details of childminders for her youngest child through the Children's Information Service, which is provided in the Children's Centre. Whilst she is busy doing all these things, her youngest child is being cared for in the crèche whilst her two other children are enjoying themselves in the indoor play centre.

loans and property advice including details of businesses for sale, competition in the area and franchising opportunities. An Information Zone is available to provide guidelines on issues such as writing business plans and how to use ICT as well as a video link facility to the Investment Centre where the Chamber of Commerce and the Economic Regeneration Unit can be contacted.

The Lifelong Learning Service sector in the JSC provides opportunities for acquiring new business skills such as marketing, personnel, health and safety, word processing, databases and spreadsheets.

21. The nature of services capable of being provided within a JSC, together with the most effective manner and form within which such services can be provided, will vary widely from scheme to scheme, and will be largely determined by local needs and circumstances. For illustrative purposes Figure 6 provides examples of some of the types of services accommodated within existing or planned JSC schemes (albeit no scheme includes all such services) but authorities should not feel constrained by existing practice and should consider the mix of services which would best suit the locality in question.

Figure 6

Local Authority Services	Partner Agency Services	Other Services
Library and Information Services	Health Care (GP, Community or Family Health Centre)	Nursery/Crèche
Family Services	Adult Education	Community Rooms
Elderly Day Care	Inland Revenue	Training Facilities
Rehabilitation	Job Centre Plus	Voluntary Groups
Licensing Information	Enterprise Centre	Citizens Advice Bureau
Licensing Information	Sure Start	Museums
Electoral Registration	Community Police	Catering or Café Services
Tourism and Marketing of Locality	Connexions	Retail
Leisure & Fitness		Colleges of Further or Higher Education
Administration of payments and receipts		Archives
Consumer Protection		Drug/Alcohol Rehabilitation Services
Youth Services		

22. Whilst the amount of work involved in properly integrating services should not be under-estimated, there are also significant benefits, as set out in Figure 7.

Figure 7

Potential Benefits of Effective Service Integration
• ease of access/use • enables service providers to address root causes of issues/problems • improves employee/user understanding of available services • breaks down barriers/artificial boundaries • economies of scale/efficiency • opportunity to educate and empower customers • increased momentum for organisational change

Challenges

23. The main obstacle to effective service integration comes from the traditional culture of public bodies to work independently and even internally to work as separate and discrete departments. For this reason it is recommended that local authorities, having identified potential partners, should make themselves aware of their respective approach and priorities, to assist all partners align their strategies and to work towards joint objectives. Issues which need to be managed are summarised in Figure 8.

Figure 8

• Overcoming different organisational cultures, objectives, historic rivalries and "comfort" zones • Ensuring a happy workforce who believe in what the JSC has to offer and present a unified, enthusiastic voice to users – through training and induction programmes/shared and single terms and conditions/grades/pay scales for JSC employees • Building on existing reputations and not ignoring individual service provider identities • Managing expectations – an appropriate balance between service provision and user demand • Managing early increase in service demand and consequent increases in resources/manpower • Avoiding increase in use of non-cost effective transactions e.g. face to face services may mean users pay more and are reluctant to take advantage of cheaper direct debit services • Identifying what appropriate levels of ICT infrastructure are needed to enable more sophisticated communication/use to be adopted over time • Resolving issues associated with sharing data • Identifying potential issues/obstacles in designing the facility by charting information and user flows

Service efficiency

24. At the same time as improving the quality of service delivery, effective service integration also has the potential to generate significant on-going efficiency savings. Contractors located within a single facility generally benefit from joint security provision, a single ownership and management structure for the facility, central catering, cleaning and administration services (such as dealing with post and routing calls through a single switchboard) whilst enjoying a facility which is designed to cater for their individual needs. Furthermore, they may enjoy access to infrastructure, ICT, information and

systems which would otherwise be unaffordable if they were left to manage on the resources they alone could attract.

25. The identification in Sir Peter Gershon's review of public sector efficiency⁵ of over £20billion of auditable and transparent efficiency gains across the public sector has been translated in the Spending Review 2004 into an efficiency target for the public sector of 2.5% per annum over 2005/6, 2006/7 and 2007/8. Across local government as a whole this requirement translates into efficiency gains of at least £6.45billion per annum by 2007/8. The ODPM has issued guidance⁶ suggesting every local authority is expected to contribute to the achievement of this target through techniques such as the remodelling and re-configuration of service provision by making the most of new technology and business processes whilst maintaining a commitment to delivering the same or higher levels of services through reduced resources. The guidance acknowledges that:-

"more collaborative working, new technologies and different ways of working with all lead to further efficiency gains"

26. Whilst efficiency targets have not been introduced for individual local services, since it is appreciated that certain authorities will be better at delivering efficiencies within some areas as opposed to others, authorities are required to produce an annual statement of efficiency gains detailing their progress and projected targets for future years which will be assessed by the Audit Commission as part of the Comprehensive Performance Assessment regime. In addition, there will be clear advantages for authorities meeting such targets:-

"Councils meeting or indeed exceeding the target will be in a win-win situation as they are free to use every £1 of cashable efficiency gain to reinvest in local services or to hold down Council Tax⁷"

27. Collaboration with partners can also make a significant contribution to achieving procurement efficiency improvements. There are obvious benefits in working with partners to share procurement costs, pool combined purchasing power, and collectively change practices for bulk purchasing commodity goods or services through the use of e-procurement. This is discussed further in Section 4.

The ODPM JSC Pathfinder Programme

28. To encourage authorities to consider ways of exploiting the benefits of co-location and service integration as well as making services more accessible, in 2001 the ODPM funds a pathfinder programme for PFI or LIFT JSCs to encourage other authorities to emulate such facilities or adapt the concept for use in their localities. Details of 4 JSC schemes in the programme with varied characteristics are set out in Figure 9 below.

Figure 9

Local Authority	Type of JSC	Services to be provided
Barking & Dagenham	DfES Extended School Centre attached to the Jo Richardson Community PFI School.	• reception/café/exhibition space • customer one-stop shop • information & advice/bill paying • use of school sports facilities out of

⁵ Gershon Review: Releasing Resources to the Frontline, July 2004 which is unavailable on HM Treasury's website (www.hm-treasury.gov.uk)

⁶ ODPM's "Delivering Efficiency in Local Services" (2004) available at www.odpm.gov.uk

⁷ Speech by Nick Raynsford to LGA Conference entitled Performing for Partnerships: the Challenge of Local Area Agreements" dated 23 November 2004

Local Authority	Type of JSC	Services to be provided
	A focal point for community development and a pilot for the strategy of local centres accessible by foot. Procured through PFI.	- school hours - shared school/public library - ICT based learning village - Connexions suite - adult learning - children's centre - nursery/crèche/ breakfast club/after-hours school club - performing arts spaces - police presence
Newcastle City Council	Three centres, extending and developing existing network of inner city centres. Procured traditionally and through LIFT.	- Council information and advice - health services and pharmacist - library - joint service centres office - college - youth services - police - voluntary sector, e.g. CAB, victim support
Newcastle City Council	In Kenton, Benwell, Gosforth and Shields Road, forming a network of centres to ensure the majority of people in the city are within 1.5 miles of a centre. Building on the existing service centre in the Civic Centre to create a network of inner city centres. Procured traditionally and through LIFT.	- visitors can access most of Council's high-volume services directly and resolve issues at first point of contact - advice and information (environment, parking, council tax, electoral registration, leisure, etc) - bill paying - joint service centres - social service enquiries - health services - presence by: Job Centre Plus, Connexions, CAB, Age Concern, Inland Revenue, credit union, college, child contact centres
Nottingham	Centre at Hyson Green - very deprived area with diverse mix of ethnic groups. Centre at Clifton - large working-class joint service centres estate with high proportion of elderly. Both centres are located in busy shopping centres. Procured through LIFT.	- reception - information & advice (street scene reporting, pest control, travel, register, etc) - local joint service centres services - social services - child protection/fostering/adult assessment/intermediate care 'Adaptations agency' for disabled at Hyson Green - primary care - GP, health visitor, family planning, etc - Sure Start/children's centre - neighbourhood services - area co-ordination - outreach sessions for welfare rights/councillors surgeries/job vacancies/asylum seeker support/trading standards/consumer protection, etc - community café - day nursery/crèche/ play provision
Stoke-on-Trent	Large centre to replace the existing run-down commercial area that forms a central focus of the Bentilee public sector joint service centres estate in	first stop shop for general enquires and advice (inc one reception for both local authority and PCT enquiries using staff seconded

Local Authority	Type of JSC	Services to be provided
	the City. Procured through PFI.	from both organisations) • community animateur • joint service centres services • library and information services with ICT centre • youth services • community rehabilitation • community and conference facilities • advisory services such as Community Enterprise and CAB • health centre - wide range of primary and acute care services, inc Walk in Centre • Also an integrated outdoor market area, a community café, staff integration area, joint use rooms, associated environmental improvements, and inclusion of local retail facilities.

29. Projects in the ODPM JSC programme have been selected through a number of annual bidding rounds. In recognition of the flexibility of JSC schemes and the multiplicity of ways in which they can be developed, the 2004 bidding round was run in collaboration with those of the Department for Health ("DH") and the Department for Culture, Media and Sport ("DCMS")⁸. Such an approach was felt necessary to better facilitate the consideration of proposals which might attract support from across government sectors. The joint bidding round was further encouraged by the changing landscape for central government support for capital projects.
30. Most previously supported JSC schemes had an average net present capital value of between £5-£15million. This invariably meant that obtaining sufficient market interest, deliverability and affordability were significant issues for procuring authorities. Given the decision of HM Treasury to implement the recommendation contained in HM Treasury's Report "PFI: Meeting the Investment Challenge"⁹ that PFI schemes with a capital value of less than £20million¹⁰ do not provide value for money, one of the benefits of a joint bidding round is that proposals from authorities can incorporate innovative ways to ensure the capital value of the project is sufficient. Techniques such as bundling, joint procurement, LIFT, BSF or innovative financing solutions represent some of the possibilities. For example, proposals for joint projects encompassing neighbouring authorities covering possibly a series of linked branch libraries were positively welcome provided the joint approach was devised to enhance service delivery and provide demonstrable value for money (i.e. not merely manipulated to circumvent the £20million capital threshold without any intrinsic rationale for doing so).
31. The £20million capital threshold only applies to the initial capital value of a project and does not apply to projects developed pursuant to NHS LIFT or BSF.
32. Authorities should also note that JSCs are by no means exclusively supported or championed by the three departments involved in the joint bidding round, and there is no clear boundary between the large projects this Pack is mainly designed to cover and

⁸ See www.local.odpm.gov.uk for further details about the Joint DH/ODPM/DCMS Bidding Round 2004

⁹ The report can be found on the HM Treasury website <http://www.hm-treasury.gov.uk/>

¹⁰ The £20million threshold applies only to the initial capital value of a project.

smaller "One Stop Shops". In December 2003, the Department for the Environment, Food and the Regions ("Defra"), in collaboration with the Countryside Agency, published "Setting-up One Stop Shops: A good practice handbook on linking services in market towns." This handbook¹¹ highlighted the role of market towns as "hubs" for rural life and depicted the use by almost 50 aspiring market towns of One Stop Shops to reverse declines in accessing authority services. The handbook was published to encourage other rural authorities to consider ways in which they can use similar facilities to revive their localities and should be consulted by all local authorities juggling service provision across sparsely populated rural areas.

¹¹ Available from the Countryside Agency's website at www.countryside.gov.uk

Section 3: Procurement Efficiency

33. The recommendations of Sir Peter Gershon's review of public sector efficiency has spearheaded a drive throughout central and local government to make best use of available resources. Local authorities spend in the region of £40billion every year on acquiring goods, works and services from external providers, and procurement costs for long term large capital projects (e.g. schools, hospitals) usually amount to between £0.5million to £1.5million.
34. The joint ODPM and LGA National Strategy for Local Government Procurement 2003-06¹² (published in 2003) specified that by 2005:-
- "smaller district councils without dedicated procurement resources of their own should be collaborating with others through the regional centres of procurement excellence to create shared services for procurement and project management.
- "councils should identify opportunities for collaboration with neighbouring councils for shared commissioning and/or delivery of services¹³"
35. Whilst authorities should explore opportunities for reducing or sharing procurement costs with others for all types of procurement, the joint nature of JSCs may open up particular opportunities to so in working with partners.
36. Extensive research has exposed the potential scope and nature of the benefits emanating from the use of innovative collaborative techniques. HM Treasury in its report "PFI: Meeting the Investment Challenge"¹⁴ highlighted the use being made of bundling or batching small projects together, an approach which has been extensively used within the NHS, and encouraged the adoption of such practices by other sectors.

Sharing procurement costs

37. At a local level, individual authorities have been at the forefront of deploying innovative techniques designed to produce substantial savings in both cost and time of procurements. A number of authorities are known to have undertaken parallel procurement exercises in a number of sectors to share the administrative, personnel, resource and advisers fees incurred in a project and authorities are encouraged to consider whether such an approach could be adopted in all appropriate circumstances. Where contributions towards such costs are to be shared, authorities should ensure they have sufficient protection to ensure they have recourse to the required funds in the event of a partner default in payment. They must also establish that the use of joint advisers does not or would not create any conflict of interest.
38. The London Boroughs of Enfield and Newham recently combined their collective resources to undertake a single procurement exercise to find a suitable contractor to build and refurbish schools within both boroughs. This approach not only produced a more attractive schools project for the market but saved the individual authorities significant funds by enabling them to benefit from their respective internal know-how as well as share many of the usual administrative costs incurred by procuring authorities.
39. Both authorities used a single set of external legal, financial and technical advisers, appointed jointly. This in itself accounted for a large proportion of the savings since external advisers' fees on an average schools PFI project can usually amount to anything between £500,000 and £2million. By holding a joint procurement, the

¹² Available from www.odpm.gov.uk

¹³ National Procurement Strategy for Local Government 2003-06 page 33

¹⁴ Available from www.hm-treasury.gov.uk

authorities still had access to the level and quality of advice sought throughout the process, but were able to obtain such advice at approximately half the cost.

40. External advisers were complemented with the in-house expertise and experience of each authority. Obviously the wealth of expertise within two authorities is greater than the capacity of a single authority, and there will inevitably be instances where in-house expertise will prevent the need to obtain further external advice.
41. Whilst each authority had its own project team and project review and management structures, the teams shared the administrative workload during the procurement process. For example, a joint OJEU was issued, an ITN was developed incorporating all requirements, the evaluation of PQQ and bid submissions was shared so that duplication of resources was avoided and bidders were required to negotiate jointly with both authorities, with questions and responses circulated across both teams. Such a process obviously resulted in significantly reduced bid costs for bidders (i.e. they only had to bid once and not for 2 separate projects), as well as making the total project more attractive to the market than each single scheme.
42. A similar approach was undertaken in the street lighting PFI market where Newcastle City Council sought to build upon their existing close working relationship with North Tyneside Metropolitan Borough Council to jointly procure a street lighting Contractor and the London Boroughs of Barnet and Enfield are embarking upon a similar project. Obviously, working in collaboration with partner agencies requires consideration of additional issues (for example vires, evidence of commitment and financial support), but such issues are surmountable, with individual authorities still retaining sufficient control to ensure their respective requirements are fully satisfied. Further details of collaborative approaches to procurement can be found on the 4ps website (www.4ps.gov.uk).
43. Whilst these examples concern two authorities, there is no reason why working with other public sector bodies should not also enable both parties to obtain cost savings, although the extent of such savings will depend on the nature of each party. For example, in some instances it may not be appropriate to appoint a single set of advisers for the procurement of a JSC due to the specialised interests of the parties. However, authorities are encouraged to consider whether, and if so, how any joint working relationship could work.
44. Different considerations will apply when working with voluntary sector bodies and commercial partners and external legal advice should be taken to ensure the interests of the authority are sufficiently protected before any proposed arrangement is entered into.

Efficiencies

45. A number of parties joining forces to procure certain services should assist in making the process more time efficient, provided there is a clear understanding of the manner in which such parties will work together. To date, time savings have been particularly noticeable where better performing authorities have teamed up with other authorities who have not had similar internal procurement capacity or expertise, thereby enabling both parties to complement their internal resources. However, it is also acknowledged that if there is any uncertainty as to how both authorities will conduct themselves, any such arrangement could become equally as protracted and more time consuming than usual. For this reason it is essential that there are clear terms of reference detailing the obligations and responsibilities of each party as well as an agreed set of principles and procedures in accordance with which the scheme will be developed.
46. In addition to producing time-savings by having a greater number of people to assist with preparing and reviewing the procurement documents and reviewing and evaluating bids,

the individual experiences of parties will inevitably be useful when devising JSC output specifications since they will be able to discuss their various approaches with a view to utilising the most appropriate solution to satisfy their collective requirements.

Accelerated Learning

47. Collaboration can prove to be a significant way in which better performing authorities can assist and share their expertise with authorities who do not have as experienced or as developed procurement teams. Authorities can learn from each other and utilise their internal expertise without having to resort to such formal techniques as secondments or specific ad hoc training sessions. The nature of JSCs is such that a lot depends on the particular requirements of stakeholders and therefore, the best solutions are not prescribed but there to be identified, developed and implemented by stakeholders. By working through the scoping, detailed specification and negotiation stages of the procurement, local authority stakeholders are better placed to determine which approach provides the "best fit" for their requirements.

New partnership structures

48. Probably the most significant recent development within this area has been the lessons emanating from PFI and the introduction of new strategic partnership structures designed to overcome the drawbacks associated with a single PFI scheme. Since its introduction, PFI has been utilised by authorities to procure the development and provision of a wide range of capital infrastructure and facilities management alongside funding and designing such facilities in-house. The main attraction of PFI has been its ability to transfer considerable risk and responsibility to the private sector and attract external finance, thereby allowing authorities to concentrate on their core functions of service delivery services. However, as mentioned above single procurement exercises take a considerable amount of time and expense, with the average time from advertisement to financial close still taking over 18 months despite the standardisation of large sectors of the market. In addition, once the contractor has provided the advertised works and services in question, the procuring authority needs to undertake another exercise before a new facility and/or services can be provided. There is very little scope for the contractor to supply other assets or services even though the procuring authority may have an ongoing need and the relationship with the existing contractor is sound.
49. Authorities are therefore advised to take a step back from individual projects to examine their strategy for asset and service requirements over the short, medium and long term. Having considered the scope of demand for accommodation and services, authorities should investigate what demand there may be regionally as well as locally for similar requirements amongst their public and voluntary sector partners. Indeed, it is precisely to encourage such an approach that the ODPM last year launched its Regional Centres of Excellence in each of the nine English regions¹⁵. By facilitating authorities to consider procuring goods, works and services on a collective basis, it is envisaged that the Regional Centres of Excellence will spur more strategic, innovative and efficient methods of procurement and service delivery through the emergence of bespoke local and/or regional strategic partnerships responsible for strategically planning their future requirements and capitalising on the combined purchasing power of their constituent members over a 7-25 year period.

¹⁵ Details of the nine regional centres can be found on the ODPM website, www.odpm.gov.uk and Figure 8.

Figure 10

Regional Centres of Excellence
North East – Gateshead Metropolitan Borough Council
West Midlands – Worcestershire County Council
South West – Dorset County Council
North West – Tameside Metropolitan Borough Council
South East – Kent County Council
Yorkshire and Humberside – Leeds City Council
East Midlands – Nottinghamshire County Council
East of England – Norfolk County Council
London – Association of London Government on behalf of the London Boroughs

50. Such a strategic approach forms the foundation for initiatives such as NHS LIFT, BSF and the ODPM's work on strategic service delivery partnerships. By engaging with one's stakeholders at an early stage all partners can ensure they develop a cohesive strategy for meeting future needs as well as enabling constituent partners to utilise their expertise in such a way so as to minimise duplication in resources. Having planned short, medium and long term strategies for a locality, such partners are then free to go out to the market to appoint a contractor who can assist them over a significant period of time in fulfilling their future requirements whether through use of the PFI or other delivery methods, depending on which delivery vehicle is the most appropriate in a given set of circumstances.
51. NHS LIFT projects facilitate collaborative working between local authorities, and a wide range of local health care providers including health trusts (encompassing primary care, ambulance and mental health trusts), strategic health authorities, GP practices, voluntary groups and local authority public health services who plan and deliver services over a 20 year period through the appointment of a single partner (LIFT Co). There is also scope for the provision of more specialist clinical services such as nursing care and providing sheltered accommodation. BSF encourages a similar approach by local education authorities, school management teams, governing bodies, learning and skills councils, the Connexions service and local businesses coming together to plan how to provide sufficient and appropriate local educational provision. Works and services are provided by a contractor and their supply chain, who together with the public sector bodies form a LEP, appointed following an initial procurement exercise. SSPs once again use the same basic model comprising of interested public sector bodies within a sector seeking to work with a private sector partner. To date SSPs have predominantly covered corporate back office services (such as human resources, finance systems, ICT support and information management) as well as asset and estate management services but in theory at least there is nothing to restrict the use of such strategic alliances across a range of sectors.
52. Experience has shown that the private sector market values the opportunity to develop medium to long term relationships with a range of procuring authorities since this facilitates the development of the partnership and provides a value for money solution given that only a single procurement exercise is required and the relationship may result in the delivery of 20 – 60 facilities and/or service streams during the period of the relationship.

53. Within the context of JSC projects, such a strategic approach is key to the successful delivery of such schemes. Furthermore, authorities who are unable to obtain additional government support may consider forming alliances with successful authorities as well as exploring to what extent they can collectively capitalise on their new powers to raise funds pursuant to the prudential code.

Section 4: Preliminary Considerations

When Developing a Joint Service Centre Project

54. This Section seeks to provide an overview of the preliminary key issues which authorities should consider to ensure JSC projects are strategically aligned to local service needs and economically delivered through the most appropriate value for money solution. The scale and importance of such preparatory work should not be under-estimated since any short-cuts during this preliminary stage could lead to unnecessary delays during the progress of any scheme.
55. Before embarking upon any JSC scheme, authorities should begin by asking themselves the series of questions stated in Figure 11, each of which is explored in detail below.

Figure 11 Essential Preliminary Questions

- What do you want to do?
- What options are available?
- Is there anyone you could work with?
- How will the project be funded?
- Is the market interested in your proposals?

What do you want to do? – Scope of Project

56. What is included within the project will largely depend on a number of factors including existing service provision, the needs of the locality and individual authority objectives. Documents such as community strategies, corporate management plans, best value annual reviews and asset and management plans should form the strategic context within which proposals for JSCs should fit. In accordance with the Modernising Government agenda¹⁶, when considering how to modernise the delivery of public services authorities should be considering a number of corporate constraints, strategies and recommendations, some of which are detailed below:-

- 56.1 the results from any comprehensive performance assessment which considers authority performance against stipulated best value performance indicators appraised in 5 dimensions:-

- (1) why the service exists and what it seeks to achieve,
- (2) the efficiency with which service costs are turned into outputs,
- (3) how well the service is being operated to meet its objectives,
- (4) the quality of service provision as reflected through users' experiences;
and
- (5) ease and equality of access to services.

- 56.2 the best value performance regime requires compliance with various indicators which require certain standards for example, BV 76 stipulates the speed within which new claims for housing benefit and council tax must be processed and BV

¹⁶ See White Paper Modernising Government (March 1991)

117 and 170 specifies targets for the number of visits to libraries and museums which authorities should strive to achieve;

- 56.3 authorities are required to ensure their accommodation is compliant with the requirements of the Disability Discrimination Act 1995 and other statutory provisions;
 - 56.4 the Freedom of Information Act 2000 requires authorities to have processes and procedures for dealing with requests for information and issuing responses within specified timescales;
 - 56.5 the National Procurement Strategy for Local Government 2003-2006 requires every local authority to have an appropriate e-procurement solution as part of their e-Government programme; and
 - 56.6 local authorities must strive to ensure all services are electronically available by 2005.
57. The requirements specified above indicate the nature of the balancing exercise which must be undertaken by authorities when ascertaining in which services to invest and the form that such investment should take. The requirements specified provide some illustration that JSCs, if planned and operated properly, could be instrumental in assisting authorities to achieve a number of their service delivery targets.
58. Such documents should assist in the identification of precise aims for the proposed JSC, many of which may emanate from a range of sources including figures concerning the existing use of council services as well as the results of customer satisfaction surveys. The latter might provide a valuable starting point for determining whether existing provision is being used effectively as well as suggest ways in which services might be re-configured to provide better value for money. For example, the fact that most enquiries concerning Council services are made between the hours of 12pm and 2pm or after 5pm with a lull in between might suggest that many people have very little time within which to make their enquiries, since it is highly likely that the identified peaks and troughs in enquiry numbers are related to many potential enquirers working standard business hours. Therefore an authority may want to consider making their enquiry service available earlier in the morning, later into the evening and possibly even at weekends, as well as enable and/or facilitate the use of enquiries through email and web access, allowing enquiries to be made at a time which is convenient for the enquirer.
59. The results of work undertaken as part of existing programmes such as the Neighbourhood Renewal Programme, Sustainable Communities or the New Deal for Communities ("NDC") or the Housing Market Renewal Pathfinder programme might also be instrumental in highlighting key areas of need within individual localities and suggest ways in which certain often hard to reach sectors of society can be assisted. For example, members of the Bangladeshi or Pakistani communities might have responded well to a NDC supported mobile community clinic which contains council representatives able to converse in a range of East Asian languages. As a result, the council might want to consider whether it would be feasible to provide interpretation services at some council premises to facilitate communication with individuals for whom English is not their first language.
60. Certain authorities such as Stoke on Trent City Council, in conjunction with their local primary care trust, have commissioned specific surveys to reveal what action needs to be taken to revive certain ailing communities. Stoke commissioned a health needs assessment across one of its deprived inner city estates, the results of which suggested the kinds of services which people living in the estate required. The survey revealed the

reliance placed upon local amenities such as the retail facilities and health care, due to the general inability of residents to travel very far and prompted the inclusion of drugs and alcohol rehabilitation clinics, dental, general health care and family support services within the proposals for the Bentilee JSC¹⁷.

61. In addition to the appraisal of information compiled for the purposes of the authority, it is also advisable for authorities to consider strategies and plans compiled by other agencies in the area. For example, work undertaken by the local police service into a particular neighbourhood might illustrate the need for additional recreational facilities since one of the reasons cited by many young offenders may be the lack of suitable recreational provision. Such information will also facilitate the authority in identifying ways in which it can work with its partner agencies.
62. Whether surveys are specifically commissioned for this purpose, or needs are ascertained from an analysis of existing internal and external information, authorities should ensure the scope of their JSC project, together with their objectives for the JSC are clearly defined at an early stage. This will assist in the determination of the available procurement options (for example, NHS LIFT will generally only be an option if the facility will include health and social care provision, whilst BSF will be an option if the JSC will comprise of extending existing school facilities for use by the wider community), the authority's potential choice of partners for the project, potential funding avenues that could be accessed as well as facilitating the evaluation of bidders' responses with a view to developing the right design solution for the JSC.

What Options Are Available? - Procurement

63. Since it is unlikely that any authority will have the necessary internal expertise or capability to construct accommodation, it is inevitable that such expertise will need to be sourced externally although it is accepted that many technical and estates departments do possess the necessary capacity to undertake detailed design and facilities management work. Therefore in all usual instances, authorities will need to appoint a third party to undertake at least the construction work for their JSC. The manner in which such an appointment can be made will vary according to a wide range of factors, but the main options are set out below (and each option is explained in greater detail in Section 7):-
 - 63.1 **Individual Procurement of Contractor** – In accordance with the EU procurement rules for awarding public contracts, an authority may advertise for a suitable construction contractor to build and possibly design the JSC. Following appointment, responsibility for all ongoing facility management duties would lie with the authority who would also be responsible for providing all necessary initial and ongoing funding for the facility as well as ensuring the facility is occupied.
 - 63.2 **Partnering Arrangements (existing or new)** – Following the introduction of the principles in Rethinking Construction¹⁸ and the PPC 2000 Partnering Contract¹⁹ many authorities have entered into partnering arrangements with a supply chain or an individual partner, responsible for undertaking the majority, if not all of the authority's construction needs during the term of the arrangement. Depending on the terms of any such arrangement, it may be possible for the authority to develop the JSC in accordance with such arrangements. The greatest benefit of such an approach is that it saves the authority undertaking a separate EU compliant procurement process each time it requires

¹⁷ Further details of which can be found at Part A2 Section 4.

¹⁸ Rethinking Construction; The Report of the Construction Taskforce (1998) commonly referred to as the Egan Report.

¹⁹ Published by the Association of Consultant Architects Ltd and endorsed by CIC and Constructing Excellence. For further information see www.constructingexcellence.org.uk

a new facility since any contract for the JSC would be covered by the initial procurement of the partner. The extent to which the authority would retain responsibility for financing, designing, constructing and managing the facility would be dependent on the terms of the existing or new arrangement entered into with the partner.

- 63.3 **Framework Agreements** - An authority may decide to appoint a contractor under an existing framework arrangement either through a relevant local purchasing organisation or through arrangements established by central purchasing bodies such as the Office of Government Commerce ("OGC").²⁰ OGC have pre-selected a number of construction and design suppliers, following consideration of their financial standing and technical capability. Authorities, along with other public sector bodies, may "call off" contracts with individual suppliers pursuant to such arrangements. If there are a range of suppliers to choose from authorities may hold a mini-competition between potentially suitable suppliers to ascertain who will be able to offer the most value for money solution. Authorities are free to determine whether to award a combined design, construction and facilities management contract or separate contracts for each element. All funding for the project together with arrangements for occupancy and fittings will remain with the authority.
- 63.4 **The Private Finance Initiative** - Authorities who do not wish to bear the responsibility for designing, constructing, managing and financing JCSs nor wish to use the OGC framework arrangements may decide to externalise all such functions through the use of the PFI. This option, unlike the previous two, also allows the authority to have access to considerable sums of third party finance, but is only an option if the capital value of the scheme exceeds £20million. PFI involves the award of a works and services contract to a third party contractor, pursuant to the EU procurement regime, with the successful bidder bearing all responsibility for designing, constructing and managing the facility, as well as dealing with all ongoing lifecycle maintenance throughout the usual 25 year period of the contract. The authority is required to pay a service charge over the period of the contract, in which a charge will be factored for ongoing facilities management services as well as a portion of the repayment sums attributable to any third party finance used by the contractor to fund the construction of the JSC. The authority will also have the opportunity to apply for government support, in the form of PFI credits, towards the capital value of the project.
- 63.5 **NHS LIFT** - If an Authority is within a designated NHS LIFT area, and either it has already granted exclusivity to LIFT Co or it wants to develop a JSC in conjunction with a local primary care trust, its only option will be to procure the development of such a facility through the local NHS LIFT scheme. This is largely so since within existing NHS LIFT areas²¹ primary care trusts and sometime authorities enter into exclusive arrangements pursuant to which they have agreed to use LIFT Co (a private sector controlled company in which local public sector health care and social care providers may have an equity stake) to procure the development, construction and management of all their future accommodation requirements²². Whilst authorities within NHS LIFT areas may decide whether or not to grant such exclusivity, primary care trusts enjoy no such flexibility. However, this is only an option if the authority is situated within a NHS LIFT designated area and authorities should check their status by consulting the DH website for further details.
- 63.6 **BSF** - If an Authority is within a designated BSF designated area²³ and has granted exclusivity to the Local Education Partnership ("LEP") (or another similar body), in relation

²⁰ Details of all OGC framework contracts are available at www.ogcbuying.solutions.gov.uk

²¹ Details of wave 1, 2, 3 and 4 NHS LIFT areas can be found at www.dh.gov.uk.

²² Subject to compliance with the Approval Criteria set out in Schedule 4 of the NHS LIFT Strategic Partnering Agreement

²³ Details of which can be found at www.bsf.gov.uk.

to any proposals for a JSC which relates to the secondary school estate or is funded under the BSF programme, the authority may be required to have the facility developed by the LEP or any similar body to whom exclusivity has been granted. Similarly to NHS LIFT, authorities are required to grant exclusivity to the LEP for their future major capital projects although such exclusivity may be subject to certain carve outs, relating to existing partnering, framework or outsourcing agreements (eg PFI). BSF will only be an option if the JSC involves the provision of works and services originally envisaged by the BSF OJEU.

64. If authorities choose to utilise existing arrangements for the development of the JSC (i.e. NHS LIFT, BSF or existing partnering arrangements), the terms of the JSC contract will to a large extent be determined by the existing arrangement. External legal advice should be sought if necessary to ascertain the extent to which such existing arrangements, whilst enabling the authority to obtain the JSC facility without going through a separate procurement exercise, also allows the authority the flexibility it requires for the JSC. The relevant OJEU notices for each existing arrangement should be consulted to ascertain the extent to which the envisaged JSC project can be procured through such existing arrangements. Authorities entering into new and bespoke arrangements must ensure they are sufficiently wide to enable them to meet their future needs.

Is There Anyone To Work With? - Collaboration

65. Although authorities have traditionally been viewed as discrete autonomous entities, in many areas there is an overlap of responsibilities with other public sector agencies. For example, authorities are encouraged to develop sustainable and safe communities. Therefore it seems logical for authorities to join forces with local police forces to ensure their respective approach is complementary, which has been evidenced to date through the presence of local community safety partnerships containing representatives from localities as well as the authority, police service, neighbourhood watch and other local stakeholders. Responsibility for caring for the elderly involves primary care providers as well as councils, whilst ensuring there is adequate provision for the education of young people is a responsibility discharged by local dioceses, individual schools, local education authorities as well as other local partners such as the learning and skills council, colleges of further education and institutions of higher education. In all such instances liaising with partner agencies should ensure the public sector as a whole does not incur unnecessary expenditure (e.g. through the duplication of resources) and allows all interested parties to develop a strategic framework which best utilises the abilities and resources that each partner has to offer.
66. Partner agencies should not just be seen as other public sector bodies, as working with organisations in the voluntary (e.g. child care or CAB) and commercial (e.g. complementary retail) sectors can also enable authorities to obtain additional benefits.
67. When embarking upon JSC schemes authorities are advised to consider the strategies deployed within their locality by other public sector providers, identify their priorities and objectives for the short, medium and long term and ascertain whether there is any alignment between such objectives and their own.
68. Once the envisaged partners have been identified, all parties should seek not only to obtain approval and support for the project in accordance with their internal governance arrangements, but also devise a method through which they can all contribute to the development of their proposal for the JSC. This is a fundamental part of the successful delivery of any JSC if the centre is to be a catalyst for service integration and not just co-location.

69. In addition to improvements in service provision, there are potentially advantages to collaboration in the procurement process. This is explored in Section 3.

How Will The Project Be Funded? - Investment

70. The issue of funding any capital project is always among the most significant issues for authorities to address. Authorities considering developing any JSC, or indeed any other similar accommodation scheme, need to ensure they have access to sufficient funds to cover the following key areas:-
- procurement costs;
 - construction costs;
 - ongoing lifecycle, maintenance and service costs; and
 - costs attributable to any exit strategy at the end of the arrangement.
71. Careful consideration should be given to ascertaining each of the above costs for a project, the sources from which such costs will be met, as well as how any cost overruns will be borne.
72. Since 1 April 2004 the prudential code has given authorities greater flexibility to borrow funds for capital purposes provided such borrowing is prudent and affordable for the authority in question. Authorities are required to determine their own levels of prudential borrowing in accordance with the principles and guidance specified in the code - although the Secretary of State has a reserve power to impose a specific or generic cap on borrowing for some or all authorities if s/he decides it is necessary to do so.
73. Authorities should also consider the extent to which working with partner agencies could help each partner reduce their procurement and transactional costs, as discussed in Section 3.
74. Extremely important, yet often overlooked, is the need for authorities to be clear from the outset as to the cost consequences of early termination or the end of the arrangement. Despite the expiry of any such arrangement, the authority (together with its partners) will still have an ongoing duty to discharge their respective functions and therefore, they must have a strategy for determining how they will continue to provide such services. Authorities must be aware of who owns the facility and whether they will have the right to acquire it at the end of the arrangement, the cost implications of any such acquisition and how they will manage the facility on a day to day basis if this function is no longer retained by the provider i.e. will a new contract be awarded at the end of the envisaged term?
75. The considerations listed above all go towards demonstrating to the authority that the project is affordable and provides value for money. If there is any doubt as to whether or not the facility and the process through which the facility will be developed will not provide value for money, the authority should reconsider what it is seeking to do and the manner in which it is seeking to do it. Further information concerning investment options are considered in Section 6 below.

Is the Market Interested in Your Proposals? - Market Interest

76. If PFI or another public-private partnership option is seen as the preferred investment option, an equally important preliminary consideration is the extent to which the private sector will be interested in the proposed project. Given the level of investment in public

infrastructure in recent years and the plans for continued investment across all sectors including health, schools, public transport, housing and joint service centres, there is some concern at whether there is sufficient capacity within the market to accommodate such demand for new infrastructure. Whilst it is accepted that the marketplace is becoming more sophisticated, it is also clear that providers are seeking to develop sectoral expertise with new providers and consortiums being developed to cater for certain projects (such as BSF), so that the market is able to respond to a wide range of specific needs. However, this does not remove the need for authorities to develop well worked up proposals to ensure the market considers their proposals as deliverable, viable and attractive.

77. Only projects with a capital value of within £20million or more are considered capable of providing value for money PFI projects. Whilst projects delivered through NHS LIFT or BSF are not subject to this requirement, it is worthwhile for authorities to consider how they can make their projects appealing to the private sector. This may not just involve the batching or bundling together of smaller schemes so that the combined capital value is in excess of £20million, but any proposals should facilitate service integration and demonstrate to the private sector that the partners are clear about what it is that they require.
78. Any arrangements between authorities and their partners should be such that the responsibilities and obligations of all parties to the proposed project are clear. A detailed output specification together with an initial design of the facility showing how the partners envisage the JSC will function should go a long way towards enabling potential private sector partners to identify the extent to which they have the requisite capability and expertise to deliver the project within the stipulated financial, market and skills constraints. Evidence of commitment from partner agencies will also serve to reassure the market that there is a real momentum to proceed.

Conclusion

79. The initial preparatory considerations specified in this Section should assist authorities to develop and refine their own plans as well as ensure the scope and nature of the JSC is one which is affordable and deliverable by the market. At the very least authorities should ensure the following minimum steps are taken:
 - obtain partner commitment for the JSC from each partner (in terms of authorities this requires obtaining appropriate Cabinet and Council support);
 - scope the optimum mix and range of service providers to be co-located within the JSC and identify their level of commitment, contribution and involvement;
 - determine the affordability envelope of the key partners to the capital, ongoing operational and procurement costs of the project;
 - prepare an initial but detailed output specification of the requirements to be accommodated within the JSC, together with a clear vision for how service integration will be facilitated through the design;
 - undertake a soft market testing exercise to ensure the JSC is deliverable and commercially attractive to the market.²⁴

²⁴ Please see 4ps case study on Stoke on Trent's Bentilee Joint Service Centre for detailed guidance on carrying out soft market testing exercises.

Section 5: Key Issues for Collaboration

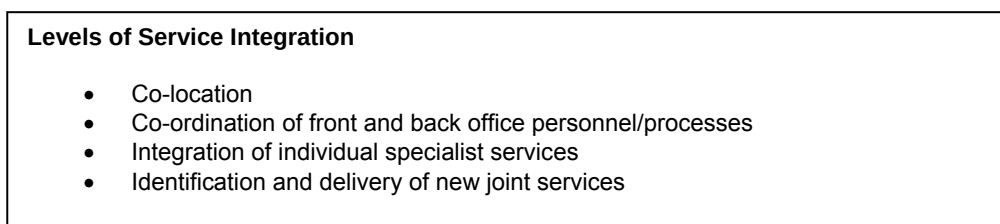
Why Collaborate?

80. Sources of encouragement for local authorities to join forces with others in the discharge of their functions can be found in a range of places, from the National Procurement Strategy for Local Government 2003-2006, HM Treasury's Report "PFI: Meeting the Investment Challenge" and more recently in the recommendations of Sir Peter Gershon's review of public sector efficiency as implemented in the Spending Review 2004. The comprehensive performance assessment regime has been modified to allow the Audit Commission and individual authorities to monitor and assess the extent to which they are delivering efficiencies, with rewards being granted to those who deliver in accordance with the Government's commitment to give better performing authorities greater flexibility and freedom.
81. The need to deliver efficiencies and improve service delivery within existing resource levels comes with an acceptance that there is a limit to the levels of efficiency improvements that can be delivered by any local authority working alone. Invariably, only by working in partnership with other public sector bodies, will authorities be capable of delivering the step change in service delivery required to transform public services to the standards expected in a developed country in the twenty first century. The ODPM's Strategic Partnering Taskforce, established specifically to develop solutions to help local government improve services by working with other organisations stated:
- "We believe that there is significant untapped potential for improvement in service delivery through greater partnering between public sector bodies and we know from our discussions with local authorities that this view is widely shared. Now that the legal barriers are being progressively removed these opportunities are certain to increase. Imaginative use of the prudential borrowing regime, the ability to use company vehicles and, for better performing authorities the power to trade, provide stimuli for more partnership working between public bodies".²⁵
82. Since the very essence of JSCs is their multi-party and multi-service nature, effective collaboration between JSC partners throughout the development, procurement and operation of a JSC is a fundamental requisite. The potential advantages and challenges to authorities from working with others in the discharge of their functions are discussed in paragraphs 16-26 in Section 2. These include both improvements in the quality of service delivery and efficiency savings. Joined up working between local authorities and their public sector partners, enables all such parties to be in a better position to deliver services which are structured and co-ordinated around the needs of service users.
83. The joint nature of JSCs potentially also opens up particular opportunities to reduce or share procurement costs, as discussed in Section 3.

²⁵ ODPM Strategic Partnering Taskforce: Rethinking Service Delivery Volume 3 Public/Public Partnerships.

Service Integration

Figure 7



84. Figure 12 above lists the different levels of service integration but gives the different starting positions of most JSC partners, an incremental approach to service integration is advisable. Co-location is the first step with co-ordination of process/personnel being facilitated through the design of the JSC. Stages 3 and 4 should be developed once partners are in the JSC and can build trust and new techniques for improving their services.
85. The key factor determining the success of a JSC concerns the extent to which it facilitates all occupants in delivering co-ordinated and streamlined services to service users. Whilst some authorities may see JSCs as an answer to co-location, the most successful centres are those who use co-location to integrate service delivery and thereby remove any duplication and inefficiencies which would otherwise exist between a number of Contractors. Ensuring the authority and its partners have a practical solution for identifying alignments in service delivery, defining how they see the JSC operating as a single entity for the benefit of its occupants as well as ensuring bidders come forward with innovative proposals for how to enhance service interaction is probably the single most difficult task when developing JSCs. The amount of preparation, research and work required from the authority, its partners and bidders should not be under-estimated.
86. To ensure optimum service integration, there are different stages and different levels of input required which can be summarised as follows:-
- 86.1 **Initial Scoping** - when asking yourselves the key preliminary questions specified in Section 4, authorities should investigate the potential partners with whom they can work. The reasons for deciding to work with certain bodies will in the main derive from an appreciation that such bodies have joint objectives as well as an acknowledgement that each partner will have something to gain from each other. For example, an authority may decide to work with a GP practice since it will enable patients to have access to council information when they visit their doctor. The primary care trust might be seeking new premises from which it can provide a wider range of services and the authority might also ask a local pharmacy if they too want to be located within the facility to enable patients easy access to the medication they have been prescribed by their doctor. Authorities should remain very open minded when considering potential partners, since providing customer focussed services (i.e. services designed around the needs of users) should be the prime objective. It might be useful for the authority to initiate the development of a working group of potential partners to identify the extent to which they can work together for their mutual benefit.
- 86.2 **Terms of Reference** – once the identity of the partners has been established, arrangements will need to be agreed for determining how the partners will work together and their collective objectives for service delivery. These may include objectives such as increased accessibility for the public, a friendly and welcoming

environment, services available in a range of languages, and enquiries to be resolved within a specific timeframe. Such overriding objectives should be laid down in writing to provide an overview for all partners of what they are seeking to achieve, which together with a procedure/principles for how such parties will work together in developing their service integration solution (i.e. how decisions will be made) should ensure such partners can develop the documentation required to obtain competitive bids.

86.3 Common Issues – the areas which commonly require addressing from a service integration perspective include:-

- reception – single reception for whole facility or separate reception desks for occupants?
- soft facilities management services – who will be responsible for cleaning, catering, landscaping, security, waste management, security etc?
- ICT provision – will all occupants have access to an internal switchboard, email system which is compatible with other networks in the JSC?
- corporate/back office – how will post, faxes, telephone calls, emails coming to the facility be handled? Separately or through a single administrative centre?
- design and adjacencies – who will be located where and next to what and how will such issues be determined?
- design quality and sustainability – will the new or refurbished buildings comply with nationally approved standards for public buildings²⁶?
- costs – how will these be apportioned and how can the generation of efficiencies for all partners be facilitated?
- change management – how can all partners be encouraged to embrace new working practices, new or unfamiliar approaches and new standards appropriate to the JSC as a whole?
- policies/procedures – how can individual Contractors' governance arrangements, protocols and policies be aligned to enable more streamlined working between partners

86.4 Design and Specification – the next stage is to enable such partners to develop their requirements for the JSC. This will not only involve specifying detailed outputs that they need but also their requirements, or possible options for the design of the facility. For example, a GP practice will have additional waste management requirements than the council's enquiries desk and it would be unreasonable for GP staff to have to walk to the other side of the JSC to dispose of medical waste or through the open café area. Alternatively, the authority might have seen an effective use of space by another authority and want to emulate

²⁶ Relevant guidance includes OGC 'How to achieve design quality in PFI Projects', CABE 'Improving Standards of Design in the Procurement of Public Buildings', National Audit Office 'Getting value for money from construction projects through design: How auditors can help' and the 4ps 'Achieving Quality in Local Authority PFI Building Projects. Copies of all such publications are available from the respective organisation websites.

their use of an open and welcoming reception area with an information library containing access to books, journals, the internet and digital television.

- 86.5 **Involvement in Procurement** – Partners should also play a role in evaluating and developing proposals during procurement, including whether they comply with the instructions issued to bidders. In addition, bidders may put forward alternative solutions which have not been considered and this group would be best placed to ascertain to what extent they are workable and whether there are any additional issues which arise therefrom.
- 86.6 **Post Completion** - there is also an ongoing need for the authority and its partners to ensure the standards, objectives and service specifications set for the project are still appropriate and are being implemented properly. In addition, any changes required to such specifications not originally foreseen earlier in the process will require discussion between the authority and the contractor as well as agreement as to whether such changes will be acceptable and how any associated costs will be dealt with.
87. Reference should be made to the experiences of Stoke on Trent City Council and Newcastle City Council for examples of how they have ensured their projects deliver integrated service provision.

ICT

88. Given the requirements on the public sector as a whole to ensure all services are 100% electronically enabled by 2005, significant investment is being made by all public sector bodies to ensure they are able to comply with this objective. For authorities and their partnering public sector bodies this will have a number of implications.
89. It is highly likely that individual public bodies will have introduced or will be introducing bespoke ICT provision for their requirements. However, to enable communication and service integration within a JSC such bodies must be able to communicate with each other so that for example, if a person has come to the Council enquiry desk, the desk can also check whether s/he can be seen by the community health clinic and records can be updated simultaneously.
90. There are no clear and fast rules in relation to the provision of ICT within a JSC, although parties should acknowledge that compatible systems will enhance service integration.

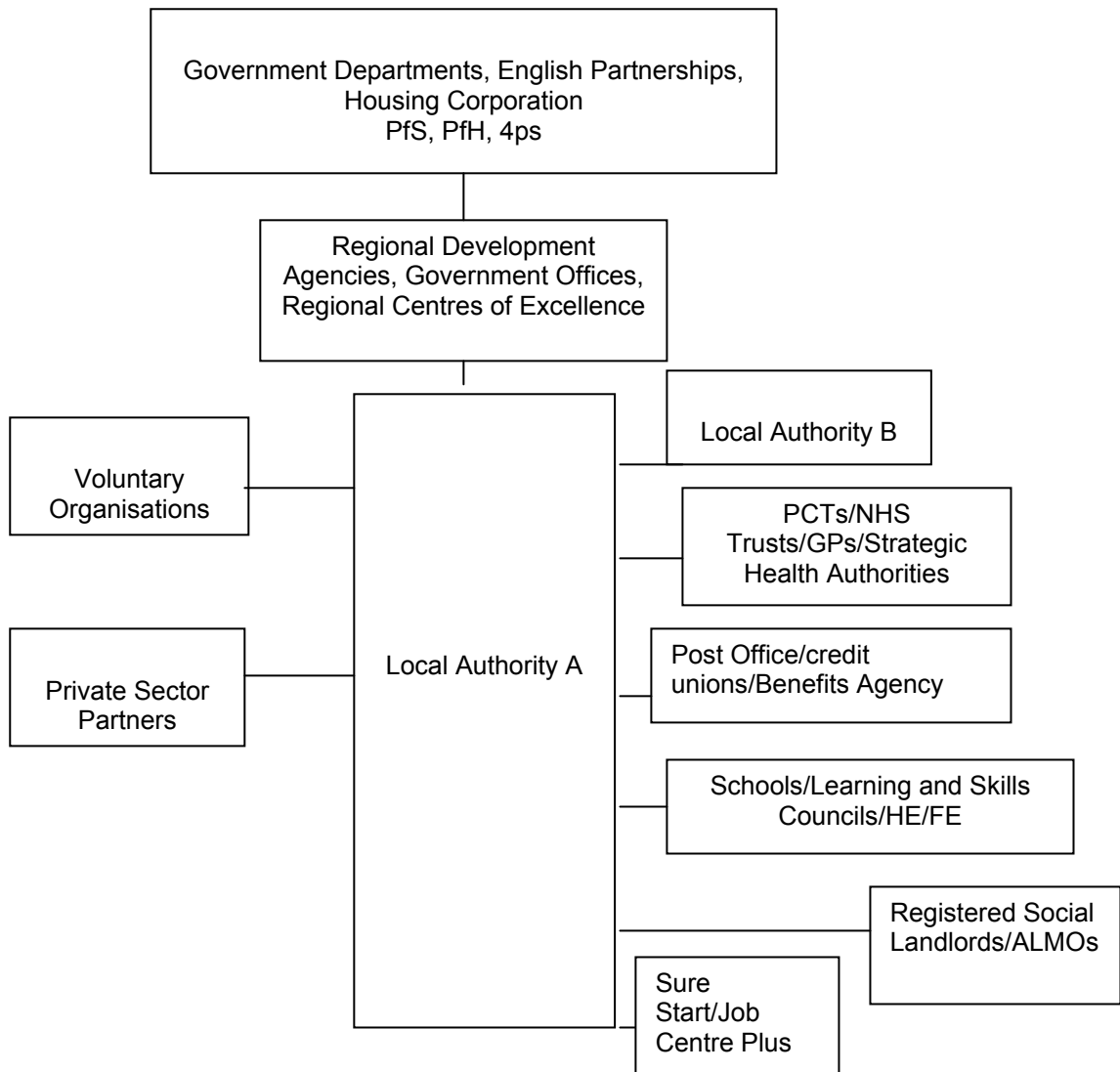
Attractive to the Private Sector

91. As evidenced through HM Treasury's Report "PFI: Meeting the Investment Challenge," the use of PFI for capital schemes with a value of £20million or less does not produce cost effective, bankable and affordable solutions. However, by combining local authority projects with a relatively low capital value, the private sector can also enjoy considerable savings in bid costs, thereby potentially making projects more appealing to a greater range of contractors. Authorities should note that it is likely that the private sector will require a joint and several liability covenant from all public bodies in any collaborative arrangement or some other form of comfort to reassure them that a number of public sector partners will not unduly complicate the transaction. This is particularly so since usually contractors will enter into a contract with one public sector partner and the respective responsibilities and obligations of each party are clear. With more than one public sector partner, contractors require assurances that they will still be able to discharge their obligations and will not be hampered by two or more independent public bodies exercising their individual discretion.

With Whom to Collaborate?

92. Collaboration need not take place just between local authorities. Collaboration or working in partnership can take place in a number of different forms and at a number of different levels as depicted in Figure 13 below.

Figure 3 Collaboration



93. In general, the extent to which local authorities can engage with any partners will be determined on a case by case basis. However, authorities should explore opportunities for working with bodies in the public, voluntary and commercial sectors. Different considerations apply to each relationship, some of which are considered below.

93.1 Working with other Local Authorities

- 93.1.1 Given recent developments within local government legislation, there is an increasing impetus for local authorities to explore innovative ways in which to discharge their functions on a collective basis. The Local Government Act 2003 introduced a range of measures designed to assist authorities in this regard including increased flexibility for authorities to determine their own prudential borrowing limits, the power to charge for discretionary services and the power to trade in function-related activities through a company. It is suggested that authorities should explore opportunities for not only providing services to

themselves but to other authorities as well whether through delegation or use of powers such as those contained in the Local Authorities (Goods and Services) Act 1970.

93.1.2 Authorities should check that they have appropriate powers to enter into any contemplated arrangements with other authorities, and each proposed arrangement must be considered on a case by case basis in accordance with internal standing orders of each relevant authority. In particular and in addition to specific powers concerning specific services, local authority are also reminded of the range of existing general powers which they should consider for these purposes, including:-

- Section 2 of the Local Government Act 2000 (well being),
- Section 112 of the Local Government Act 1972 (secondment of staff);
- Local Authorities (Goods and Services) Act 1970 (allows authorities to work together and provide certain works, goods and services to each other as well as bodies designated as public bodies for the purposes of this legislation);
- Deregulation and Contracting Out Act 1994 (by order authorities may delegate those functions specified in the order to a person or entity specified in the order);
- Section 95 of the Local Government Act 2003 allows authorities with the top three CPA ratings to trade in function related activities through a company; and
- Section 93 of the Local Government Act 2003 (allows all authorities to charge for the provision of discretionary services - i.e. services they can provide but need not necessarily do so - to recoup their costs in providing such services only. This power cannot be used to make a profit).

93.2 Working with other Public Sector Partners

93.2.1 A key issue for authorities when considering working with other public sector bodies is whether the authority and its proposed partner have the requisite powers to work with each other. The different governance arrangements of each party together with any legislative framework will need to be reviewed to ensure requisite powers exist.

93.2.2 In relation to working with health bodies, Section 31 of the Health Act 1999 permits NHS bodies to work in partnership with authorities in relation to certain of their health, social care and related functions as specified in the legislation and the accompanying regulations²⁷. NHS bodies for these purposes include primary care trusts, a health authority and other NHS trusts. Prior to the introduction of NHS LIFT, Section 31 arrangements were the usual means by which primary health care providers would work with authorities to discharge their respective functions, especially since Section 31 permits such partners to pool their funds and discharge certain of the other partner's functions. Authorities in NHS LIFT areas should seek to work with their health care partners through the LIFT project. For authorities in areas not designated as NHS LIFT areas, Section 31 partnerships remain the main power pursuant to which they may work with their

²⁷ Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617)

local health partners. Further details about the manner in which Section 31 partnerships work can be found at Part A2, Section 7.

- 93.2.3 In other sectors, such as education, housing, transport etc, authorities must ensure they identify appropriate powers enabling them to work with the bodies in question (e.g. schools, registered social landlords, urban regeneration companies etc). The same consideration apply when authorities envisage working with national or regional bodies. The Regional Centres of Excellence are based in local authorities and therefore do not have a separate legal persona (unless they have established separate legal bodies to discharge some or all of their functions) but bodies such as English Partnerships and regional development agencies are creatures of statute, whose powers derive from enabling legislation which must be consulted before any arrangements are entered into. Furthermore, authorities must also appreciate that undertakings by certain public national or regional bodies may require central government approvals or support and such constraints should be factored into any arrangements.
- 93.2.4 NHS LIFT and BSF necessarily involve authorities working with local, regional and national partners (Partnerships for Health and Partnerships for Schools respectively) and guidance issued by the relevant departments should be consulted prior to entering into any such arrangements.

93.3 Working with the Voluntary Sector

- 93.3.1 The legal nature of voluntary bodies will take a number of forms, including unincorporated associations, prudent and industrial societies, partnerships, charitable organisations, trusts, statutory bodies as well as community interest companies. The powers and capacity of such bodies to deal with authorities will depend on the individual governance arrangements of each body. Authorities should ensure they are aware of the powers of their voluntary sector partners since in some instances, voluntary bodies may not have the power to hold or dispose of property or enter into contractual arrangements concerning facilities, or if they do not have such powers they may need to comply with certain prescribed constraints and procedures which may take some time.
- 93.3.2 Some voluntary bodies also operate only for a relatively short period of time depending on the source of their financial resources and the reason for which they were established. For example some bodies may be set up for a specific project (e.g. to promote the English bid to host the Olympic Games in 2012) and once this purpose has been satisfied, the organisation may dissolve or develop some new purpose. Alternatively, an organisation might be established to apply for, and once awarded, spend a grant issued by the Arts Council which will expire in 6 months time. After the expiry of the grant, the organisation may cease to operate or obtain funding from elsewhere if there is a continued need for its services which may require a change to the way in which it operates to meet the criteria for its new funding service. In either case, authorities should note the constraints according to which each of their potential voluntary sector partners operate and take this into account when determining the extent of their respective obligations.
- 93.3.3 In many instances, voluntary bodies have been given an allocation of space within an authority procured JSC in exchange for a peppercorn or market value rent depending on the organisation in question. Such occupancy is usually pursuant to a short-term tenancy or an informal sharing arrangement which allows the authority and the voluntary body the flexibility to terminate the arrangement by giving reasonable notice. It is due to the uncertainty of funding

streams and duration that most voluntary sector partners will not be willing to enter into long term arrangements, even if their constitutional documents enable them to do so. Therefore, authorities must accept that demand risk concerning any space allocated to voluntary sector bodies within a JSC may ultimately lie with them. Practice has shown it is difficult to transfer demand risk for occupation to the private sector in such instances although this is the preferred option which authorities should in the first instance pursue. If demand risk lies with the authority it should seek to obtain as much reassurance as possible (for example in the form of commitment letters, undertakings from the trust board) from its voluntary sector partners of their commitment to the project thereby enabling the authority to minimise its potential exposure.

- 93.3.4 Private sector partners and particularly external funders can also become quite nervous of arrangements involving voluntary sector bodies for the purposes outlined above. For this reason, authorities should make the extent and nature of such voluntary sector involvement clear at the outset of the scheme.

The Commercial Sector

- 93.4 Commercial partners can be potential tenants from which the authority could obtain rental income once the JSC project has been constructed. There are additional issues which must be considered when seeking to allow commercial partners, such as retailers, pharmacies or cafes to become tenants in the JSC all of which are considered in Part A2: Developing JSCs through PFI which recount the lessons learnt from Stoke on Trent City Council's use of sympathetic retail in their JSC.

How to Collaborate?

94. Given the potential for implementing "joined up" service delivery through JSCs, authorities should consider at a preliminary stage the potential partners with whom they could collaborate, and if they decide to do so, what form such collaboration would take. The identity of each partner will help determine the nature of any relationship, and in some instances authorities may find themselves being lead procuring bodies on behalf of other public sector providers (for example under PFI as in Stoke) or joint procurers of such services with their local partners (for example as in Newcastle and North Tyneside LIFT). If the authority is the lead procuring authority on behalf of a number of public and voluntary sector bodies, the authority should consider what protections and support it will require from its partners as reassurance of their commitment to the project and the respective input of all parties once the JSC is in operation.
95. A number of possible approaches are considered below emanating from current market practice. They will invariably be supplemented as the market develops and choice of the appropriate approach will usually be dependent on the type of investment option chosen.

Figure 14

Arrangement	Collaboration approach
DBFO/BBO	Authority as lead procurer on behalf of range of public Contractors. Co-operation Agreement between the Authority and its public sector partners dealing with finance, obligations and responsibilities for the operation of the JSC.
Traditional PFI	Authority may sub-let the JSC to a range of public sector providers in accordance with sub-leases.

Arrangement	Collaboration approach
	Terms of occupancy to be contained in leases.
Collaborative PFI	Authority as lead procurer on behalf of range of public Contractors. Co-operation Agreement between the Authority and its public sector partners dealing with finance, obligations and responsibilities for the operation of the JSC
NHS LIFT	Authority and health partners enter into Strategic Partnering Agreement to determine local strategy for health and social care facilities. Authority and health partners each enter into Lease Plus Agreements with LIFT Co concerning their relevant part of the JSC, as well as have the option to become shareholders in LIFT Co pursuant to a Shareholder Agreement. Authority and facility occupants enter into Stakeholder Agreement concerning the provision of soft FM, ICT and joint administration services at the JSC.
BSF	Authority will enter into individual and specifically BSF modified PFI/D&B/FM agreements with the PSP for each school. Authority and educational partners will enter into Strategic Partnering Agreement to determine strategic educational policy in the area. The Authority must become a shareholder in the LEP (if the LEP is an incorporated body). Authority will enter into Governing Body Agreements with relevant bodies in respect of each school which has been re-developed.

96. The approaches outlined above are summaries only and are considered in more detail in Section 7: Introduction to Delivery Options.

Key issues

97. When considering entering into a partnership with any public, voluntary or private sector partner for a JSC scheme, authorities should ensure they address the following key issues:-

97.1 Governance

- 97.1.1 How will the relationship between the parties be structured so that each party is clear about their respective roles and responsibilities?
- 97.1.2 How will any such relationship will be documented prior to and during the procurement process as well as once the scheme is operational?

97.2 Finance and Accountability

- 97.2.1 How will all "joined up" arrangements ensure they are affordable for each party, provide value for money, and are clearly and openly accountable to their respective members?

- 97.2.2 How will financial contributions be determined and how will variations to the pre-determined amounts be authorised (including over and under spends)?
- 97.2.3 Is there any funding requirement that will be met from external sources and if so, what will be the source of such funding and the consequences of default if repayment or conditions are attached?

97.3 Risk Management

- 97.3.1 All partnerships alter the risk profile of a service. The ODPM Strategic Partnering Taskforce publication Risk Management: Technical Notes (ODPM 2003)²⁸ provides a framework for considering risk management with partnerships. The processes set out in that publication should be followed.

97.4 Employee Issues

- 97.4.1 Partnership working raises a large range of employee issues. These include consultation, terms and conditions, pensions, TUPE, secondments, redeployment, the Code of Practice on Workforce Matters and relocation. Reference should be made to the ODPM Strategic Partnering Taskforce guidance, Employees and Partnerships – Technical Notes (ODPM 2004) which provides information on all these issues and together with 4ps guidance on Workforce Matters available at www.4ps.gov.uk.

97.5 Commercial and Legal Issues

- 97.5.1 The duration of the partnership arrangements and whether, and if so under what conditions will early exit from the arrangements be permitted;
- 97.5.2 The extent to which each party is able to contribute non financial resources (e.g. employees, property and equipment) to the project;
- 97.5.3 The levels of service required and whether these will be different according to each party's specific requirements and how such differences be accounted for in price, specification and monitoring?
- 97.5.4 Who will undertake the procurement of any works or services and whether responsibility for this will be shared between the parties?
- 97.5.5 How ongoing monitoring of the performance will be undertaken, by whom and the penalties for poor or non-performance.

²⁸ A copy of which can be obtained from the ODPM website at www.odpm.gov.uk

Section 6: Funding Requirements

98. As discussed in Section 3: Preliminary Considerations, one of the key considerations for authorities investigating their options for undertaking a JSC project concerns how the project will be financed. This Section seeks to provide authorities with an overview of the issues they should consider when putting together their financing proposals for the project as well as identify what additional avenues of funding could potentially be available.
99. Once the need for a JSC has been established and some clarity gained as to the objectives it will be designed to meet, authorities should consider the following financial and commercial issues:-
- the location of the proposed JSC;
 - whether an existing facility can be refurbished or a new purpose built facility is required?
 - the level of funding required for the project; and
 - potential sources of funding.

Location

100. The location of the proposed JSC will have a significant bearing on the amount of funding required for the project. For example, if the location is in the heart of a densely populated neighbourhood, obtaining access to the right location may prove to be expensive and difficult unless the authority is willing to use measures such as compulsory purchase orders or Section 106 agreements.
101. Any chosen location must accord with the authority's local strategic plan for the area so that the granting of planning permission, if required, is unlikely to be a difficult and cumbersome exercise.
102. Identifying a suitable location is an area in which collaboration with partners may be helpful for authorities since collectively they should have access to a bigger range of potential locations than if the authority was acting alone. If a particular location is suggested which is alongside other users (for example commercial retailers), it might be advantageous for the authority to consider ways in which their support could be used within the project to deliver a JSC which is capable of assisting their interests in accordance with those of the authority. For example, when Stoke on Trent City Council were developing their plans for their JSC, they discovered there was a substantial reliance placed by the community on the retail facilities situated alongside the site identified for locating the JSC. However such retail facilities were in need of repair. They therefore included the re-development of the retail facilities within the JSC project, following which the retailers would continue to rent the new facilities from the Council.
103. Any choice of location should be appraised to identify the extent to which there are any encumbrances preventing the authority from using the site in the required manner. This will also assist in developing a project timetable and assessing approximate project costs.

Refurbishment or New Build?

104. The model PFI Project Agreement contained in this Procurement Pack is drafted on the basis that the JSC will be a new build facility. However, authorities may also use this model PFI Project Agreement for use on facilities which also or only involve the refurbishment of existing premises.²⁹
105. When considering the use of refurbishment, the authority will also need to ascertain what will happen to the existing services being provided from the facility during the refurbishment works and whether they or indeed the contractor will be required to provide suitable alternative accommodation to cover any interim period prior to the completion of any works.
106. Experience of JSC projects to date has demonstrated that new build facilities are more appropriate in most cases than refurbishment. However, projects containing some refurbishment or only comprising of refurbishment are not precluded from consideration by departments when determining which projects are capable of receiving central government support. Any such proposed projects should clearly set out the specific reasons why refurbishment is the most appropriate value for money solution as well as provide evidence of market interest in the project.

Level of Funding

107. In calculating the level of funds required to undertake the project, authorities should take into account the following costs:-
- costs of undertaking any procurement (if appropriate - i.e. if there is no existing LIFT Co or framework arrangement);
 - capital, i.e. initial construction and lifecycle costs;
 - costs of providing any interim services and accommodation for services whilst the works are being undertaken;
 - ongoing operational and maintenance costs;
 - insurance arrangements;
 - costs associated with developing any agreements between JSC partners;
 - costs associated with acquiring required property for the facility; and
 - contingency funds.
108. This list is just an indication of the main costs which will be evident in most schemes but should not be seen as exhaustive since there will be additional costs arising which are dependent on the circumstances of each scheme.
109. Authorities should also be wary of entering into arrangements where they will be required to make "bullet payments" or a big lump sum payment towards or at the end of the contract term, since this will inevitably raise questions as to how the authority will fund

²⁹ Authorities using the Model PFI Project Agreement for refurbishment projects should ensure the Contractor's Proposals and the Output Specification adequately reflect their requirements. In addition existing provisions concerning latent defects risk, site conditions, collateral warranties and surveys, interim services and the service commencement date (which in refurbishment projects will usually be from day one) should be reviewed for their relevance.

such a lump sum cost. Imposing considerable liabilities on future revenue streams (i.e. Council tax payers) is not encouraged unless an authority is convinced such an approach provides value for money. Lump sum payments during the initial stages of a project are not as dangerous provided they relate to clear outputs being delivered as well as ensuring the contractor is still incentivised to perform its obligations in the future.

Sources of funding

110. There are a range of funding sources available to authorities for funding their JSC projects and the main options are considered below.

110.1 Borrowing

110.1.1 Prior to the introduction of Part 1 of the Local Government Act 2003 and its accompanying regulations, the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) on 1st April 2004, local authorities faced considerable limitations on their ability to incur debt to finance capital investment. Under this new regime authorities enjoy greater freedom to borrow funds and/or enter into or vary credit arrangements to fund capital investment associated with the discharge of authority functions as well as for the prudent management of their financial affairs. Therefore, authorities may borrow funds to fund the costs associated with developing a JSC project provided such borrowing is in accordance with their self prescribed borrowing limits.

110.1.2 Local authorities are expected to annually review their capital investment programme within the context of a three-year cycle and they must set their borrowing or "affordability" limits with reference to the indicators specified in the CIPFA Prudential Code for Capital Finance³⁰. The Secretary of State possesses a reserve power to impose a limit on borrowing generally for local government for national economic reasons as well as on borrowing by individual authorities to ensure that an authority does not borrow more than it can afford but as yet this power has not been exercised.

110.1.3 Anyone lending to an authority is protected by the re-enactment of "safe harbour" provisions³¹ which should reassure lenders that they will not be prejudiced by the absence of a power to borrow and nor are they bound to enquire whether an authority does in fact possess such a power. Such provisions should be supplemented by the similar protections for contractors and funders contained in the Local Government (Contracts) Act 1997 provided the contract between the contractor and the authority and the funder's direct agreement are certified in accordance with the terms of the 1997 Act and its accompanying regulations³².

110.1.4 Authorities should explore with their internal and external financial advisers appropriate structures through which they can raise funds for projects. Many authorities are already using their increased flexibility to fund capital programmes, e.g. Birmingham City Council borrowing £15million to part fund its housing improvement scheme and the London Borough of Tower Hamlets borrowing almost £11million to fund an administrative buildings project.

³⁰ A copy of the Code is available from the CIPFA website at www.cipfa.org.uk

³¹ Section 6 of the Local Government Act 2003 which states that lenders are not bound to enquire whether an authority has power to borrow and will not be prejudiced by the lack of any such power.

³² The Local Authorities (Contracts) Regulations 1997 SI 2862/1997

110.1.5 If authorities decide to borrow funds on behalf of themselves and their partners, they should ensure there are sufficient protections in place to ensure any default by the partner in making due payments does not entail the authority being in default of the credit arrangement. Authorities should ensure they do not retain liability for any costs other than those attributable to their own actions.

110.2 Land Disposals

110.2.1 Authorities have various powers to acquire and dispose of land used for differing purposes although any such disposals must be in accordance with the legislative framework applicable to such land (for example Section 233 of the Town and Country Planning Act 1990 allows the disposal of land held for planning purposes whilst Section 32 of the Housing Act 1995 deals with disposals of land held for housing purposes). Authorities may consider raising funds for a JSC project by disposing of surplus or unsuitable land to a third party and using the receipts thereof for their JSC project.

110.2.2 The introduction of the Local Government Act 1972: General Consent Disposal³³ in August 2004 has given authorities greater flexibility when disposing of land. Generally Section 123 of the Local Government Act 1972 required all land disposals to be for the best consideration reasonably obtainable but the General Consent permits disposals where they would secure the promotion or improvement of the economic, social or environmental well being of the area provided the undervalue does not exceed £2million. Despite the language of the General Consent, use of the wellbeing power is not a necessary pre-requisite to such a sale at an undervalue although it is highly likely that this power would be applicable to any proper use of the General Consent.

110.2.3 Since authorities generally own a considerable amount of land within their localities, this might be an appropriate way in which to fully or part fund the costs connected with developing a JSC project.

110.3 Partners Contributions

110.3.1 If authorities are joining up the provision of services with other public sector partners who will also be accommodated within the JSC, they should explore with such partners the extent to which their partners are able to assist in funding part of the costs of developing the JSC. This could be achieved through the disposal of land by a partner to the authority or through the payment of rental income, which represents ongoing service charges which the partner is paying as an occupant of the JSC as well as an additional element representing part of the capital cost of the facility.

110.3.2 The exact nature of any contributions from partners can only be determined once it is clear under which procurement route the JSC will be developed, since this will also affect which party retains ownership of the facility once it is constructed or refurbished. However, it will be possible to agree a mechanism for apportioning costs attributable to the scoping of the proposal as well as the procurement exercise between such partners at an early stage in the process.

³³ Issued pursuant to Section 128(1) of the Local Government Act 1972

110.3.3 Any funding from voluntary sector bodies is unlikely to be long term and authorities should factor this into their considerations. Any envisaged funds emanating from the leasing of parts of the JSC facility to commercial parties should be factored into any analysis, with the proviso that there may be circumstances when such parts of the facility remain unoccupied thereby not generating any rental income. A commercial judgement would need to be taken as to with whom demand risk relating to commercial and voluntary sector partners will lie. The private sector will generally be unwilling to accept the entirety of such risk.

110.4 PFI Credits

110.4.1 For a number of years, central government support in the form of PFI credits has been available for the funding of JSCs from the ODPM. PFI credits are applicable to PFI, NHS LIFT or appropriate BSF projects.

110.4.2 However, the total PFI credits available each year is limited. A large number of JSCs have been developed without the aid of government support and authorities are strongly encouraged to consider all other forms of funding in the first instance since recourse to central government support will be dependent on the approach adopted by each spending review and will be finite, so there will inevitably be disappointed applicants.

110.4.3 JSCs developed as extended schools or containing provision for children's' centres may also be able to obtain funding from DfES.

110.4.4 If an authority is successful in bidding for PFI credits, revenue grant support will be paid by ODPM once the project is operational. From the start of 2005-06 PFI support grant has been paid over the life of the contract, based on an annuity calculation using the level of PFI credits. Further guidance is available from the ODPM.

110.5 Grants

110.5.1 Authorities are also encouraged to explore the extent to which their JSC project is capable of attracting funds from alternative funding streams many of which are detailed in guidance prepared by Partnerships for Schools for the BSF programme, and a copy of which is available at www.bsf.gov.uk.

110.5.2 The following funding streams are worth noting, although authorities should also note that there will be different timescales, criteria and boundaries according to when such funding will be available, thereby requiring detailed investigation before any applications are made:-

Figure 15

DfES	• Sure Start • Children's' Social Services Funding • Children's' Services Capital Grant
Learning and Skills Council	• Post 16 Capital
ODPM	• Neighbourhood Renewal Fund • New Deal for Communities • Housing PFI for Non HRA Schemes
Government Office	• European Social Fund • European Regional Development Fund
Regional Development Agencies	• Single Regeneration Budget
DH	• Conventional Capital • Adult Personal Social Services Funding • Social Services PFI
DCMS	• Big Lottery Fund/New Opportunities Fund • Sport England • Arts Council • Space for Sports and the Arts

110.5.3 Where authorities are relying on other funds to meet payments for a JSC project, they should be clear as to when they will be in receipt of them, whether such funding is contingent and if it is and the funds are not paid, how the project will be funded in the interim. If there is an interval between the receipt of funds and payments being due, authorities must also be certain as to the extent of their liability during this interim period, as well as ensuring they have sufficient comfort and protection in the event such funds are not forthcoming. This is particularly significant if an authority together with its partners is relying on grant funding available through schemes such as Sure Start. Since grant funding is usually by way of a lump sum, authorities must ensure they are able to meet their ongoing revenue costs for projects, even though some of the funds to be used to pay such costs may derive from initial lump sum payments.

110.6 Commercial Rents

110.6.1 Authorities should also consider the extent to which they can offset any costs incurred in developing the JSC through the receipt of commercial rents from third parties occupying space in the JSC once it becomes operational. Authorities may not be in a position to charge market rates for some voluntary or public sector bodies, but will be in a better position to do so from commercial parties. In some schemes, this has been used to help in the regeneration of the area by encouraging retailers who specifically cater for the types of services required by the community.

See Stoke on Trent City Council's JSC scheme³⁴ for further details of how such an arrangement may work.

³⁴ Part A2

Section 7: Introduction to Delivery Options

111. Authorities, depending on their location, may face a bewildering choice of options through which to undertake the development of their JSC project. Before proceeding to examine the main options in more detail in Parts A2(PFI) and A3(NHS LIFT) this Section provides an overview of the main options confronting authorities and the key distinctions between each to give authorities a steer towards which option may be more appropriate for their specific needs.
112. The main options for developing JSCs are the following, each of which are explored below;-
- undertake a new bespoke procurement for the appointment of a Contractor;
 - utilise an existing authority partnering arrangement;
 - utilise an existing framework agreement to select a contractor or hold a mini-competition amongst a small number of potential contractors, established by local/regional purchasing organisations or the OGC;
 - embark upon a project under the PFI;
 - work with the local NHS LIFT scheme; or
 - undertake the project in accordance with the local BSF scheme.
113. The extent to which each of the above options will be available will depend on a number of factors including authority location, internal expertise and experience, the procurement strategy of each authority and the stage of development for the relevant LIFT and/or BSF scheme. We consider in outline when each of the above options will be available to authorities and provide an overview of the approach required to implement each option. The remainder of this Procurement Pack will concentrate on exploring in detail the approach authorities should take when implementing their JSC projects through PFI and NHS LIFT.
114. **Bespoke Procurement**
- 114.1 Appointing a contractor to design, build and possibly operate and/or finance a JSC pursuant to a bespoke procurement process will always be an option for authorities. However, since local authorities are contracting authorities for the purposes of the EU public procurement rules, they must adhere to the strict rules governing such procurement processes as contained in the UK regulations implementing the EU Directives³⁵ covering the award of public contracts for works, supplies or services. A new Directive 2004/18/EC which combines the existing three Directives was introduced on 31 March 2004 but authorities should await guidance from the OGC and the implementing UK regulations before seeking to undertake any activity pursuant to the new Directive³⁶.
- 114.2 If the intended contract(s) (works, supplies and/or services) exceed the stipulated EU financial thresholds then an authority must follow a more prescriptive

³⁵ Directive 93/36/EEC regulating the procedures for the award of public supply contracts; Directive 93/37/EEC in relation to the award of public works contracts; Directive 92/50/EEC governing the award of public service contracts.

³⁶ Member states have until 31 January 2006 to implement Directive 2004/18/EC

procurement process as contained in the relevant UK regulations.³⁷ However if the value of the contract is below the specified financial thresholds, the authority is only required to comply with the EU Treaty principles of transparency, equal treatment and non discrimination between member states during any award process. The latter award can take place in a shorter timeframe.

114.3 At the time of writing the financial thresholds are as follows³⁸:-

- public supply contracts - £153,376;
- public works contracts - £3,834,411
- public services contracts - £153,376

114.4 When developing a JSC, it is highly likely that the authority will need to award a works contracts (for the construction or refurbishment of the facility) as well as possibly a services contract if they want the contractor or a separate contractor to design and/or fund the facility or provide facilities management services once the facility becomes operational. It is highly likely that in most cases the value of such contracts will exceed the financial thresholds, thereby requiring a fully compliant EU procurement process in accordance with the implementing UK regulations. Authorities may also need to appoint external legal, technical and/or financial advisors and controls relating to such services must also comply with the public procurement rules.

114.5 The EU procurement rules specify that the following procedures are available if the contract is above the applicable financial threshold and authorities must comply with the terms of the procedure they have adopted, otherwise risk intervention or challenge from the European Commission or a third party respectively. Although to date the negotiated procedure has been the main route through which UK local authorities have tended to award complex PFI and similar contracts, the introduction of Directive 2004/18/EC and its pending implementation in the UK by January 2006 is likely to result in authorities being encouraged to consider the use of the competitive dialogue procedure which is specifically designed to accommodate the requirements of particularly complex requirements³⁹.

Figure 16

Open	All interested contractors may submit tenders. This procedure is usually used for the supply of goods where price is the key factor.
Restricted	Authorities select a number of contractors to invite to submit tenders from an examination of their respective expressions of interest. This is the most commonly used procedure by authorities for major works and services contracts.

³⁷ Public Works Contracts Regulations 1991 (SI 1991/2680), Public Services Contracts Regulations 1993 (SI 1993/3228) and Public Supply Contracts Regulations 1995 (SI 1995/201)

³⁸ Authorities should check the OGC website for further details concerning changes to the financial thresholds. www.ogc.gov.uk

³⁹ Authorities should contact their internal procurement specialists or the 4ps for further information concerning the implementation of Directive 2004/18/EC into the UK and its consequential implications for authorities undertaking complex procurement exercises.

Negotiated	This has been the procedure most commonly adopted for PFI contracts and usually takes approximately 18 months. Following the publication of an OJEU Notice, authorities assess respondents' answers to pre-qualification questionnaires, before inviting successful respondents to submit tenders. Following an evaluation of submitted tenders, authorities select a preferred partner with whom to negotiate the remaining terms of the contract before contract award. However, this procedure is only available in limited circumstances, including where the restricted or open procedures have been unsuccessful or where the nature of the contract is such that it does not permit overall pricing. In relation to service contracts, the negotiated procedure may be used where the contract specification cannot be established with sufficient precision to permit the award of the contract. In relation to works contracts, the negotiated procedure may only be used where the works involved are carried out purely for the purpose of research, experiment or development.
Competitive Dialogue	This new award procedure was introduced in the new Directive but has not been implemented in the UK. The intention is that it should only be used when the technical and/or financial/legal make up of project is indefinable for complex procurements. It offers greater scope for dialogue between bidders and the contracting authority than the negotiated procedure. Through an iterative process, authorities may clarify a number of issues during the tender stage to refine their requirements before engaging in an exclusive dialogue with the successful bidder to finalise the contract prior to financial close. Authorities are advised to await guidance from OGC before contemplating use of this procedure.

115. Undertaking a bespoke procurement process for the appointment of the JSC contractor in most cases pursuant to the negotiated procedure is likely to be a lengthy process (often taking at least 18 months to complete). This approach provides a suitable option if an authority is seeking the pure construction and or design of a single facility and is willing to take all if not most funding and operational risk itself.

116. **Partnering Arrangements – Existing or New**

116.1 Given the costs incurred in undertaking bespoke procurement exercises, Increasingly authorities are entering into what have been described as partnering arrangements. In essence, they involve the award of a works, supplies and/or services contract to a particular partner or a panel of partners who will be responsible for undertaking/providing the works/supplies/services required during the course of the arrangement, provided such requirements are within the terms of the arrangement. It is common to find authorities introducing partnering arrangements for the appointment of legal and financial advisors as well as for major construction projects. Obviously this is only an option if the authority has such an arrangement in place when considering developing a JSC. Alternatively an authority may consider introducing such arrangements and the JSC project might be the first contract to be awarded under the arrangement.

116.2 Authorities should note however that there are specific rules governing the use of partnering arrangements since they may be caught by the rules relating to "framework agreements" under EU law as contained in Directive 2004/18/EC. Although authorities should await the UK regulations implementing Directive 2004/18/EC, OGC guidance stipulates that

"a framework agreement is an agreement with suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and quantity. In other words, a framework agreement is a general term for agreements with suppliers which

set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement⁴⁰."

- 116.3 Directive 2004/18/EC stipulates certain rules which must be complied with when awarding the framework agreement itself as well as the actual contracts or call offs issued pursuant to it, and restricts the length of such arrangements to four years in duration. Authorities who have existing partnering arrangements or who are contemplating entering into such arrangements should consult the 4ps, OGC and their legal advisors before undertaking any action.
- 116.4 When using existing partnering arrangements for the development of a JSC, authorities should ensure the terms governing the existing arrangement are sufficient to allow the development of the JSC and the partner or panel of partners from whom the authority can select have sufficient expertise and experience to enable them to fulfil the objectives of the JSC.

117. Framework Agreements

- 117.1 Authorities should consider using existing framework agreements which have been established by local or regional purchasing consortia⁴¹ as well as central government bodies such as the Office of Government Commerce.
- 117.2 The OGC is an executive agency aligned to HM Treasury responsible for ensuring the public sector as a whole obtains value for money in public procurement. In pursuit of this objective OGCbuying.solutions (www.ogcbuying.solutions.gov.uk) has negotiated a series of framework agreements covering a wide range of works, supplies and services most of which can be accessed by authorities.⁴² From the construction, refurbishment and design of facilities, obtaining professional advisory and consultancy services through to the installation of back-office telecommunication systems, the hanging of curtains, the placing of fire extinguishers and even the connection of utilities, it is highly likely that authorities can access equipment and services through an existing framework agreement
- 117.3 The foundation of the approach used by OGCbuying.solutions and regional or local purchasing consortia is the acknowledgement of the bulk purchasing power of the public sector as a whole which is used to obtain savings from providers.
- 117.4 It would be impossible to list all the potential services and suppliers available from local and regional purchasing consortia but in this Procurement Pack OGCbuying.solutions have a range of products which should be useful to authorities considering developing JSC projects, the most relevant of which are:-
- OGCEnergy allows public bodies to purchase their gas, electricity, liquid fuel and renewable energy supplies through a number of suppliers at discounted rates;
 - Property and Construction Services allows public bodies to appoint contractors, surveyors, architects, engineers, technical advisors and

⁴⁰ The OGC guidance is available from <http://www.ogc.gov.uk/index.asp?docid=1000084> entitled Framework Agreements and EU Developments

⁴¹ Further details of local or regional purchasing consortia can be obtained from your Regional Centre of Excellence or by contacting the 4ps

⁴² OGCbuying.solutions are re-advertising a number of their framework agreements and it is envisaged that all should be available for use by authorities. Nevertheless, authorities should check in the first instance with OGCbuying.solutions if any product in which they are interested is currently available to them.

facilities management contractors amongst others for their property management and works needs;

- S-Cat provides access to consultancy, human resources, financial and business management and research services;
- G-Cat provides access to ICT hardware, software and supplies together with consultancy and maintenance services; and
- Portfolio provides access to a wide range of hardware, office equipment, catering equipment and furniture and fittings.

117.5 The main advantage to authorities of using OGCBuying.solutions framework contracts involves cost and time savings. Suppliers, contractors and Contractors are generally appointed following a pre-qualification process in accordance with the EU procurement regime. Authorities can either order direct from a provider or and more likely in this instance, hold a mini-competition between providers for certain product for a specific service (eg facilities management) and thereby obtain a price against their specification within a shorter-timeframe than they would otherwise incur. Such a process could result in significant cost and time savings for the authority. However, authorities should ensure there are sufficient providers with the requisite expertise and experience available from whom to select before embarking upon this process.

117.6 OGCBuying.solutions are constantly renewing their products and if a particular service is not currently catered for it is worthwhile investigating direct with the organisation as to whether there will be any development in this area in the near future.

118. The Private Finance Initiative

118.1 Under PFI authorities procure a total solution by seeking a private sector partner ("Contractor") to design, build, finance and operate the JSC. Essentially, the authority purchases infrastructure and facilities management services from the Contractor pursuant to a long term (usually around 25 years) contract. The authority sets out its requirements for the assets and services by reference to defined outputs (and in some cases also outcomes). The Contractor takes the risk of providing the asset and services to measurable standards (outputs and/or outcomes) and is paid by way of a unitary charge. Once appointed following a procurement process, the Contractor will enter into a contract (the "Project Agreement") with the authority regulating their relationship. The Contractor only receives payment when the services are operational, although the cost incurred by the Contractor in constructing or refurbishing the building will be built into the unitary charge. Payment to the Contractor is dependent upon the availability of the asset and performance of the services as measured against the authority's specified outputs.

118.2 Although traditionally authorities have perceived PFI as a route to additional government funding for capital projects, this perception should be reviewed in light of developments in local government legislation which allow authorities greater flexibility to borrow funds to assist in the financing of their capital projects. Central government PFI support is available for all English authorities by applying to the relevant sponsoring central government department and the Project Review Group⁴³ to obtain approval for a PFI project. Annual bidding rounds,

⁴³ For further details of the Project Review Group please see www.4ps.gov.uk

possibly continuing to be run jointly by ODPM/DCMS/DH are likely to remain the main mechanism for prioritising JSC projects for PFI credits. Local authorities will be notified of the details of such bidding rounds by an invitation letter.

118.3 This Procurement Pack includes sector specific guidance and model documentation approved by HM Treasury for use on JSC PFI projects. Over the last 7 years the market has become accustomed to the use of PFI for the development of a wide range of public infrastructure. The structure and approach of PFI⁴⁴ is accepted as market practice and therefore, authorities should be open to using this approach provided their projects satisfy the following criteria:

- an external contractor is required to design, build, finance and operate the JSC (or a series of JSCs);
- the capital value of the project exceeds £20million;
- the general and specific departmental criteria for each joint bidding round;
- procurement through the PFI will provide value for money for the public sector; and
- the project is affordable.

If any of the criteria specified above are not satisfied, it is unlikely that PFI will be an option.

118.4 In a similar fashion to a bespoke appointment, any authority seeking to use PFI will need to comply with the EU procurement regime and it is envisaged that such a process should take between 15-18 months to reach completion.

118.5 Authorities should also consider whether there are opportunities for collaboration within a PFI procured JSC. Stoke on Trent City Council acted as lead procuring authority in the development of their PFI Bentilee Centre on behalf of themselves and a local primary care trust. Authorities should also consider whether, especially in light of the relatively low capital value of most JSC schemes, there are opportunities to develop a single JSC or a series of JSCs through a single PFI Project Agreement in partnership with their neighbouring authorities. Such an approach would help to increase the value of the project as well as facilitate service integration between them. Additionally, it could provide a viable and practical solution for removing any duplication of public service provision by both authorities, if a JSC was situated in an area where the boundaries of both authorities collided. However, authorities should not underestimate the challenging nature of schemes involving neighbouring authorities.

119. **NHS Local Improvement Finance Trust**

119.1 NHS LIFT is only an option for authorities located within NHS LIFT designated areas. To date there are 51 NHS LIFT schemes covering almost 100 local authority areas but authorities should consult the DH and 4ps website for further details of the location of current schemes. Details of schemes approved at the time of writing (wave 1, 2,3 and 4 of NHS LIFT) are set out in Part A3 (NHS LIFT) Section 1.

⁴⁴ Further details of which can be found in Part A2(PFI)

119.2 If an authority is within a NHS LIFT area, it must ascertain the status of the scheme. This will have a bearing on the extent to which the authority can use the scheme to deliver its JSC project. Schemes will either be in development (the scheme is still in procurement) or operational (i.e. LIFT Co and the remainder of the governing arrangements have been established). The implications for each are described below.

119.3 Schemes in Development

119.3.1 If a scheme is in procurement, the authority can play a role in the development of the scheme and should ensure it does so. The level of such engagement may vary according to the needs and wishes of the authority, but given that once established primary care trusts will be legally required to undertake the development of all their infrastructure requirements through the scheme, opportunities for integrating services and working closely with local health partners will be substantially diminished if the authority does not take part in the development of the scheme. Further details concerning the level of involvement can be found in Part A3 (NHS LIFT).

119.3.2 The authority can only procure the development of its JSC within LIFT and without a further procurement competition if the authority is a named contracting party in the OJEU notice advertising the desire of all contracting parties to appoint a private sector partner with whom to establish LIFT Co (a special purpose vehicle) through which the development of facilities will take place. If the authority is not mentioned in the OJEU notice it will not be able to procure facilities through the scheme although it will still be able to take normal leaseholds from LIFT Co or a PCT if required.

119.3.3 Authorities must also ensure the terms of the LIFT OJEU notice are sufficiently wide to enable the authority to provide the services it envisages within the JSC. For example if it wants to build sheltered housing as well as provide intermediary care for the elderly, are the CPV codes in the OJEU wide enough to allow LIFT Co to do so? Such requirements will also have a bearing on the identity of the private sector partner, since such sources will require more specialist skills and not just a construction and facilities management partner.

119.3.4 By participating in the procurement of the LIFT Co partner, the authority will be able to influence the choice of the partner as well as ensure such a partner will be capable of delivering certain of the authority's needs. More importantly, NHS LIFT schemes, rather like PFI, are based on the use of standard documentation and the form of such documents will be negotiated with the partner prior to financial close. It is advantageous for the authority to ensure its interests are represented in any project specific amendments that are made to the documents.

119.3.5 The end of the procurement process will involve the appointment of the partner who will establish LIFT Co (in which the authority may or may not become a shareholder), signature of the Strategic Partnering Agreement between all public bodies involved in the scheme and LIFT Co as well as the execution of a number of Lease Plus Agreements relating to particular projects which will be undertaken by LIFT Co. If the authority wants to ensure its JSC project is one of the first projects to be developed by LIFT Co, it must ensure details of the project are

contained within the LIFT Co Strategic Service Delivery Plan and the authority has worked up the specification (Tenants Requirements) for the JSC with the partner prior to financial close.

119.3.6 If the authority's project is not within the first set of projects to be developed by LIFT Co, provided the project is within the Strategic Service Delivery Plan, LIFT Co will undertake such development later in the arrangement. LIFT arrangements last for 25 years.

119.4 Operational Schemes

119.4.1 If LIFT Co has already been established and is operating, the authority should still ensure it was named on the original OJEU notice and the services to be provided within the JSC fall within the services specified in the OJEU notice. If this is the case, the authority if it has signed the Strategic Partnering Agreement will be able to put forward its proposal for the JSC in accordance with the New Projects Approval Process as set out in the SPA.

119.4.2 In summary this requires that the development of the JSC is within the strategy for local health and social care provision as specified in the SSDP, a proposal has been developed by LIFT Co, approved by the SPB and is affordable to the authority and any other public bodies affected by the project. If the authority is not a signatory of the SPA it will need to persuade such a signatory to support its project and push it through the New Projects Approval Process on its behalf. This is likely to be difficult to achieve in practice.

119.4.3 Further JSC projects will also need to comply with this procedure during the terms of the NHS LIFT scheme.

119.5 Authorities may bid for central government support in the form of PFI credits through annual ODPM/DH/DCMS Joint Bidding Rounds. No approval from the Project Review Group is required for the award of PFI credits for a NHS LIFT scheme.

119.6 There are a range of additional issues which authorities should consider when considering use of this option many of which relate to the extent to which the authority wants ownership of the JSC once constructed, how it will use the facility and encourage other public, voluntary and commercial sector parties to co-locate and integrate their respective services as well as how to fund the rental costs associated with the authority's occupancy of the JSC facility. All of these are discussed further in Part A3 (NHS LIFT) in which we consider the approach taken by Newcastle City Council who have used this approach for the development of a number of their JSCs.

119.7 In summary NHS LIFT is only an option for authorities who satisfy the following criteria:-

- they are situated within a NHS LIFT designated area;
- they were named or will be named in the OJEU advertising the establishment of the NHS LIFT scheme;
- their JSC will only include health, social care and related authority services or those services specified in the OJEU notice advertising the scheme; and

- the authority is seeking to work strategically with its local health care partners.

120. Building Schools for the Future

- 120.1 Similarly to NHS LIFT, the DfES' £2.2billion⁴⁵ per annum BSF programme is predicated on the basis that all local education providers should be encouraged to work together to devise a joint strategy for local education provision, and through the appointment of a private sector partner, they will be able to participate in the planning and development of their collective infrastructure requirements for the next 25 years following an initial procurement exercise.
- 120.2 It is suggested that authorities seeking to procure JSCs which are integrated with a secondary school project could consider using their local BSF scheme if available, and an example is shown in Part A4 (although this was developed before BSF).
- 120.3 However, BSF is only an option for authorities who reside within BSF designated areas. At the time of writing there are 34 designated BSF areas details of which are listed below in Figure 17. An indication of when all local education authorities in England will become BSF designated areas over the next 15 years is available from www.p4s.org.uk.

Figure 17

BSF Pathfinder	BSF Wave 1	BSF Wave 2	BSF Wave 3
Sheffield Bristol Bradford Southwark, Greenwich & Lewisham	Gateshead & South Tyneside Knowlsey Leeds Manchester Newcastle-upon-Tyne Newham Solihull Stoke-on-Trent Sunderland Waltham Forest	Birmingham Hackney Haringey Islington Kingston-upon-Hull Lambeth Liverpool Middlesbrough Nottingham Tower Hamlets	Barnsley Derbyshire Durham Kent Luton North Lincolnshire Salford Sandwell Tameside Westminster

- 120.4 Since BSF represents to a large extent the transposition of the NHS LIFT model into the education sector, the same basic model applies including the existence of a private sector controlled special purpose vehicle (LEP) in which the public sector can take a shareholding. The main difference however is that individual projects can be developed in accordance with a PFI agreement, a normal design, build, operate and/or finance agreement as well as separate service contracts for the provision of services such as ICT across all schools within the areas.
- 120.5 In addition authorities may decide not to establish a LEP but to utilise existing vehicles which enable the public sector to work with the private sector partner to develop local infrastructure provided such arrangements deliver demonstrable value for money. Such flexibility is designed to ensure the adopted local BSF

⁴⁵ BSF funding is only initially available for the development of the secondary school estate although authorities, together with their partners are free to include the provision of additional educational facilities within their programme. For further details please contact DfES or 4ps

model is the most suitable model to complement the current and future needs of the local education authority and does not involve the authority in incurring additional and unnecessary expenditure.

- 120.6 Authorities situated within BSF areas may be able to develop their JSCs within the scheme if they comply with the following provisions:-
- they were named or will be named in the OJEU advertising the establishment of the BSF scheme;
 - the development of the JSC will come within the services specified in the OJEU notice advertising the scheme; and
 - the authority is seeking to work strategically with its local education providers.
- 120.7 Similarly to NHS LIFT and provided they satisfy the criteria above, principles concerning inclusion of the facility within the local strategic service delivery plan and compliance with the projects approval process will be required. Authorities should always be included within BSF schemes since they are the main driver. The question is when will their area become a designated BSF area. We understand all authorities have been given an indication by DfES when they will become such an area and therefore they should use such information to strategically plan their future accommodation needs.
- 120.8 In Part A4 of this Procurement Pack we examine the key issues which authorities should examine when considering use of BSF for the development of their JSC facilities. Since BSF is largely based on the NHS LIFT structure a comparison of the key features of both initiatives is set out in Part A5 and authorities are also encouraged to contact the 4ps for further information.
121. Authorities situated in both NHS LIFT and BSF areas must carefully analyse the existing arrangements and determine the extent to which they can develop their JSC in accordance with either scheme. This is a particularly pertinent issue which will be determined by the nature of services to be provided within the JSC, the partners with whom the authority seeks to work in terms of aligning and co-ordinating service delivery and the extent to which (if at all) the authority and its potential partners have granted LIFT Co or the LEP exclusive rights to develop their respective infrastructure requirements. Unless careful consideration is given by the authority to its own obligations under both schemes and the obligations of its potential partners, before embarking upon a JSC project under either scheme, it may inadvertently be in breach of its obligations and therefore incur substantial costs.
122. The remainder of this Procurement Pack examines in detail the process adopted by two authorities in developing JSC projects, Stoke on Trent City Council who developed their facility in accordance with the PFI (Part A2) and Newcastle City Council who developed their JSCs through a first wave NHS LIFT scheme (Part A3). To assist authorities in considering their options, we set out in Figure 18 below an overview of the main options which authorities could pursue when developing their JSCs.

Figure 18 Key Options for JSCs

Bespoke Procurement (assumption a DBO agreement will be awarded)	Partnering Arrangements	Framework Agreements	Traditional PFI	Collaborative PFI	NHS LIFT/BSF – In Procurement	NHS LIFT/BSF – Operational
Partnership with voluntary, other public and commercial bodies possible. Authority likely to be procuring authority.	Partnership with voluntary, other public and commercial bodies possible if within the existing partnering arrangement.	Only public bodies may access OGC framework agreements but no reason why authority cannot liaise with voluntary and/or commercial partners as to the development and operation of the JSC	Partnership with voluntary, other public and commercial bodies possible but need a procuring authority.	Partnership with voluntary, other public and commercial bodies possible but need a procuring authority.	Partnership with voluntary, other public and commercial bodies possible but need a procuring authority.	Partnership with voluntary, other public and commercial bodies possible but need a procuring authority.
No formal procedure but suggest options appraisal should be undertaken to establish this is the approach will provide best value for money for the public sector	No formal procedure required but suggest options appraisal should be undertaken. Ensure compliance with procedures for new projects specified in existing partnering agreement.	No formal procedure but suggest options appraisal should be undertaken to establish this is the approach which will provide best value for money for the public sector	Options appraisal	Options appraisal	Options appraisal	NHS LIFT - Strategic Service Delivery Plan (SSDP) BSF – Strategic Business Case (SBC)
Explore whether Government funding available but no specific funding stream. Ensure compliance with internal procedures	Explore whether Government funding available but no specific funding stream. Ensure compliance with internal procedures and existing partnering agreement.	Explore whether Government funding available but no specific funding stream. Ensure compliance with OGC documentation.	If Government funding support - PRG	If Government funding support – LIFT – No PRG. BSF – PRG	If Government funding support – LIFT – No PRG. BSF – No PRG	If Government funding support – No PRG

Bespoke Procurement (assumption a DBO agreement will be awarded)	Partnering Arrangements	Framework Agreements	Traditional PFI	Collaborative PFI	NHS LIFT/BSF – In Procurement	NHS LIFT/BSF – Operational
OJEU (since contract likely to be above EU financial thresholds) with other procuring authorities if any.	OJEU not required since covered within original procurement of partnering arrangement.	OJEU not required since OGC providers pre-qualified.	OJEU	OJEU with numerous procuring authorities	OJEU – must ensure procuring authority and scope of services sufficient for authority requirements	Must ensure named as contracting party within original OJEU and scope of services sufficient for authority's purpose.
Authority to develop own documentation.	Authority to use documentation specified in the existing partnering agreement.	OGC standard documentation complimented by project specific documentation if required.	Standardised Documentation – SoPC 2004 and sector specific guidance	Standardised Documentation - SoPC 2004 and sector specific guidance. May need "stakeholder agreement" to regulate relationship between procuring authorities	Standardised Documentation PfH NHS LIFT PfS BSF	Standardised Documentation NHS LIFT - SSDP developed annually on project specific basis BSF – SBC developed annually on project specific basis
Procurement – PQQ to appointment of contractor	If panel of potential providers, hold a mini-competition between possible providers to appoint most suitable contractor.	If panel of potential providers, hold a mini-competition between possible providers to appoint most suitable contractor.	Procurement - PQQ to appointment of partner	Procurement - PQQ to appointment of partner	Procurement - PQQ to appointment of partner	New Project Approvals Process
Residual value risk and ownership of JSC retained by authority	Residual value risk and ownership of JSC usually retained by authority	Residual value risk and ownership of JSC usually retained by authority	Residual value risk remains with authority	Residual value risk remains with authority	NHS LIFT - If the authority transfers the freehold of property to LIFT Co, residual value risk lies with LIFT Co but the main public sector tenant has an option to purchase at an adjusted market value BSF- the party with whom residual value risk will lie will depend on the delivery method used	NHS LIFT - If the authority transfers the freehold of property to LIFT Co, residual value risk lies with LIFT Co but the main public sector tenant has an option to purchase at an adjusted market value BSF- the party with whom residual value risk will lie will depend on the delivery method used (i.e. PFI or DBFO)

Bespoke Procurement (assumption a DBO agreement will be awarded)	Partnering Arrangements	Framework Agreements	Traditional PFI	Collaborative PFI	NHS LIFT/BSF – In Procurement	NHS LIFT/BSF – Operational
					(i.e. PFI or DBFO)	
Authority and other procuring partners (if any) need to be certain that they can terminate the arrangement for poor performance by the contractor and they need to be clear as to who will operate the JSC following the expiry of the arrangement.	Exit and performance strategy to be set out in the contract awarded to the contractor.	Exit and performance strategy to be set out in the contract awarded to the contractor..	Exit strategy needs to be set out in the contract so the authority receive the asset at contract expiry/termination to a specified standard	Exit strategy needs to be set out in the contract so it is clear who obtains any property interests at contract expiry/termination and the standards which the assets must meet	NHS LIFT - Authority needs to determine whether it wants to acquire the asset at expiry/early termination of LPA or is happy to seek new accommodation. BSF - The exit and performance strategy will be specified in the delivery method used (i.e. PFI or DBFO)	NHS LIFT - Authority needs to determine whether it wants to acquire the asset at expiry/early termination of LPA or is happy to seek new accommodation BSF - The exit and performance strategy will be specified in the delivery method used (i.e. PFI or DBFO)

DEVELOPING JOINT SERVICE CENTRES

PART A2

Development of JSCs through the PFI

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Section 1: Opportunities for Developing PFI JSC Projects

123. Part A1, Section 7: Introduction to Delivery Options specified the following initial criteria with which authorities need to comply if use of the PFI is to be a viable option for their JSC projects:-
- an external contractor is required to design, build, finance and operate the JSC (or a series of JSCs);
 - the capital value of the project exceeds £20million;
 - the general and specific departmental criteria specified in the invitation to apply for the relevant central government bidding round are satisfied (if central government support is required);
 - procurement through the PFI will provide value for money for the public sector; and
 - the project is affordable.
124. The standard PFI structure, which is still being used across a range of sectors including housing, transport, schools, leisure and waste management, allows authorities to obtain a total solution for developing and running a JSC from a contractor appointed following a EU compliant procurement process. The model documentation contained in this Procurement Pack is drafted on the basis that the contractor will design, build, finance and manage the operation of the JSC throughout the 25 or so years of the arrangement but amendments to the model Project Agreement are permitted for project specific amendments. For example, an authority might wish to procure the development of a number of JSC projects, thereby requiring appropriate phased works and service commencement and completion provisions.
125. HM Treasury's presumption that the use of PFI for projects with a capital value of less than £20million does not provide value for money will be significant for many authorities seeking to procure JSCs since traditionally JSC projects have capital values of between £3-15million. However, authorities should not see this presumption as a bar preventing them for using structures based on the PFI for the development of their JSC projects. Instead, authorities should, together with potential partners (whether they be neighbouring authorities or other local public service providers) consider ways in which they can overcome the presumption so that schemes are structured in such a manner so as to provide value for money. An example might involve the establishment of a series of community JSCs comprising of library, council and primary health care services throughout two boroughs. Alternatively, instead of establishing two separate JSCs, one providing health related services and the other being a one stop shop for council services, consideration should be given to bringing both projects together both in terms of location and service integration to enable service providers to better meet the needs of users. Note however, that simply joining together two smaller schemes into a single larger project will generally be insufficient to attract central government support for projects. Any attempt to amalgamate a number of projects must demonstrate that such amalgamation has been undertaken for service delivery reasons and not to avoid the restriction on the capital value of PFI projects. Service integration must be a significant feature of any scheme capable of attracting central government support.
126. Since the availability of central government support is only available for projects with a capital value of £20million or more, even if authorities do not require such support from central government, they should refrain from using PFI unless they are confident they can rebut the presumption that PFI does not provide value for money for schemes with a lower capital value.

127. The potential availability of central government support for JSCs has previously been seen as an advantage for using this approach. However such funding is also available for JSCs developed through NHS LIFT, and authorities should not consider the availability of such funds as a key element in determining whether the PFI is the most appropriate solution. Authorities are encouraged to explore innovative financing methods for their projects, especially now that they have greater flexibility for determining their individual borrowing levels in accordance with the Prudential Code.
128. Authorities should also appreciate the nature and implications of the process in accordance with which any PFI project must comply, as well as the time, administration, cost and resource requirements of such an approach. All such factors should be considered when undertaking an options appraisal of all the available procurement options for developing the project. Often authorities require additional expertise to assist in the procurement of a PFI contractor which will require the appointment of external financial, legal and/or technical advisors depending on the internal expertise of the authority, as well as a dedicated project team responsible for managing and leading the project. For these reasons, and others, authorities are encouraged to explore the extent to which they can work with other authorities or public sector bodies to share some of the costs involved in undertaking such an exercise.
129. The benefits of a collaborative arrangement between the public sector can be seen from Section 4 which examines the manner in which Stoke on Trent City Council, together with a local primary care trust entered into a PFI arrangement pursuant to which both parties obtained the construction, finance and operation of a JSC which met their respective needs. However, whenever working in partnership with other public, voluntary or commercial partners in a PFI project, a lead procuring authority must be selected and often it is advisable for such partners to enter into contractual arrangements between themselves to determine how interaction with the contractor will take place, how the unitary charge payments will be apportioned and as well as setting out their respective rights and obligations. If such details concerning their working arrangements are not clarified at an early stage in the process, it is highly likely that many of the advantages of working in collaboration with partners may not be realised due to protracted negotiations and competing interests.
130. It is also worth noting that authorities not situated within designated BSF or NHS LIFT areas will be restricted in terms of their available options for developing their JSC and therefore, PFI should provide an accessible, deliverable and market tested structure. An advantage of PFI over its counterpart NHS LIFT involves the inclusion within PFI of all operational aspects of the facility. This encourages the authority and its partners to work on the development of their service requirements early in the process and refine their needs with the preferred bidder during the negotiation phase of the procurement process. At the time of writing, the existing NHS LIFT schemes do not allow LIFT Co to provide soft facilities management or ICT services thereby leaving authorities with an essential gap in the service provision that will be available once the facility becomes operational. Such services are essential to the successful integration of services by Contractors located within a facility and their importance should not be overlooked.
131. Part 2A of this Procurement Pack examines the steps and considerations applicable to authorities exploring the development of JSCs through PFI, and we draw in particular upon the experiences of Stoke on Trent City Council in their pathfinder "Bentilee" District Centre.

Section 2: Strategy and Process for JSC PFI Schemes

132. In certain circumstances, the provision of a JSC through PFI may provide the best value for money solution, enabling a local authority and its stakeholders to achieve their mutual and complementary objectives for joined up service delivery. The need for improvement is invariably linked with a requirement for significant capital investment, which cannot adequately be met from internal or a combination of internal and central government support.
133. In this Section we will examine the following:-
- the procurement process in accordance with which a JSC PFI project must comply
 - possible project structures;
 - the allocation of responsibility for the JSC; and
 - the key features of using PFI for developing JSCs.

Procurement Process

134. The different stages of developing a JSC PFI project are considered in detail in Part A5 and Part B of this Procurement Pack which spans the early stages of developing an outline business case through to examining issues which should be considered pre and post contract. In this Section we provide an overview of the process, a diagrammatic illustration of which is contained at Section 5: PFI Process Map.
135. The overriding objective of PFI is to create a structure in which value for money is optimised through private sector innovation and management skills, the award synergies from linking design, build and operate, the efficient allocation of risk, and a whole life cycle approach to service delivery.
136. The procurement process is likely to take between 18 and 24 months from approval of the proposals (by council members, and the Project Review Group if the authority is seeking central government support towards the costs of the project) to contract signature. Due to the number of schemes that have closed in this market and the sector specific guidance contained in this Procurement Pack it is envisaged that such timescales should over time reduce as the market matures. However, authorities are advised to take advice and be realistic about the time involved. They should also note that development of the OBC from initial approval of the Expression of Interest can take a significant length of time, and a failure to do so properly often results in delays during the procurement process.
137. **Outline Business Case**
- 137.1 Once the need for service provision/improvement has been established at the strategic level, project and procurement options are considered, and investment appraisal exercises undertaken. Such appraisal exercises should build on, and develop further, the strategic appraisal work done as part of the best value review or strategic service review. The conclusions of the detailed options appraisal exercises should be documented in an Outline Business Case (OBC), the purpose of which is to support and justify the choice of service delivery route and to provide the decision-makers with all the relevant information they need to give their approval to taking forward the project.

137.2 The OBC should contain details of the following:-

- the strategic context for the JSC project;
- details of the stakeholders and their respective contribution and roles;
- a detailed options appraisal setting out how the procurement of the project through PFI will deliver best value for the authority;
- the legal powers pursuant to which the authority will enter into the PFI arrangements;
- a financial analysis of the affordability of the project, identifying funding sources and providing evidence of such funding;
- key project documentation;
- project management structures and timeframe for completion;
- completed risk register showing allocation of risk;
- service requirements and performance standards, set out in the Output Specification;
- payment mechanism, which determines the unitary charge payable to the Contractor for the satisfactory provision of the Services; and
- preliminary proposals for monitoring the Project Agreement.

137.3 Further details of concerning the development of the OBC can be found at Part A5 of this Procurement Pack.

138. Project Director and Project Board

138.1 Once the OBC has been approved, the project management arrangements will need to be developed. This will involve the appointment of some or all of the following:-

- **Project Manager** in the authority, who should normally have already been involved in developing the OBC;
- **Project Sponsor**, ideally the Director or Assistant Director with overall responsibility for the service area in which the project is proposed. In JSCs there may be a number of project sponsors depending on the services to be provided within the JSC;
- **Project Director** in the authority who is given authority and delegated authority 'to do the deal'; and
- **Project Team**: that has the relevant skills and experience to deliver the project and support the Project Director. Ideally this Team should comprise of eight to ten individuals to keep the process manageable. Roles and responsibilities are defined at the outset. Appointment of external advisors to the Project Team will be needed in those areas not covered by in-house expertise. If the authority is working in partnership with other public or voluntary sector parties, they should also have representation on the

Project Team but authorities should avoid allowing Project Teams to become too big to allow decisions to be made and enforced efficiently.

- 138.2 The Authority will also need to determine appropriate arrangements for obtaining the approval of key stages and decisions in the procurement process by chief officers and members. It is good practice to put in place a Strategic Board for this purpose. Since JSCs are complex projects involving a range of interested parties, it is advisable to also establish a Stakeholder Board to ensure the interests of all stakeholders will be met in the JSC as well as to feed into the technical specification of requirements.

139. Pre-Qualification and Short-Listing

- 139.1 Publication of an OJEU notice will be required and if it is necessary a Prior Information Notice (PIN), which informs the marketplace that the project is being developed and is likely to be formally advertised in an OJEU contract notice in due course. Typically authorities have used the negotiated procedure for PFI schemes but a decision concerning the most appropriate procurement procedure must be made on a project specific basis. The implementation of Directive 2004/18 in the UK by January 2006 may result in authorities being advised to use the new competitive dialogue procedure but authorities should await guidance from the OGC or obtain legal advice before using this procedure.
- 139.2 The authority must issue an Information Pack and a Pre-qualification Questionnaire to everyone who responds to the OJEU notice, providing details about the proposed project, the procurement and project management arrangements and a timetable for the key stages in the procurement process. It can be helpful to arrange a Bidders Conference at this stage to allow the authority to provide more comprehensive information to potential Bidders about the scheme and for bidders to seek answers to issues on which they are unclear.
- 139.3 The purpose of the Pre-Qualification Questionnaire (PQQ) issued with the Information Pack is to obtain information that will establish whether potential bidders or consortia have the technical capacity and ability, and have the economic and financial standing, to deliver the project. It also enables the authority to determine whether there are any grounds pursuant to which a bidder may be rejected. The authority identifies the tests and criteria that will be used to assess the general, technical and financial strength of bidders
- 139.4 From the PQQ evaluation, a list of pre-qualified bidders is selected. A report setting out the results and conclusions of the evaluation is produced to provide a clear audit trail for the process and of the reasoning behind the final assessment. Bidders that do not satisfy the pre-qualification criteria are informed as soon as possible and offered feedback on their submission.

140. Short-listing Bidders and defining proposals

- 140.1 Evaluation and further de-selection of the pre-qualified bidders to a short-list of (usually) two or three is on the grounds of ability and commitment to offer a viable bid for the project. Various options are open to authorities for this part of the procurement process, and the choice depends on the project and local circumstances. The typical approach is to issue an Invitation to Submit Outline Proposals (ISOP). The ISOP requests in some detail the approach pre-qualified bidders propose to take to the project, their willingness or appetite for taking on the risks associated with the project, and how they propose to structure and

organise delivery of the project. An evaluation framework is developed for bidders' responses, and this may include interviews if appropriate.

- 140.2 Only short-listed bidders are taken through to the next stage of the procurement process, which involves the issue of the Invitation to Negotiate document, which will include the Output Specification, Payment Mechanism and Model Project Agreement.

141. The Invitation to Negotiate

- 141.1 The Invitation to Negotiate (ITN) is sent to the short-listed bidders. It incorporates any issues identified as part of the pre-qualification and short-listing process. In most cases the ITN is a development of the Information Pack, providing more detail in terms of the instructions and guidance to bidders on the process to be followed, the timetable, the authority's requirements for bids, and the criteria to be used for evaluation. It is accompanied by details of the services required, as set out in the Output Specification. It also includes the proposed contractual terms governing the arrangement (the Model Project Agreement), including any preferred contract length and Payment Mechanism, and the extent to which bidders are able to submit variant bids. It is important that the ITN is fully developed before it is issued.
- 141.2 The ITN should include a detailed Output Specification specifying the requirements of the authority and its partners for the facility, a detailed Payment Mechanism detailing how payment for the services and performance deductions for poor performance will be monitored as well as the Model Project Agreement amended to reflect project specific requirements.
- 141.3 Following receipt and evaluation of the ITN bids, the authority may decide to de-select a number of bidders and seek a Best and Final Offer (BaFO) from the new short-listed bidders, typically this is limited to no more than two Bidders at this stage. Alternatively, the ITN bid evaluation may enable a Preferred Bidder to be selected without a BaFO stage.

142. Closing the Deal

- 142.1 The selection of a Preferred Bidder from the final bids signals the end of the competitive process and is the final stage before financial close. Timing is important here: the ideal time to nominate a Preferred Bidder is when the key issues remaining for resolution revolve around the details of the Payment Mechanism and/or the due diligence/credit committee process of the funding institutions. Selection too soon will remove the competition, the paramount driver of value for money. Prolonging the selection unnecessarily will just increase costs for authority and bidders. A Reserve Bidder should wherever possible be appointed who is able to replace the Preferred Bidder should negotiations fail to reach financial close.
- 142.2 Once the terms of the Project Agreement are reasonably conclusive, a Final Business Case (FBC) is prepared setting out the finalised arrangements for the project for approval by members, and the sponsoring department in those instances where the authority is seeking PFI credits towards the costs of the project.
- 142.3 When the PFI Project Agreement is signed, or commercial close of the project is achieved. Financial close is when the financier's commitment takes effect and

the interest rate and unitary charge are fixed. Ideally commercial and financial close should be co-terminus, although this may not always be possible.

- 142.4 Model documentation spanning the entire PFI procurement process is contained in this Procurement Pack. Such documents were based on the project undertaken by Stoke on Trent City Council and should be adapted on a project specific basis. Such documentation will also need to be adapted to accommodate schemes where there are two or more joint procuring authorities and the involvement of other stakeholders during the project.

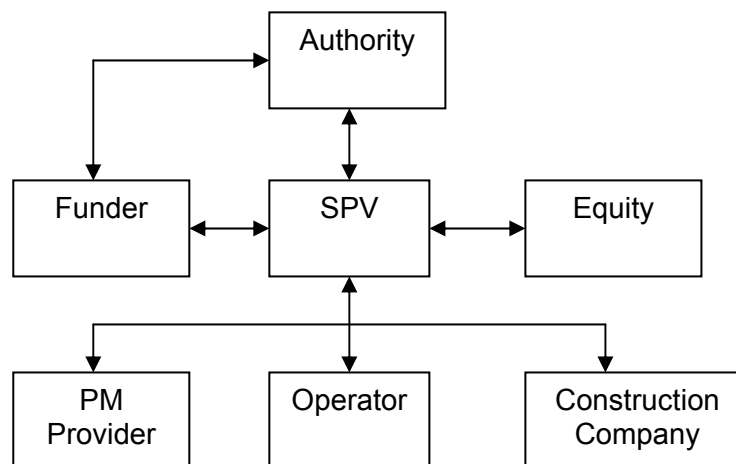
Possible Structures

143. There are a range of possible legal structures for the delivery of JSC schemes, spanning relationships with the private sector as well as among the public sector bodies procuring the JSC. The authority will normally be the lead procurer and will seek a private sector partner to design and deliver the JSC. It will also have to determine how it will work with its partners to ensure their collective needs are satisfied. Relationships between the authority and its public/voluntary sector partners can be governed in a number of ways. Since different considerations are applicable when authorities are working with the private, public and voluntary partners, possible approaches are examined below.

Structures for Working with the Private Sector Partner

144. The contractual and delivery structures for JSC PFI schemes in which authorities seek to utilise the expertise of the private sector vary from project to project. However such schemes can broadly be divided between those where the JSC private sector partner ("Contractor") chooses to create a special purpose vehicle (SPV) to deliver the services required by the authority and its stakeholders and those where it does not.
145. The choice of structure will depend upon the scope of the services to be provided in the JSC scheme and the preferred delivery structure of the Contractor. It is likely that different Contractors will offer different delivery structures to the authority during the procurement. There is no evidence to suggest that a particular structure is likely to offer a higher quality of service or enhanced value for money and the choice will be dependent on which option provides the most value for money solution for the parties.
146. Authorities will of course, as part of their evaluation process, wish to ensure that any delivery structure proposed will be financially robust and able to deliver the services required.
147. **Special Purpose Vehicle**
- 147.1 Special purpose vehicles ("SPVs") are usually companies or limited liability partnerships created to deliver the requirements of an individual PFI scheme. They will not undertake any other activities beyond the scheme or own any assets other than those used to provide the scheme. A general SPV structure is shown in the diagram in Figure 19 below, with contractual relationships between the parties shown by the arrows

Figure 19 SPV Structure



- 147.2 To deliver the requirements of the Authority, the SPV will either provide the services directly or, more commonly, have sub-contract arrangements with one or more providers to deliver the required services. The extent of these sub-contractual arrangements will depend on the scope of the services required by the Authority but may include provision of FM services, a one-stop shop for council services, retail, catering and security services. In addition, the SPV will generally contract with a construction company to develop the assets (buildings) required by the Authority.
- 147.3 The majority of funding (generally around 90%) required to meet the capital investment for JSCs will be by way of a loan directly to the SPV. Banks and financiers are prepared to lend to the SPV because of the Project Agreement in place with the Authority, which guarantees income to the SPV as long as the SPV continues to provide the operational services. This type of funding, commonly referred to as project financing, can be a very cost-effective method of securing funding for a scheme. However, the extent to which such third party funding is available will largely depend on the size of the scheme and the size of the revenue stream (ie unitary charge) going between the SPV and the Authority.
- 147.4 To govern the rights of any third party funder in the event of that the SPV fails to deliver any of the operational services to the required standards or experiences financial difficulties, the Authority will enter into a separate contract with the funder, commonly known as a Direct Agreement. This will protect the funder against premature termination of the project by enabling the funder to step-in to save the project.
- 147.5 The remaining funding required for the development of the JSC will normally be provided by other investors in return for shares in the SPV. The risks in a PFI project are such that investors will seek to "ringfence" the project so that no performance guarantees will be given directly to the Authority. The Authority will rely on the deduction mechanisms contained in the Payment Mechanism for poor or inadequate performance, together with the ultimate sanction of termination.

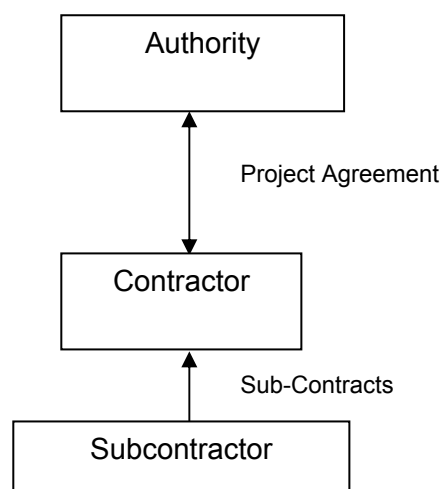
148. **Non-Special Purpose Vehicle**

- 148.1 In a non-SPV structure the Authority will enter into a direct contractual relationship with the Private sector partner (PSP), pursuant to which the private sector partner (PSP) will generally provide the majority of the services required

by the Authority, although it may decide to sub-contract some services to other members of its supply chain.

- 148.2 Funding is usually provided directly to the PSP in the same way as for the PSP's own capital investments, with the assumption that specific financing for the project would not be sought. Given the relatively small size of JSC projects, in capital expenditure terms, it is highly likely that this structure may be preferred by PSPs generally since it is not as economical to incur third party finance costs for small capital projects. This structure is also common in projects where PSPs are confident they can satisfactorily manage all project risks. This structure is depicted in Figure 20.

Figure 20 Non SPV Structure



Structures for Working With Other Public Sector/Voluntary Bodies

149. Regardless of the choice of a SPV or non-SPV structure for the PFI transaction, authorities must still determine how they want their relationship with their fellow public/voluntary sector partners to operate and be governed since this will to a large extent determine who enters into the PFI Project Agreement with the PSP. Public sector bodies can effectively collaborate in a number of ways. However, it is important to ensure, regardless of the particular route adopted, that there is a single point of contact established with the PSP, a mutually acceptable method in place for resolving disputes between the stakeholders on a fast track basis and a balanced outcome for all stakeholders. The appointment of a single JSC Manager appointed by all partners may be a method of ensuring this works in practice.
150. There are a number of options for public/voluntary sector working arrangements with the main options being considered below:-
- **Stakeholder Agreements** – Whenever working with partners it is useful to devise a structure and process in accordance with which each partner will work. Within this arrangement there is no pooling of budgets. Authorities should consider how their relationship with their partners will be conducted throughout the procurement process (i.e. who will be lead procurer, how any costs/liabilities will be apportioned, the respective contribution of each party to the development of documents and the evaluation process and how key decisions concerning shortlisting, appointing a preferred bidder and approach to negotiations will be handled and conducted). Secondly, authorities should consider how the respective obligations of each

partner will be documented once the contract is awarded, for example, will the contractor enter into a single agreement with the lead procurer who will then step down liabilities and risks to each of its partners. Alternatively each partner may enter into a separate agreement with the contractor. Even if the latter approach is selected there may need to be some agreement between the parties specifying the processes and procedures with which they will comply once the main contract is operational. For example, if one party wishes to step-in following a contractor default and the other doesn't what will happen if there is only a single contract with the lead procurer. Time spent analysing and considering such issues at the outset can assist in the smooth progress of the project. The approach adopted by Stoke on Trent City Council and their local primary care trust. is considered in Section 4.

- **Section 31 Health and Authority Partnership Arrangements**– If the JSC involves health and social care provision and the authority is seeking to work with its local health care providers, both parties may enter into a joint committee or a partnership arrangement to manage the joint discharge of their functions as well as pool funds. However, such arrangements are only allowed in relation to the discharge of certain prescribed health-related functions of the authority and prescribed health functions of the PCT in accordance with Sections 27-32 of the Health Act 1999, together with the accompanying secondary legislation (e.g. NHS Bodies and Local Authorities Partnerships Arrangement Regulations 2000). Further details of such arrangements are set out in Part A2 Section 7.
- **Public/Public Consortium** - Subject to enabling powers, authorities may decide to form a special purpose vehicle with their stakeholders through which they can pool their funds, functions and other resources for the wider purpose of fulfilling the PFI project. Each stakeholder would have to confirm they have the requisite authority to form and enter into a separate entity (e.g. company, LLP or a not for profit distributing organisation). This will need to be reviewed on a case by case basis and determined by each stakeholder in accordance with the relevant external statutory framework as well as their internal rules and regulations. Such a SPV could enter into the Project Agreement with the Contractor thereby making the appointment of obligations easier to manage and apportion. Stakeholders will need to determine however, who will bear the set up costs of the SPV, in what proportion and how the SPV will initially be resourced.

Allocation of Risk in Standard PFI Projects

151. Within a PFI Project Agreement, the allocation of responsibilities is clear. The procuring authority is generally responsible for:
 - Setting an output based specification for the services it requires;
 - Making monthly unitary payments for the services it receives;
 - Overall monitoring of the contract to ensure the outputs specified and continuous best value is being delivered; and
 - Proposing service variations to take into account changes in the authority's priorities.
152. The Contractor is generally responsible for:
 - The design, build, finance and operation of new and/or refurbished facilities for the term of the Project Agreement;

- All lifecycle costs and latent defects;
 - The provision of various services generally including facilities management services such as cleaning, catering, landscaping and building maintenance services; and
 - Implementing variations in the Output Specification to meet future customer needs and changes in the procuring authority's priorities.
153. In addition, the Contractor may be responsible for the provision of certain "public sector" or clinical services. The decision as to whether to include such services within the scope of the Contractor's responsibilities will depend upon the authority's strategic objectives with its stakeholders and their approach to service delivery. If it is decided to include them provision will need to be made in the advertising OJEU notice so as to ensure the right bidders apply.
154. Project Agreements commonly state which project risks are to be transferred to the Contractor, which are to be retained by the authority (or the public sector generally in relation to JSCs) and which risks are to be shared between the parties. The overriding principle is to allocate risks to the party best placed to manage them. As a consequence for example, all risks associated with the provision of the asset will be at the risk of the Contractor, other risks deriving from changes to the services required by the authority or public sector partners will lie with the authority and its partners. Other risks, in respect of which it would not provide value for money to transfer entirely to the party or which are beyond the control of either party which are commonly shared. Standard guidance on the allocation of risks in PFI Agreements is contained in HM Treasury's, "Standardisation of PFI Contracts Version 3" (May 2004) ("SoPC")⁴⁶. The Model Project Agreement contained in this Procurement Pack complies with SoPC although specific provisions concerning the joined up nature of the project can be incorporated as project specific amendments.

Features of PFI

155. The benefits to an authority of using the PFI route to procure the establishment of a JSC can be summarised as follows:
- In the right circumstances, provides better value for money as compared to other forms of procuring and providing serviced JSCs;
 - Gives procuring authorities and their partners long-term certainty as to the provision and cost of JSC services;
 - A number of risks are transferred away from the procuring authority and its partners to the Contractor, who is better able to manage them;
 - Any third party investment in the PFI project does not effect an authority's overall ability to raise finance for other services;
 - Authorities can obtain assistance with capital investment i.e. through bidding for PFI credit support from the relevant Central Government Department; and
 - Allows authorities and their public sector partners to concentrate on the delivery of services (e.g. social care), whilst delegating the responsibility of providing and maintaining the assets and facilities to the private sector.

⁴⁶ A copy of SoPC 2004 is available at the Partnerships UK website at www.partnershipsuk.org.uk

Section 3: Key Issues Arising In PFI JSCs

156. This Section seeks to explore issues which commonly arise when developing JSCs through PFI as well as provide a steer as to how such issues can best be managed. Many issues concern the working relationship and allocation of responsibilities between the various public service partners, as well as partners from the voluntary and commercial sectors, whilst other issues concern project specific matters which should be addressed early in the development of each project. This analysis begins with an appraisal of general issues which commonly arise in all JSC projects before considering those issues particular to projects involving collaborative arrangements between the authority and its public, voluntary and/or commercial sector partners.

General

157. Standardisation of Documents

- 157.1 PFI has developed across a range of sectors with the documentation being refined following the completion of projects. To assist public sector bodies in undertaking PFI projects, HM Treasury in collaboration with Partnerships UK (and formerly the Treasury Taskforce) have sought to develop a level playing field for all parties embarking upon such projects through the publication of the Standardisation of PFI Contracts (SoPC) the most recent version of which was published in 2004⁴⁷.
- 157.2 SoPC 2004 contains guidance on the approaches available to all parties within a PFI project as well as containing both mandatory and suggested drafting for inclusion in PFI project agreements. On behalf of local government, the 4ps in conjunction with HM Treasury and the ODPM, have published a Local Government Supplement to SoPC 2004⁴⁸ (LGS) which contains additional guidance and drafting for local authorities. In particular such guidance details how PFI project agreements should be drafted to take account of the statutory duties and obligations of authorities including the duty of best value, the Code of Practice on Workforce Matters in Local Authority Service Contracts⁴⁹ the public duty to promote race equality and use of the Local Government (Contracts) Act 1997. The LGS also explores some of the more technical issues surrounding termination rights, payment of the unitary charge and compensation as well as suggesting approaches for performance monitoring and management.
- 157.3 For authorities pursuing JSC PFI projects, the ODPM, 4ps and HM Treasury have approved the Model Project Agreement contained in this Procurement Pack as sector specific guidance for use by authorities developing JSC or similar accommodation projects. The Model Project Agreement includes both the guidance in SoPC 2004 and the LGS as well as references to project specific issues which authorities should consider when undertaking projects. The Model Project Agreement is drafted on the basis that an authority, together with a public sector partner, is seeking to develop a single JSC facility by a private sector contractor. The Model Project Agreement can be adapted for use by authorities seeking to procure the development of a series of JSC or similar accommodation projects.
- 157.4 Authorities are also encouraged to consider ways in which they can work with potential public and voluntary sector partners in the development of JSC

⁴⁷ A copy of SoPC 2004 is available from HM Treasury's website at www.hm-treasury.gov.uk as well as from the 4ps website at www.4ps.gov.uk

⁴⁸ A copy of which is available from the 4ps website at www.4ps.gov.uk

⁴⁹ ODPM Circular 2003/03 Annex D

schemes and should ensure all their collective requirements are adequately provided for within the JSC Project Agreement or additional documentation as appropriate. Further guidance on dealing with collaborative working between the authority and its partners is set out later in this Section.

- 157.5 A summary of the main contractual provisions of the Model Project Agreement and how they relate to SoPC 2004 is set out in Part B5 Section 3.

158. **Soft Market Testing**

- 158.1 Given the relatively few JSC PFI schemes which have closed to date and the HM Treasury presumption that infrastructure projects with capital values of less than £20million will not provide value for money for the public sector or bidders, authorities should ensure there is market interest for their proposed project before they commit substantial resources. Undertaking a soft market testing exercise, as undertaken by Stoke on Trent City Council, can be an incredibly useful tool to test the market.

- 158.2 Following the issue of a Prior Information Notice, which makes the market aware of the intention to issue an OJEU notice for the project, potentially interested parties can be asked a wide range of questions concerning their approach to the proposed project, whether they consider it to be deliverable and bankable, whether there are any key issues which should be addressed before the project proceeds as well as identify any potential issues which make the project less appealing to the market. For example, it is highly likely that bidders will be concerned about with whom their relationship will be if there are a number of different public partners within the scheme and will seek reassurance that the roles and responsibilities of each partner are identified, thereby leaving less room for protracted negotiations or complications later in the process.

- 158.3 Although detailed guidance on how to undertake soft market testing exercises, as well as the experiences of Stoke on the Bentilee District Centre can be accessed from the 4ps website which has a case study exploring these issues,⁵⁰ authorities should ensure any soft market testing exercise complies with the following:-

- the EU public procurement regime;
- it is undertaken at a sufficiently early stage in the development of the project to enable the authority to take on board market responses;
- all information is prepared carefully since this will be the first stage in the authority's attempt to sell the proposed project to the market;
- ensure the authority is clear as to how it will identify organisations to assist it in the exercise;
- ensure the authority asks direct and specific questions, because their quality will determine the quality of the responses it receives; and
- document all information issued and received to assist in identifying how the proposed project should be modified to ensure it is deliverable.

⁵⁰ www.4ps.gov.uk 4ps Case Study The Stoke Bentilee Joint Service Centre (January 2002)

- 158.4 Spending more time during the initial stages of a JSC project can save enormous time later in the process. Given the innovative and complex nature of JSC projects it is advisable to test proposals with the market. However, careful consideration should also be given to responses to ascertain the key drivers and motivations behind private sector interest. Experience has demonstrated that whilst initially the private sector might be very supportive of proposals during a soft market testing exercise, when projects actually go to the market, only a few number of expressions of interest or full bids are received. For this reason it is advisable for authorities to liaise with 4ps and other authorities who have conducted soft market testing exercises to ensure they are able to ensure the design and conduct of their exercise will enable them to clearly identify the extent to which the market is interested in their proposed project.

159. Adequacy of Information

- 159.1 The PFI process revolves around the quality of information issued by authorities as well as the quality of bids submitted in response. There is a direct relationship between the robustness of bids received and the adequacy of information supplied to bidders by the procuring authority to enable them to prepare their respective bids. Authorities should ensure they ask specific, unambiguous and jargon free questions which require bidders to respond to the precise issues which the authority and its partners want to know. If such an approach is not followed, there is a danger the authority will be swamped with mountains of paper resembling a generic sales pitch rather than a detailed response to the particular proposed project.
- 159.2 An additional issue within JSC projects relates to control. The procuring authority will not always have possession of all the relevant information as a great deal will belong to other partners. It is important that all partners are committed to collating and updating such information throughout the procurement process and a specific actual or virtual data-room for these purposes could be established. However responsibility for maintaining, reviewing and monitoring its use should be allocated to a specific person so that an accurate audit trail can be maintained. .
- 159.3 One added complexity is the responsibility for ensuring that the information supplied to bidders is consistent. The authority together with its partners should clarify which documents will prevail if any inconsistency is established.

160. Property

- 160.1 Authorities should work with their partners (both internal and external) to identify appropriate locations for the siting of the JSC. It is preferable that Authorities should identify appropriate sites (with their public sector partners) prior to going out to the market. This would enable the Authority to undertake all appropriate site surveys, thereby reducing uncertainty for bidders and enabling bids to be comprehensive. However, it is accepted that it will not always be possible to identify appropriate sites at such an early stage of the project; some Authorities may seek bidders who can assist them in identifying an appropriate site since site issues can be significant project risk, it is recommended that initial work is undertaken as soon as possible.
- 160.2 Site options should also help identify whether the project envisaged will only involve refurbishment or a new build, remediation work or detailed environmental surveys. Accessibility of location will be a key feature towards enabling any project to improve service delivery by making services more accessible to service

users. Once a location for the JSC has been identified, the authority together with its partners need to identify with whom ownership of the facility once developed will lie and the manner in which the other partners will occupy or have an interest in the facility.

- 160.3 Freehold ownership of the land upon which or the JSC should lie with the authority procuring the project. Therefore, if other partners are transferring land into the project, arrangements must be made to ensure such transfers are possible and capable of fulfilment within the project programme. The value of any land to be transferred must be accounted for in accordance with general and partner specific accounting procedures.
- 160.4 If the JSC is to be occupied by a range of different bodies, arrangements must be devised to ensure each occupier is clear as to the terms of their occupation, the duration of such occupation, their exit strategy and how they will ensure they can meet any payment obligations.
- 160.5 It is common within PFI for property owners (usually procuring authorities) to appoint surveyors to carry out a survey of the site on terms agreed with the contractor. The costs of such surveys are usually met by the successful contractor, albeit in return for warranties concerning the condition of the site. It is easier if the procuring authority owns the property to be developed since this enables it to take a decision as to the responsibility for such surveys. One additional consideration relates to whether a collateral warranty should be sought in favour of the other public sector partners and who should bear the additional cost of procuring such additional warranties.

161. **Planning**

- 161.1 Closely related to the issue of property concerns the requirement to obtain all necessary planning consents and approvals before the development of the JSC is permitted. An obligation is usually placed on the contractor to undertake all appropriate action necessary to ensure the JSC is built in accordance with all applicable rules and regulations.
- 161.2 However, authorities should acknowledge that whilst they are likely to be the local planning authority to whom any application for developing the JSC will be made, this is a separate and distinct statutory role from that of discharging its other public service functions and entering into the PFI arrangement with the Contractor. There can be no fetter on the discretion of a planning authority to award any planning permission and therefore detailed work must be taken at an early stage to ensure the proposed project is in accordance with the local planning strategy and is likely to be granted such approval if an application is made. A presumption that such approval will always be granted should not be made.
- 161.3 Authorities should also take note of the rules concerning judicial review since lenders are unlikely to agree to a completion of the project until after the 3 month judicial review period within which any affected person can challenge a planning or administrative decision of a public authority has expired. In some instances, waiting for the expiry of the judicial review period has led to a delay in project completion with some authorities agreeing to split financial and commercial close, an approach which authorities should strongly resist. A commercial close no longer has any purpose under the PFI support regime for 2005/06 where only financial close will be recognised.

162. Existing Service Provision

- 162.1 Once the location for the JSC has been decided, the authority will need to consider what will happen to existing services – will they be re-located or suspended whilst any construction or refurbishment works are being undertaken? In most instances suspension will not be an option since the authority has a statutory responsibility to discharge its functions so temporary re-location will be required. The exact arrangements can only be determined once the authority has a clear understanding of the accommodation requirements for the project since in many instances the authority might issue an ITN with a number of possible locations for siting the JSC but not be clear as to which one will provide better value for money.
- 162.2 The authority and its public sector partners will still have ongoing statutory duties to provide services despite any work that might be undertaken, and any disruption on location or premises is no excuse. Therefore authorities should ensure they fully investigate with bidders their proposals for decanting arrangements, mobilisation and providing suitable alternative accommodation if required during the initial phase of the project. Appropriate provision should be contained in the JSC Project Agreement.

163. Service Integration

- 163.1 The development of instructions to put forward to bidders at the ITN stage is covered in Section 5 of Part A1 (paragraphs 84-87). This should also address the extent to which the design for the JSC should be flexible and capable of meeting differing needs over its life-span.
- 163.2 Once the Preferred Bidder has been selected, the partners should ensure they work with the Preferred Bidder to refine the Contractors proposals. This will be the last opportunity for technical input into the specification and design since post completion any changes will require adherence to the change mechanism contained in the Model Project Agreement which will have cost implications. Any uncertainties or ambiguities should be clarified at this point as well as arrangements and the costs associated with mobilisation and decanting services and providing suitable temporary accommodation whilst the works are being undertaken.

164. Staffing

- 164.1 The authority must determine how the JSC will be staffed. From a public sector perspective, these issues will not differ from a traditional procurement. However, when using a PFI structure there may be a transfer of staff to the contractor under the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) ("TUPE") and such a TUPE transfer may impact not only on authority staff but partner staff as well. The extent to which existing authority staff are affected and the nature of posts that will be affected will be dependent on the services to be accommodated within the JSC.

- 164.2 Authorities, together with their partners, should address a range of issues concerning staff including:-
- whether the arrangements contemplated by their project will involve a TUPE transfer and any consequent implications thereof;
 - to what extent affected employees require statutory consultation and the manner in which this will be conducted;
 - the extent to which the contractor will comply with the obligations specified in the ODPM Code of Practice on Workforce Matters in Local Authority Service Contracts⁵¹
 - the extent to which the contractor will require admission to a statutory public pension fund or whether equivalent pension provision will be arranged, and by whom; and
 - how any staff transfer issues be managed.
- 164.3 Authorities should also be aware that any transfer of staff to the JSC, along with staff from other public sector partners may raise sensitive issues which will need to be handled carefully e.g. different terms and conditions, induction and training programmes, different grades and pay scales, different working hours and expectations. Early engagement and consultation should ensure such matters are dealt with delicately.
- 164.4 Reference should be made to the 4ps guidance on workforce matters in service contracts, a copy of which can be found on the 4ps website.

165. **Indemnities**

- 165.1 The authority will need to establish to what extent it will need to indemnify the other partners against costs, expenses and liabilities incurred in the procurement of the PFI (and in future, other services). There is a risk for the authority, that if arrangements dealing with such issues are not documented, it as lead procuring authority will bear liability for all such costs.
- 165.2 All risks retained by the authority in the PFI Project Agreement should be passed onto partners in the proportions agreed between the authority and its partners and indemnities sought to support this risk allocation. Such pass down risks should include:
- liability for the occurrence of force majeure, relief, delay and compensation events;
 - change in law (Council Specific, Service Specific, Discriminatory and General); and
 - variations and change in services (including arrangements for partners roles in benchmarking and market testing).
- 165.3 A similar process could be adopted in the partner governance arrangements to match the risks under the Project Agreement.

⁵¹ ODPM Circular 2003/03 Annex D

166. Termination and Compensation

- 166.1 Where termination is due to an authority or partner default, the other non-defaulting public sector partners should be entitled to receive the amount of any outstanding debt, all costs associated with termination and the anticipated returns (or benefit of the capital contributed) to be repaid to the defaulting authority/partner.
- 166.2 Where termination is due neither to any default on the part of the authority nor the other partners (for example due to a force majeure event, such as war), then the compensation payable will be "neutral." This means the authority and its partners will only be paid sufficient funds to cover their costs.
- 166.3 Authorities must decide, together with their partners, what will happen to the JSC facility together with any other assets in the project at the end of the contract term. How will the residual value of such assets be determined? If the unitary charge has been calculated such that the partners have paid for the capital value of the asset as well as the services, then it could be argued that they should be entitled to a share of the assets, or compensation for the loss of any assets.
- 166.4 Termination and compensation arrangements for multi-occupancy multi-user JSC facilities are not as simple as the arrangements for the development of an asset required by a single procurer. In JSCs, there are a number of public sector organisations who may effectively need to continue to provide public services after expiry. Authorities should ensure they have sufficient flexibility so that they may exercise their option to continue using the facility to provide public services beyond the end of the contract term. It is common in PFI for the asset to revert to the public sector at no additional cost, but how it is occupied in the future will need to be agreed. Other issues to be considered include:
- Payment Mechanism issues (including responsibility for auditing the monitoring the different aspects of the Output Specification in accordance with the Payment Mechanism).
 - Payment Obligations. The partners are all dependent upon each other paying the unitary charge as it becomes due. The thresholds triggering termination for non-payment will not be doubled because of the introduction of a number of public sector partners. Therefore persistent non-payment by one partner will result in the threshold potentially being breached and a termination of the whole project. This will therefore need to be addressed in any agreement between the authority and its partners.
 - Revenue Sharing Arrangements. There is often an element of third party income generated from use of JSCs and authorities should seek to secure a share in any such income generated by the contractor. In such circumstances, the parties will need to determine how any share of such income is to be apportioned and applied between them. One option is for authorities to commit to use all such income for the future benefit of the JSC or the local community as a whole. Any such arrangement should be documented between the parties.

167. ICT

- 167.1 If an authority is seeking central government support for the project, it should note that funding is only available for ICT infrastructure such as cabling. It will not be available for computers or software.

167.2 Authorities and their partners should seek advice concerning the extent to which their existing ICT services are compatible, or are capable of being upgraded so that they are compatible as well as obtaining information about new bespoke systems that could be introduced into the JSC by the contractor. Note however, guidance issued by the Office of Government Commerce that use of the PFI is not seen as a value for money solution for ICT contracts and therefore alternative measures for introducing suitable ICT provision should be considered⁵². One option might be for one Contractor to procure such services on behalf of others, although there will be issues concerning the technical capacity of systems required by different occupants. For example, it may be adequate for a community legal advice clinic to have access to a standard ICT package whereas a primary care trust requires access to more sophisticated systems. A key issue in such discussions will involve who will determine the level of sophistication for a system and how will such costs be apportioned between occupants. Authorities should consider the availability of existing ICT arrangements which they could utilise for the purposes of their JSC since they may offer considerable cost savings. Authorities should contact their local or regional purchasing consortia or central purchasing agencies such as OGCbuying.solutions for further information about existing products.

168. **Retail**

168.1 Some PFI schemes have involved retailers occupying certain parts of the JSC facility. Such an approach was adopted in Stoke since the council acknowledged the reliance placed upon the local shopping parade by the community and thereby accepted the value of such retail to the life of the community. Alternatively the introduction of new retailers can help to regenerate a location and attract new customers.

168.2 Whatever the reasons for including retail within the project, authorities need to be certain there is interest from the kind of retailers sought to occupy space within the facility, the arrangements pursuant to which such occupation will take place and the cost consequences for the authority and its partners, if any space allocated for use by retailers is not taken.

168.3 It is very rare for contractors to accept demand risk for retailers, particularly if there are tight regulations concerning the type of retailers that are permitted to be situated within the facility. Therefore, the public sector might be required to take some if not all of this risk. Authorities should investigate ways in which the contractor can be incentivised to encourage occupation by third parties and it is advisable that commitment is obtained from retailers as to their occupation as early in the process as possible. This will reassure lenders and the contractor that the scheme is viable.

168.4 If there are existing retailers or occupants on the site authorities should ensure they are given notice to leave in sufficient time to enable the contractor to start work. The status and terms of any such occupancy arrangements should be revealed during any due diligence process thereby enabling the authority and its parties to be clear as to what it will need to do to obtain vacant possession.

⁵² Standard terms and conditions for use in IT contracts are available from the OGC website at www.ogc.gov.uk

169. Third Party Income

- 169.1 As well as the use of retailers, authorities should consider other ways of incorporating the provision of third party income into their JSCs. Such provision will not assist in reducing the cost of the facility to other occupants but if structured appropriately could help to introduce new activities and services into the JSC locality. For example, authorities who incorporate leisure provision within their JSC should consider requiring the contractor to generate third party income by making the swimming pool and tennis courts available to the general public or for corporate events during specific times when such facilities are not required by the authority or its public sector partners for use by schools or other essential community use. Alternatively a JSC including a theatre could at certain specified times be made available to the contractor to generate third party income from use of the theatre by community groups at specified rates.
- 169.2 However there are a number of issues associated with the generation of third party income which should be considered:-
- the parameters within which the generation of third party income will be permitted i.e. times, which part of the facility etc;
 - any design implications. For example, a public swimming pool should be designed so that people using the swimming pool cannot access other parts of the JSC facility;
 - with whom will demand risk for generating third party income lie? Authorities should attempt to pass as much demand risk onto the contractor as possible as well as introduce incentives within the Payment Mechanism which encourage the contractor to make full use of this opportunity. Such incentives may for example allow the contractor to retain all third party income generated above a specified threshold with the first £10,000 of income generated every year shared between the parties;
 - the risk of vandalism and damage to the facility during third party use may be greater and how, by whom and in what proportions will such costs be borne?
 - how will associated costs concerning staff, utilities, energy etc incurred during such use be paid for and by whom?
- 169.3 In addition to the issues listed above there will inevitably be specific issues which arise concerning the potential use to which the facility can be made in pursuit of generating third party income. It is advisable for authorities to explore bidders' approach in this area by seeking specific proposals within ITN bids thereby enabling the authority to determine the extent to which the benefits outweigh the disadvantages and costs.

Collaborative PFI

170. Scope of OJEU

- 170.1 When seeking to work in collaboration with another local authority or procuring on behalf of a number of public bodies or indeed as joint procurer with other public bodies, authorities should ensure all public partners seeking to make use of the facility are mentioned in the OJEU notice advertising the scheme. This is an EU requirement. Any public body who will be entering into a works, services or

supplies contract which is above the EU prescribed financial thresholds needs to comply with the procurement rules. Since under the PFI Project Agreement, the contractor will be providing works and services to occupants they will need to comply with the process.

- 170.2 In addition to mentioning all public partners by name, all partners should ensure the common procurement vocabulary (CPV) codes used in the OJEU notice are sufficiently wide to allow all such partners the flexibility to undertake the envisaged activities. For example, if the contractor will be required to implement an ICT system in the JSC facility, undertake soft facilities management services and provide beds pursuant to the Extra Care Housing Initiative⁵³ references to all such envisaged services should be expressly mentioned in the OJEU.
- 170.3 Since the OJEU is issued early in the process, the need for authorities to engage with potential partners and clarify with whom they will be working must be comprehensively undertaken before the OJEU is issued otherwise some partners may not be in a position to take full advantage of the facility⁵⁴.

171. Procurement Process

- 171.1 The authority together with its partners must ascertain the nature and manner in which they will collaborate, for example will all partners play an equal role in the procurement exercise with costs being apportioned equally or will one party take the lead with others contributing at defined times with the apportionment of costs and liabilities reflecting this arrangement?
- 171.2 It is advisable that the engagement of all partners should be facilitated throughout the procurement process, and structures will need to be devised to ensure all contributions are manageable and constructive. It is suggested that a specific working group is devised to collate all such feedback with membership modified according to the progress of the project. Experience suggests collaboration during the procurement process is largely undertaken on an informal basis but regardless of the formality or otherwise of any arrangements, it is advisable to specify any arrangements in writing to ease the involvement of a number of different parties.
- 171.3 The authority should also liaise with its partners and decide not only how requests for information under the Freedom of Information Act 200 and the Environmental Information Regulations 2004 about the project will be dealt with. All public utilities should have publication schemes and the authority will need to ensure it balances the need to maintain a competitive commercial arrangements with the bidder whilst honouring its statutory obligations. A decision as to how any costs incurred in responding to requests will also need to be made.

172. Consultation

- 172.1 Consultation and clear channels of communication between the procuring authorities and their other public, voluntary and commercial sector partners should be established in all collaborative projects. This will help to reduce

⁵³ Details of which can be obtained from the Department of Health website at www.dh.gov.uk

⁵⁴ The procurement process does not have to be complied with if entering into a simple leasing arrangement thereby enabling partners to occupy pursuant to a standard lease. However, there may be issues depending on the extent to which the contractor is providing non standard lease services to the occupant since PFI is seen as the provision of serviced accommodation for occupants. Legal advice should be sought on this issue if appropriate.

opportunities for complications to arise later in the process and enable all parties to the project to feel as key players in the development of their JSC.

173. Stakeholder Agreements

173.1 In addition to any documentation detailing the nature of the relationship between partners during the procurement process, it is highly likely that a further agreement between such partners will be required specifying their respective obligations once the PFI Project Agreement has been entered into. Partners may decide to enter into separate Project Agreements with the contractor but generally, most collaborative PFI projects involve the authority being the lead procurer on behalf of the other public sector bodies. In the former instance, although the obligations of each partner are separate they may still need to be an agreement governing how the behaviour of one partner might have an impact on the other (eg if one partner wants to step-in and others do not, what should happen?). In the latter instance, the authority will enter into the Project Agreement with the contractor. However, it should not retain all liability for paying all costs and ensuring all obligations are complied with since it together with its partners will be occupying the facility and it cannot be held responsible for the actions of other occupants. In addition, certain procedures and protocols will need to be established between the occupants as to who will lead as the single communicator with the Contractor's project manager and how performance monitoring and the reporting and investigation of defaults and disputes should be undertaken.

173.2 It is strongly advised that relations between the authority as lead procurer and the its partners should be documented in the form of a Stakeholder Agreement. This should address the following key issues:-

- working arrangements between the authority and its partners (for example they may consider establishing a JSC management committee to review and revise the policies in accordance with which the JSC is run);
- whether there will be a single person liaising with the contractor on behalf of all such parties or a number of representatives;
- whether there is to be any transfer of land or assets between such partners;
- how such parties will apportion unitary charge payments between them;
- what will happen in the event that one partner defaults on payment;
- how the liability for the indemnities contained in the Project Agreement will be apportioned;
- what will happen in respect of costs and liabilities in the event the Project Agreement is terminated early, especially in respect of Authority Default (for example will the party most responsible for the default be required to pay the full compensation sum due to the contractor or will liability for such sums be shared even though all parties did not contribute to the event giving rise to the Authority Default?);
- how variations to the Project Agreement will be proposed, investigated, put forward to the contractor and paid for;

- how any employees or all parties will be dealt with under the Project Agreement (i.e. will there be a TUPE transfer to the contractor of just authority staff or will this involve staff from other stakeholders transferring also? Will any staff be seconded to the Contractor and if so for how long?)
- who will determine whether an Authority Default has occurred leading to a right to terminate the Project Agreement and how will an Authority step-in operate in practice between the parties?
- the insurance obligations of each party;
- their roles in any market testing and/or benchmarking and/or retendering of certain services within or the whole Project Agreement; and
- ancillary matters such as confidentiality, dealing with requests for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and what will happen if there is a reorganisation in the health sector resulting in a PCT no longer existing in its current form?

173.3 The authority should ensure so far as possible that all risk retained under the main PFI Agreement that is within the control of the other partners is borne by them. If this is not achieved, then as procurer on behalf of all public sector entities, the risk will lie with the authority. Risks which cannot be managed by and which are not within the control of the authority should not be retained.

Section 4 Stoke on Trent City Council's Approach

174. Key drivers for The "Bentilee" Joint Service Centre

- 174.1 Stoke on Trent City Council's ("Council") "Bentilee" estate is one of Europe's largest joint service centres estates suffering from high levels of deprivation, poor health and inadequate access to public services. Hence the Council's desire to promote good health, help to generate employment and empower the community through the development of a "joined-up" service centre providing a range of accessible public, commercial and voluntary sector services.
- 174.2 Existing provision in Bentilee comprised of a "struggling shopping parade, a run down and under used community centre, abandoned and semi-derelect flats and bungalows and an outdated and inadequate health centre⁵⁵". Originally the Council planned to develop three separate centres; a new build to replace the community centre, through the PFI, and the refurbishment of a community and youth facilities centre and an employment and training centre, through a combination of Council funding, single regeneration budget funds and National Lottery grants. However, the soft market testing exercise (see below) revealed the advantages of merging the 3 centres into a single new build centre, which would allay fears about obtaining continued funding for the two non-PFI centres, remove the triplicate overhead costs and most significantly, increase the appeal of the project to the private sector.
- 174.3 The new combined centre ("Centre") was designed to provide a range of services which are detailed in Figure 21 below.

175. What does the centre offer?

Figure 8

Service	Details
First Stop Shop	A common customer interface to deal with a large proportion of customer enquiries on a first stop basis and sign-posting for other internal and externally linked services.
GP Suite	A team of GPs, practices nurses, health care support workers and others maximising the use of this facility to meet the needs of its 6000+ caseload.
Community Rehabilitation	A collaborative approach between the Council Social Services department and the PCT to deliver a seamless rehabilitation service aimed at promoting independence.
Physiotherapy	A local base for the North Staffordshire Physiotherapy Team. Referral pathway through GPs within the surrounding area or from the local hospitals. The department provides an outpatient function for those with mobilisation or manipulation needs brought about by back, shoulder, knee, posture problems, accidents etc.
Dental	The personal Dental Service in North Staffordshire offers an integrated, comprehensive Primary Dental Care Service, targeting individuals who would not usually seek mainstream dental care, and children identified

⁵⁵ OBC Addendum para 2.13

Service	Details
	through the school dental service together with a wide range of people with specific needs
Chiropody	The department provides outpatient functions including the prevention, assessment, treatment and management of conditions, as well as patients requiring emergency treatment.
Complementary Therapies	Includes alternative and complementary therapies from the private sector. The majority of services are provided through GP referrals, offering therapies where there is some evidence of efficacy.
Substance Misuse	A local base for part of the Stoke on Trent Community Substance Misuse Team. Referral pathways through GPs or other primary health care practitioners.
Community Services Practitioner Suite	Provides extended primary care through shared accommodation including consultation, examination, counselling and treatment areas as well as providing a base for the community nursing team.
Family Support	A community based support for parents and their children offering access to family support services.
Healthy Living	The service works with members of the local community and service providers to develop joint initiatives that address inequalities in health and unequal access to services. It will also support the role of the Community Supporter, linked to the First Stop Shop.
Walk-in Centre	The Walk-in Centre is a branch of the North Stoke Centre which is a national pilot project. The centre is nurse led and provides advice, diagnosis and treatment of minor illnesses and injuries as well as health information and promotion
Joint service centres	Many joint service centres enquiries, including general advice and all cash transactions are handled at the First Stop Shop. The office based joint service centres team provide more specialist and complex services either through home visits or by appointment in the confidential interview rooms.
Library	Provides a community library/information service to the residents based on traditional and more innovative/modern media.A new ICT facility is available, jointly managed with the Youth Service, offering support to the public in IT usage.
Youth	For young people aged 11 to 25 (with a focus on those aged 13-19) in the community. The facility provides a range of formal and informal educational and development opportunities, as well as support. Activities, training, information, advice and guidance, group work, and counselling are delivered in a safe and friendly environment where young people can meet and socialise.
Community Centre	The Community Centre facilities are shared between the Contractors within the Centre and the community (via the Community Centre Committee). The venue is used to deliver a range of recreational and

Service	Details
	leisure activities, events and functions to the whole community at a low cost.
Community Enterprise	In partnership with the Council's Education department and Connexions, this service delivers a range of services aimed at improving the employment and enterprise skills of Bentilee residents. They provide access to information, advice and guidance on learning and work and liaise with additional services to provide advice and guidance on other social issues.
Joint Use Rooms	A shared facility providing meeting, training, conference and social facilities for Contractors, the community and external organisations.

Other Associated Services

The Authority is looking to develop joint working arrangements with a number of additional service providers currently serving the community. These will either operate within or out with the Bentilee District Centre but regardless, will integrate the service provision accordingly.

Sure Start Childrens Centre	Based on the south side of Dawlish Drive, the Centre works with parents-to-be, parents and children and will access family support, health partners and other Centre services.
Staffordshire Police Authority	Community safety/law enforcement information and documentation. Linked services to other providers through the First Stop Shop approach.
Jobcentre Plus	Local Job Centre staff providing and delivering ad hoc services appropriate to community need in parallel with the organisations future delivery plans

Additionally the Bentilee District Centre will accommodate a café, pharmacy and a number of community retail outlets. Within the confines of the site there will be an open-air market at least one day per week to complement existing retail.

176. Stakeholders

- 176.1 In view of the acknowledged poor health of citizens in Bentilee, the Council commissioned a detailed and independent health needs assessment of the locality which revealed a high proportion of residents suffering from long term disability or illness, a high proportion of households providing care for friends or relatives and high levels of drugs and alcohol dependency. Such facts alone highlighted the importance of providing high quality and accessible local services which addressed these needs. The key recommendation from the assessment was the need for the Council to jointly plan and structure the provision and delivery of services, with local providers, through the introduction of facilities such as diagnostic and treatment centres, drug and alcohol related services, specialist

outreach provision and expanding such services as dental care and GP practices.

- 176.2 Initial consultation with the community had also revealed that citizens saw "customer centric delivery as the main priority – delivering services around life events rather than professional and other packaging.⁵⁶" This could only be achieved through

"break[ing] down the organisational and functional boundaries with a view to organising services around the needs of the local community⁵⁷"

- 176.3 Therefore a key component of the Council's strategy for regenerating Bentilee involved the need to work closely with key local partner organisations comprising mainly of North Staffordshire Health Authority, North Staffordshire Combined Healthcare NHS Trust and North Stoke Primary Care Trust ("PCT"), since this was the only way in which the health needs of local citizens could adequately be addressed.

- 176.4 The Council already enjoyed a good working relationship with such partners since it had previously worked with them on a range of joint schemes including IT, Sure Start, a family centre and social services joint commissioning arrangements.

- 176.5 In particular, the nature of the services to be provided at the Centre required a close working relationship with the PCT, who together with the Council would be occupying most of the Centre. The NHS 10 Year Plan, dated July 2000, highlighted the NHS objective for investment resulting in 50 new one-stop primary care centres. and it was decided that this would be a key element in making services accessible to the public. In addition, the project is a vital element of the PCT's Local Health Delivery Plan and Strategic Service Development Plan for the NHS LIFT Programme.

- 176.6 The Council and PCT also recognised the need to bring other stakeholders on board such as voluntary agencies as well as organisations such as the police, the Citizens Advice Bureau and Bentilee Community Joint service centres Limited . It was clear that commitment from the PCT would be provide din the form of a formal stakeholder agreement regulating the manner in which the PCT and the Council would occupy the Centre, but it was less clear how involvement of the other stakeholders who wouldn't necessarily be paying for space within the Centre could be obtained.

- 176.7 The Council, PCT and other stakeholders formed a working group to ascertain how the Centre should be developed to meet the needs of the Bentilee community. Their guiding objectives for the project were;-

- deliverability;
- any added value to be provided by Contractor must be tested
- affordability; and
- joint service delivery.

⁵⁶ OBC Addendum para 1.5

⁵⁷ OBC Addendum para 1.2

- 176.8 Pursuant to its duty to develop community strategies for promoting the social, economic and environmental well being of their area pursuant to Section 4 of the Local Government Act 2000, the Council was keen to harness the capabilities of its key partners to assist in regenerating the Bentilee estate.
- 176.9 The project was a key contribution to the achievement of the priorities contained in the Council's Corporate Plan, Community Strategy, Neighbourhood Renewal Strategy and the Council's Asset Management Plan.
- 176.10 A number of consultation meetings took place between all stakeholders to ascertain their respective contribution to the development and procurement of a partner for the Centre.

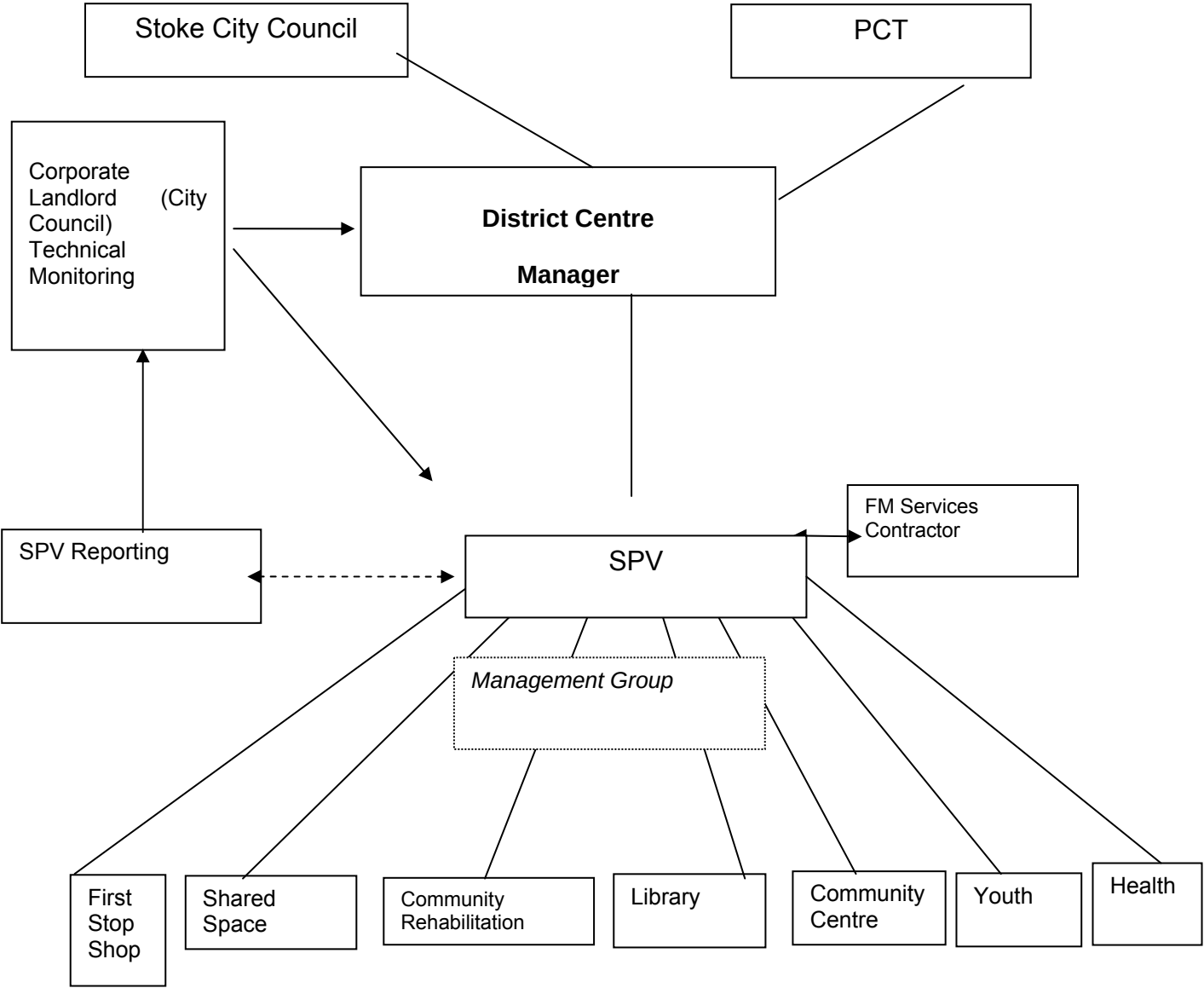
177. **Project Management**

- 177.1 The Council and its partners committed considerable time, energy and resources to developing the Project. The partners have adopted the Projects in Controlled Environments 2 (PRINCE 2) Methodology as a framework for the project management structure.
- 177.2 A Project Team was established comprising of the following sub-groups:
- Corporate Management
 - Project Board (with representation from all stakeholders)
 - Service Integration Group
 - Technical Team
 - Procurement Team
 - Financial Team
 - Stakeholder Group
- 177.3 **Corporate Management** represented by the most senior officers of the main stakeholders (those stakeholders accepting any risk associated with the project) i.e. Council Manager, Stoke-on-Trent City Council and Chief Executive, North Stoke Primary Care Trust. This team the Corporate Management was collective authoritative body who represented the interests of the organisations for whom the project is undertaken.
- 177.4 **Project Board** provided overall direction and management for the project, comprising of the Project Director and two other main groups i.e. Senior Suppliers and Senior Users/Stakeholders:
- 177.5 **Senior Suppliers** consisted of senior representatives from the Council's Finance and Corporate Assets departments who represented the interests of those designing, developing, facilitating, procuring, and implementing the project products.
- 177.6 **Senior Users/Stakeholders** consisted of chief officers from the service providers who would occupy the Centre i.e. Social Services, North Stoke Primary Care Trust, Directorate of Community Information. Its role was to ensure the needs of all those who will operate out of the Centre will be met in terms of quality, functionality and ease of use. .

- 177.7 Project Manager, also the Council's Asset Management Manager had prime responsibility for managing the project on a day to day basis.
- 177.8 There were also a number of specialist teams covering procurement, technical and financial consisting of representatives from all key stakeholders as well as their external legal, financial and technical advisers. However probably the most significant group was the service integration group ("SIG").
- 177.9 **SIG** was managed by a manager appointed by North Stoke Primary Care Trust, and the team included officers from the other main Contractors. It was responsible for the production of a Service Delivery Plan, following liaison with all stakeholders to gain an understanding of their respective statutory duties and service integration needs. The team was responsible for defining those requirements so that they could be incorporated into the Output Specification produced by the Technical team.
- 177.10 SIG was also responsible for ensuring that the public services provided at the Centre were in accordance with stakeholders' vision and expectations and the community they represent, and to effectively manage the transfer operations and services from their existing locations. Further details are given about SIG below.
- 177.11 The proposed project management structure for the project once the Centre was built is contained in Figure 22 below.

Figure 22

PROJECT MANAGEMENT STRUCTURE



178. **Service Integration**

178.1 One of the guiding principles of the scheme was the acknowledgement that

“the PFI is only a means to an end – the key requirement is an operational centre that satisfies the needs of the community – this will be as much related to the public services staff/operations in the centre as it is to the building functionality”.

178.2 There was early recognition that the Centre was about more than bringing the activities and spatial requirements of the partners together.

"Co-habitation within the Centre was not enough – the objective was co-delivery, rationalising both the services and the environments within which delivery takes place. This means that the Centre should be based on summation rather than addition."

178.3 To ensure such objectives were adequately addressed a Service Integration Manager and Learning and Change Manager were appointed and SIG formed in February 2002. Membership comprises of key representatives from each of the Contractors who would deliver services from within the Centre as well as nominated Bentilee community representatives.

178.4 SIG was primarily responsible for :

- the design, development and delivery of an integrated services package;
- promoting and fostering a culture of cross organisational working to facilitate the delivery of a seamless customer focused service; and
- responding to the requirements of the procurement process

178.5 SIG defined the core the vision, principles and key features of the project as follows:

178.6 **Vision** - We believe that by working together we can provide improved and comprehensive access to services, through the Centre, that will enhance the quality of life of people in the area.

178.7 **Principles** - We will achieve the vision by adopting the following principles:

- Be open
- Foster mutual understanding
- Accept shared ownership
- Be pioneering
- Continually improve
- Customer focussed
- Excellence in everything

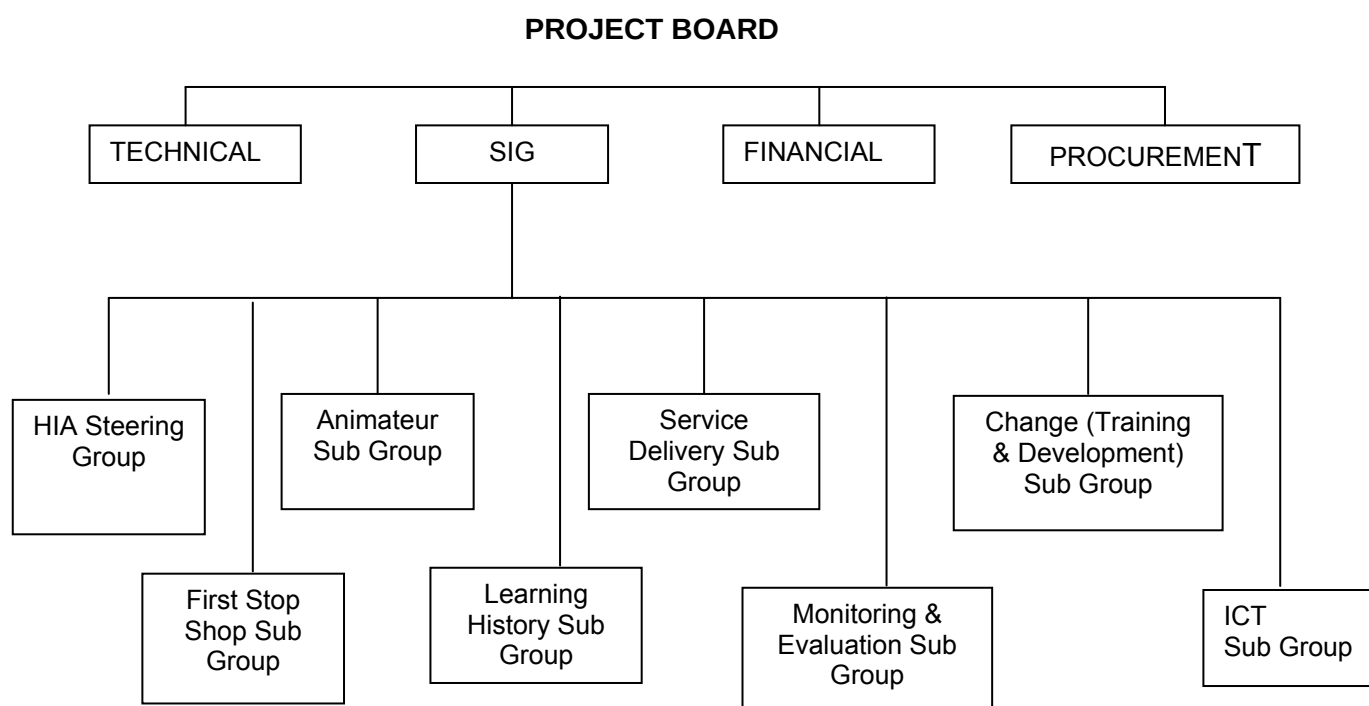
178.8 **Key Features** – We will evidence the principles through:

- Community involvement in the management and running of the Centre
- Delivering a service which is understandable and transparent
- Focussing on identifying, with individuals, their needs and addressing them
- Meeting needs within the Centre or providing wider access to services

- Valuing the contribution of all ,especially young people, as equal partners in Centre development and service delivery; affording them consideration as creative, active customers in integrated service development
- A secure, welcoming and open environment in which members of the community will receive the highest standards of service from all providers
- Individuals working seamlessly across organisational and operational structures
- Contractors working in new ways to provide integrated services; and
- The innovation and flexibility of Contractors over the ownership and usage of space within the Centre

178.9 One of the roles of SIG was to define, develop and detail the services to be delivered in the Centre. Due to the complexity of such work, a number of SIG sub-groups were tasked with developing service packages for certain services as depicted below.

Figure 9



178.10 Each SIG sub-group was given clear terms of reference, objectives and a number of outcomes to achieve within given time scales to inform the service delivery model, the Centre Operating Manual.

178.11 Collectively, SIG, SIG sub-groups, community representatives and the SIG manager informed and shaped the design and layout of the Centre through:-

- SIG monthly meetings
- contribution to the output specification
- Production of the Service Delivery Plan
- Presentations from and meetings with bidders throughout the procurement process
- Attending meetings of community groups, community centre committee and interested parties
- Staff consultations and briefings
- Membership of the Project Board, Technical, Financial and Legal groups
- Stakeholder consultation day

- Involvement in the evaluation process from PQQ to BAFO

179. **Third Party Consultation**

- 179.1 A series of consultation exercises were held with both service stakeholders and local residents groups to ensure that all needs were adequately addressed in the development of the Centre.
- 179.2 Staff, and their respective trade union representatives, who would be affected by development of the Centre were consulted on the potential impact of the Centre on their current job roles.
- 179.3 Ongoing consultation and negotiation took place between the Contractor and the Council's retail tenants to agree their requirements for the forthcoming retail development within the Centre.

180. **Soft Market Testing**

- 180.1 In view of the innovative nature of the scheme, and to assess the extent to which such a complex scheme involving a range of different stakeholders could be accommodated and indeed embraced by the private sector, a soft market testing exercise was developed to primarily ascertain
- whether there was any market appetite for such a low capital value scheme involving a range of Contractors;
 - the scope of services which the private sector would be willing to take and those which should be retained by the partners; and
 - whether there was any interest in the envisaged retail element of the Centre.
- 180.2 A Prior Information Notice was issued in the Official Journal of the European Community inviting expressions of interest to be included in a soft market testing exercise. Almost 20 responses were submitted in response to a series of questions drafted by the Council. A detailed information memorandum (including site plans) was issued to inform potential respondents of the envisaged nature and scope of the project. The questions related primarily to;
- how the provider would deal with the relationship between the SPV and the Centre's occupants and what they would expect in terms of contractual arrangements;
 - comments on the design of the Centre and the scope of the project, particularly in relation to retail;
 - how they would deal with decanting arrangements;
 - whether bringing three small centres within a single Centre was more attractive.
- 180.3 Half of the responses met the Council's evaluation criteria and were invited to attend an informal discussion with Council and PCT officers and their external advisers to explore their responses further. The key messages for the Council were;-
- combining all 3 centres into a single and larger Centre would make the project more attractive to the market and reduce procurement costs
 - there was no appetite for taking all the demand risk in relation to retail;

- some respondents were only interested in providing design, build and finance and operate services whilst others were more keen to explore the possibility of providing additional services; and
- respondents were happy with the legal structure and documentation⁵⁸.

180.4 The Council explained that the exercise

"gave us good understanding of what the private sector market place is willing to accept in terms of the scope of the PFI contract and risk transfer."

180.5 It also gave the partners confidence that innovative opportunities presented by the scheme would be taken by potential PFI providers who would see it as helping them to provide strategic base from they could explore similar emerging opportunities in the future.

180.6 The exercise certainly informed the Council as to the scope of the project. It was clear that the design, build, finance and operation of the Centre, together with facilities management services would form part of the contract. It was also clear that some services should continue to be provided by the public sector, namely joint service centres, library, GP surgeries etc. However there were a range of services which could be delivered by either party and therefore such services were stipulated as either mandatory or discretionary variant bids (eg one stop shop and related administrative functions, sympathetic retail and commercial retail).

181. **Procurement**

181.1 One might ask why PFI was chosen and not NHS LIFT, given that a large part of the Centre would be accommodating health and health related services. The simple answer was that the origins of the project pre-dated the development of NHS LIFT. Given the importance attributed by stakeholders to service integration towards the success of the project, it is highly likely that NHS LIFT even if it had been available would not have met the requirements of Centre occupants since due to its lacuna concerning soft FM and the concept of individual Lease Plus Tenants, unless individual Tenants decide to make an effort to integrate their services.

181.2 Furthermore, and more significantly, in view of the unique manner in which the project sought to regenerate a locality by providing access for all residents to a range of health, social, information and commercial services in a co-ordinate and cohesive fashion, the project was an ODPM PFI Pathfinder scheme whose achievements would hopefully be emulated across the UK.

181.3 The Council followed the negotiated procedure under the Public Services Contract Regulations 1993 (S11993/3228) and (the "Service Regulations"). Two Contract Notices were published in the Official Journal of European Union one relating to Works and the other to the Services to be provided by the Contractor. Obviously since at this stage it was unclear exactly what services would be included within the project, the notices were drafted widely to allow exploration with bidders as to which commercial solutions would satisfy the objectives of the public sector partners. The procurement timetable is set out in Figure 24.

⁵⁸ For a more comprehensive understanding of the exercise please see the 4ps website for a case study examining this soft market testing exercise – www.4ps.gov.uk

Figure 10

PFI Procurement Programme	
Stage	Date
OJEU Contract Notice	1 March 2002
Expressions of Interest Deadline	7 April 2002
Information Memorandum and Pre-qualification Questionnaire (PQQ) issued	9 April 2002
PQQ submission date	30 April 2002
PQQ evaluation and short-listing	1 May – 10 May 2002
Bidders Day	21 May 2002
Council's Risk Assessment of Project Costs	June – September 2002
Development of Invitation to Negotiate (ITN)	Sept – December 2002
ITN issued	9 December 2002
ITN submission date	26 March 2003
ITN Evaluation	26 March – 30 April 2003
Best and Final Offer (BaFO) issued	20 August 2003
BaFO submission date	5 September 2003
BaFO Evaluation and Clarification	8 September – 16 October 2003
Appointment of Preferred Bidder	24 November 2003
Commercial Negotiations	December 2003 – March 2004
Commercial Close	31 March 2004
Financial Close	February 2005
Project Commencement	April 2006

- 181.4 Following the receipt of a large number of expressions of interest, three compliant PQQ responses were submitted. Due to the lower than expected number of responses, and following legal advice, it was decided that all pre-qualified bidders would be invited to submit ITN bids.
- 181.5 The ITN was issued to the three pre-qualified bidders providing full details of the Partners' output requirements, risk analysis, payment mechanism, and the form of project agreement. Bidders were invited to submit one Core Bid and two Mandatory Variant Bids. One of the Mandatory Variants related to the provision of the Community Centre by means of an alternative approach and the second related to a capital investment for environmental works. Bidders were also encouraged to consider the submission of Discretionary Variant bids which offered value for money for the Partners. One of the bidder withdrew from the competition and did not submit a compliant ITN Bid. The evaluation process was conducted by the joint Council and PCT teams.
- 181.6 The two submitted complaint bids raised affordability issues and it was considered by the evaluation team that the proposals submitted by each bidder offered scope for achieving improved value for money which could be achieved by asking the Bidders to submit their best and final offers.
- 181.7 Best and Final Offer invitations were issued to the two remaining bidders and following consideration of submitted proposals the Contractor was selected as preferred bidder in accordance with the procurement timetable.
- 181.8 The Preferred Bidder letter listed the outstanding issues which would be negotiated prior to contractual and financial close and contractual close took place on 31 March 2004. A decision was taken to split financial and contractual close due to delay in obtaining vacant possession of the existing retail units on the site. Had this issue been addressed earlier in the process, there would have been no reason to delay financial close. The impact of an eight month gap between contractual and financial close (which took place in November 2004) involved

182. Legal Issues

Council Vires

182.1 The Council had power to enter into the legal arrangements associated with the development of the Centre pursuant to the following powers:-

182.1.1 Section 1(1) of the Local Government (Contracts) Act 1997 which provides that whenever a statutory provision confers or imposes a function on an authority, there is also conferred upon that authority a power to enter into a contract with another for the provision, or making available, of assets or services (or both) for the purposes of or in connection with the discharge of that function by the authority. Both the PFI Project Agreement and the Funders Direct Agreement would be certified contracts for the purposes of the Act, which protects the interests of the private sector in the event the contract is declared ultra vires the powers of the authority and the Project Agreement would contain appropriate relevant discharge terms which would in such circumstances apply..

182.1.2 Section 120 of the Local Government Act 1972 ("1972 Act"), which allows local authorities to acquire, by agreement, any land, whether situated inside or outside their area, for the purpose of any of their functions, or the benefit, improvement or development of their area.

182.1.3 Section 123 of the 1972 Act allows authorities to dispose of land held by them in any manner they wish, unless they intend to dispose of land at less than the best consideration that can reasonably be obtained in which case they seek consent from the Secretary of State for such disposal. Section 128 of the 1972 Act confers on the Secretary of State powers to give general consent for the purpose of certain land transactions which authorities may wish to carry out. Pursuant to the Local Government Act 1972: General Disposal Consents 1998 (paragraph 2) consent has been given by the Secretary of State:

"To the disposal of a leasehold interest, otherwise than by way of a short tenancy, where the terms of the disposal, including any agreement or other contract which is binding on the parties, require the use of the land, or its improvement and use for the purpose of.....a.....health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, as amended, or a National Health Service trust constituted under Part 1 of that Act"

182.1.4 Section 1 of the 1970 Act allows authorities and any public body may enter into an agreement for (amongst other things) the following purposes:

- the supply by the authority to the body of any goods or materials and
- the provision by the authority for the body of any administrative, professional or technical services

182.1.5 Section 28 of the 1977 Act enables authorities to make available to health authorities and NHS trusts, acting in their area, the services of persons employed by the authority for the purpose of the authority's functions under the Local Authority Social Services Act 1970, so far as reasonably practicable, to enable health authorities and NHS trusts to discharge their functions under the 1977 Act and, the National Health Service and Community Care Act 1990.

182.1.6 Section 2 of the Local Government Act 2000 gives local authorities the power to take any action which they consider will be likely to promote or improve the economic, social or environmental well-being of their local community.

182.1.7 Section 31 of the Health Act 1999 permits local authorities to enter into partnership arrangements with NHS Bodies in relation to the discharge of certain functions prescribed by regulations. Such arrangements may be entered into if they are likely to lead to an improvement in the way in which those functions are exercised, and includes the power to maintain pooled funds.

PCT Vires

182.2 The PCT had the power to enter into the legal arrangements concerning the development of the Centre pursuant to the following:-

182.2.1 paragraph 12 of Schedule 5A, Part III of the National Health Service 1977 Act (as amended by the Health Act 1999) to do anything which appears to be necessary or expedient for the purpose of or in connection with the exercise of their functions, including the acquiring or disposing of land and entering into contracts.

182.2.2 section 18A (3) of the 1977 Act (as amended by the Health Act 1999 and the Health and Social Care (Community Health and Standards) Act 2003) to provide premises for the use of persons providing general dental, general ophthalmic or pharmaceutical services, or providing or performing primary medical services, or performing personal dental services under an agreement made under section 28C of the 1977 Act on any terms they think fit.

182.2.3 in exercising their functions are under a duty to co-operate with local authorities to secure and advance the health and welfare of the people of England and Wales in compliance with section 22 of the 1977 Act (as amended by the Health Act 1999).

Project Agreement

182.3 As the lead procuring body, it was decided that the Council would enter into the PFI agreement with the Contractor for a period of 25 years during which the Contractor would build, finance and operate the Centre. The Council would pay a monthly service charge ("Unitary Charge") for occupying the Centre, which would be subject to deductions for non or poor performance. The Council in conjunction with the PCT and any other occupants would determine amongst themselves the proportions in which such parties would contribute to the Unitary Charge.

182.4 The PFI Project Agreement between the Council and the Contractor was based on the Standardisation of PFI Contracts ("SoPC")

Stakeholder Agreement

182.5 The Council passed down some of its obligations in the PFI Project Agreement to the PCT insofar as those obligations related to serviced space in the Centre occupied by the PCT or those occupying under arrangements made by the PCT. The terms of this relationship were contained in a Stakeholder Agreement.

182.6 The Stakeholder Agreement also contained governance arrangements for operation of the Centre and its relationship with the Council as well as occupational arrangements

Leases

- 182.7 Once the Centre was built, the Council intended to lease back the Centre from the PFI Contractor to enable it to grant sub-leases and licences as follows;
- a 25 year sub-lease of part to the PCT, who would enter into back to back sub-leases with GPs and any other health trusts;
 - a sub-lease or licence of part to Bentilee Community Joint service centres Limited;
 - a sub-lease or licence of part to the Citizens Advice Bureau; and
 - various sub-leases and/or licences of part to other stakeholders and voluntary agencies.

Section 31 Agreement

Pursuant to a Section 31 Agreement the Council's Social Services function and the PCT collaborated on the development of a seamless Community Rehabilitation Service.

Risk Allocation

- 182.8 The structure of the PFI project and the negotiations resulted in the Council transferring a significant amount of risk to the private sector;-
- 182.8.1 **Capital:** the main risks of cost and time overrun including project management were transferred to the Contractor. No payments would be made to the Contractor until service commencement..
- 182.8.2 **Lifecycle:** the delivery of services through a fixed price mechanism, according to compliance with the output specification ensured the Contractor retained all risks associated with lifecycle replacement including the frequency and cost of fabric, installation and equipment replacement.
- 182.8.3 **Performance:** the payment mechanism made the full Unitary Payment vulnerable to deductions thereby enabling the Council to withhold total payment if no service was delivered in accordance with the standards set out in the output specification and payment mechanism. The Council did not retain any poor service delivery risk.
- 182.8.4 **Third party income:** the guarantee of a fixed annual retail income meant demand risk up to the level of this amount was fully borne by the Contractor. This level merely covered the cost of providing retail facilities, thereby ensuring the risk of making a positive return on retail was fully transferred. Any income above this level was shared between the Contractor and the Council in accordance with an overage mechanism.
- 182.8.5 **Termination:** if the Contractor was in default, the Council would be protected from risk by only paying compensation to the extent that the contract has any future value at the point of termination.
- 182.8.6 **Residual value:** the Council would receive the Centre at the expiry of the project agreement (25 years) for nil consideration.
- 182.8.7 **Vandalism:** a number of additional security measures were installed to reduce this risk, and it was agreed that vandalism outside core hours and in external areas at any time, would be borne by the Contractor up to a cap.

183. Finance

- 183.1 The financing of the Centre was derived from a mixture of single regeneration budget funds, neighbourhood renewal fund monies and PFI credits from the ODPM. As an ODPM PFI Pathfinder scheme, central government was keen that other communities should emulate the principles which underpinned the development of the scheme, if it proved to be a success.
- 183.2 The usual PFI funding structure was adopted, involving 10% of equity (from the contractor) and 90% of borrowing. The SPV had two main subcontractors, one dealing with the design, construction and maintenance of the Centre and the other providing soft facilities management services such as cleaning, grounds maintenance, the provision of handypersons and security services.
- 183.3 Although the Council had previously applied for and received provisional approval for funding for the Centre through PFI credits, it developed financial models to demonstrate to its partners that the Centre, developed through PFI, was capable of delivering the objectives of all partners.
- 183.4 A mechanism was established to share out the PFI RSG credits between the partnering public bodies
- 183.5 The Council entered into a Development Partnership with North Staffordshire Health Authority to share project development costs.

Affordability

- 183.6 The affordability of the project benefited from the success of the Contractor receiving Inland Revenue approval for their COP 10 application on tax treatment. This allowed the Contractor to use the 'contract debtor' accounting treatment and the tax liabilities to follow the accounting, effectively writing off the whole capital expenditure instead of using capital allowances.

Payment Mechanism

- 183.7 A detailed Payment Mechanism, originally provided at ITN, and refined during the negotiation process, detailed how the Council would pay the Contractor for providing a serviced and managed Centre, as well as allowing the Council to withhold payment when the Contractor failed to meet the required standard of performance as set out in the output specification. 100% of the Unitary Payment was at risk of unavailability and poor performance reflecting the "no service, no fee" principle of PFI.
- 183.8 The Payment Mechanism was area based, with deductions calculated according to the relative importance of each area defined by a weighting system. A basic area rate was calculated each year which divided the Unitary Payment by the total weight of the areas, and used this as a basis for all deduction calculations.
- 183.9 The Contractor was given a rectification period before any deductions would be incurred and deductions would be accelerated for repetitive failures.
- 183.10 Deductions were triggered by any report from Council staff or Centre visitors. At the same time the Contractor was required to operate its own performance monitoring mechanism thereby ensuring it accurately recorded and assessed its own performance against the output specification..

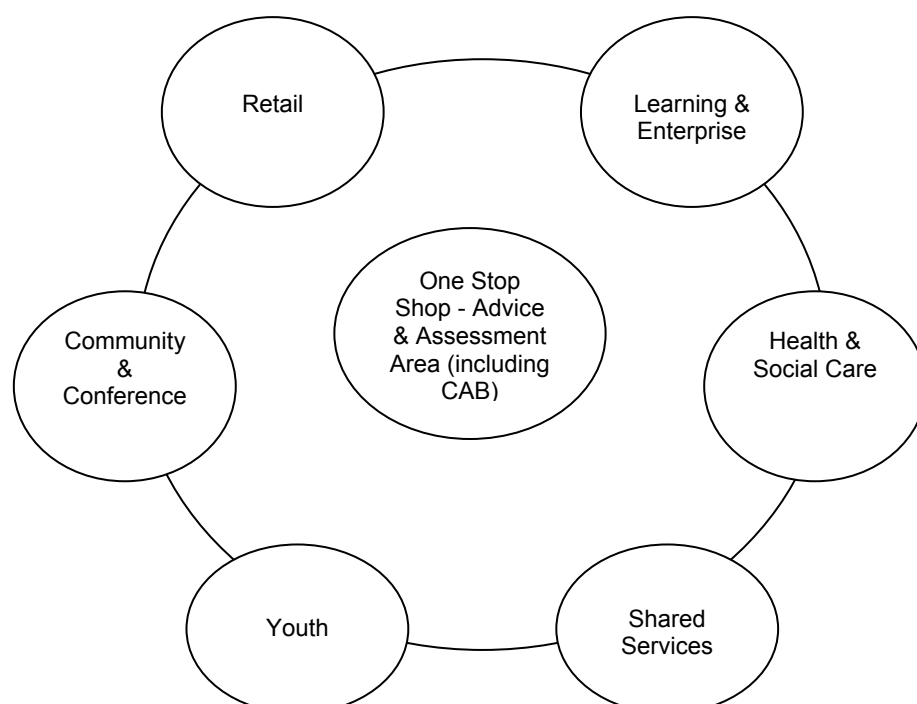
Third Party Income

183.11 The Contractor was encouraged to generate third party income through the retail element of the project. Further details are set out below.

184. Design

184.1 SIG reviewed the synergies between the services and developed an indicative service model designed to capture the customer centric ethos of the Centre (see Figure 25 below) although they accepted the final design of the Centre would be developed in conjunction with the PFI Contractor.

Figure 11 Indicative Service Zones



184.2 The design of the Centre was developed to ensure equality of access for all public sector service customers, with external access from four directions, drawing the customer/patient directly to the First Stop Shop reception which forms the central focus of the building and is the focus for customer centric joined-up service delivery.

184.3 Considerable importance was attached on the need within the Centre for multi-purpose and joint use accommodation, which would assist to promote joint working arrangements between all Contractors. All services are accessed from an internal street area providing a secure internal environment for the public. Additional facilities such as the Community Café and complementary private sector services such as the internal pharmacy provide a greater sense of ownership and involvement for the users.

184.4 The incorporation of an integrated community retail solution within the development, reflected the community aspirations captured through a number of consultation exercises. It was envisaged that the combination of commercial retail and public sector service delivery, all under one roof, would be mutually beneficial and increase the use of public services.

184.5 Service capacity modelling was undertaken to identify the anticipated levels of service provision and the consequential spatial requirements based on existing service usage and the projected increase in service usage based on the new facility and joined up working

with partner agencies. As mentioned previously the health needs assessment informed this process and helped to establish the required levels of current service needs as well as quantified future demand patterns and identified areas where current service provision was inadequate or non-existent. The results of the modelling exercise informed the spatial requirements for each Contractor.

- 184.6 It was also clear that certain user groups would need to be located either close to or some distance from others to maximise the public service received.
- 184.7 It was the role of SIG to work through the issues of service integration SIG developed a Public Sector Service Delivery Plan and once the Centre was due to be built it was envisaged that an Operating Plan and Manual will be jointly developed between the public and private sector partners.
- 184.8 Figure 24 below details the floor space made available within the Centre for the various services.

Figure 12

Service	Net usable floor area, excluding circulation and ancillary space m2	Gross internal floor area including circulation and ancillary space m2	Percentage of gross internal floor area %
Health	1292	2141	34%
Joint service centres	208	274	4%
Learning and Enterprise	346	457	7%
Youth Service	130	191	3%
Community and Conference	671	837	13%
Joint Use Rooms	375	549	9%
First Stop Shop	237	892	14%
CAB	98	145	2%
Retail	913	913	14%
Total	4270	6399	100%

- 184.9 As mentioned above there were a number of services such as First Stop Shop, administrative functions, ICT and retailing, which could potentially be included or excluded from the project. Following a detailed in-depth analysis of the risks associated, with what was already considered by the private sector to be a small but complex scheme, it was strategically concluded that these services, excluding retail, would be best placed within the public sector control. The First Stop Shop, administrative functions and ICT requirements would be delivered in partnership by the Council and PCT, through joint funding arrangements with management protocols, in accordance with data protection legislation and appropriate staff secondment implications.
- 184.10 The Service Integration Team have moved significantly towards developing a integrated telephone system through a virtual network. This will ensure that staff will have access to all short-dial facilities for their respective organisations, whilst members of the public are channelled through one interface for the District Centre. Additionally, of course, it is expected to incorporate the Council's "Stoke on Call" customer service facility.
- 184.11 A public sector appointed District Centre manager will manage front of house staff, which will include both Council and health employees, who will also lead the Service Management Group, represent all services on the District Centre Management Committee and by the Authority Representative for the SPV.
- 184.12 Community retail facilities will be incorporated into the centre, the cost of which will be met by a guaranteed income stream from the letting of the retail units by the SPV. The position

achieved for retail is far better than that envisaged early in the development of the project. The SPV will manage the retail units and take demand risk subject to a specific limit.

- 184.13 The land block originally identified for the scheme has been reduced in size since the OBC. The main reason for this has been due to a risk assessment conducted on the lower segments of land which were defined as public open space. The risks of developing this land was considered to be too great and could have jeopardised the delivery of the whole project. The land area containing the existing Day Services Centre has been removed from the project site area as it is currently not planned for development within the construction of the centre.

185. Output Specification

- 185.1 The work undertaken by SIG was used by the technical team to develop the output specification which the Contractor would be required to deliver. A summary of the main outcomes required is set out below.

Figure 13

Service	Required Outcome
Works specification	The provision of serviced accommodation to permit the Council and PCT to deliver “joined-up” services in accordance with the Public Sector Service Delivery Plan, to achieve major improvements in the standard of community services within the area.
Design	A Centre, which will accommodate the proposed services and make a positive statement to the community. The design of the Centre must also meet all other requirements of the Output Specification in respect of technical and operational performance, compliance with statute and regulations, and health and safety.
Energy Efficiency	The Council wants the scheme to be a demonstration project in terms of energy efficiency. They feel that significant reductions in energy consumption, compared with current good practice benchmarks, can be achieved without disproportionately increasing the capital cost of the scheme. Challenging yet achievable targets for energy consumption are set out in the Output Specification. To achieve these targets the Contractor will need to address not only the design of mechanical and electrical installations, but also issues such as building plan form and orientation, building mass and insulation values together with passive environmental control, all which impact on energy consumption.
Capacity	A Centre design that will achieve the successful accommodation of the number of staff, visitors and customers specified by the Council yet provide flexibility for future changes.
Accommodation requirements	Spatial relationships must accord with the requirements of the Council, the PCT and the other Stakeholders as detailed in the Area Data Sheets and elsewhere in the documentation. Spaces must perform as required by the Area Data Sheets. The Contractor is expected to pay particular attention to the need for accommodation to be shared by different Stakeholders and its implications on location, circulation routes and the need for different types of storage in the Centre, which should be well integrated and contribute to the efficient performance of the building(s). Area data sheets refer to the particular requirements of each accommodation space.
Sustainability	Facilities designed and operated in such a way as to display a best practice approach to sustainability of building components and demonstrate innovative energy and environmental management, which may include the following: • Contribution to minimising ozone depletion, global warming, air and water pollution, and non-renewable resource depletion. • Maximise the use of energy efficient materials and processes. • Minimise the risk of legionnaire’s disease. • Avoid sources of ionising and electromagnetic radiation and any design features associated with sick building syndrome. • Maximise the opportunity for re-cycling. • Enable maintenance regimes to be used to maintain optimum performance.

Service	Required Outcome
	• Avoid any clearly harmful building products and processes. • The use, where possible, of natural resources such as daylight, natural ventilation and passive solar energy
Quality Assurance and Monitoring	Building Contractor, Facilities Management and/or Operator Companies and their sub-contractors having accreditation and operating quality management and control systems in accordance with BS EN 9001 or 9002, as appropriate (or equivalent externally audited quality assurance standard). In addition Building Contractors, Facilities Management Companies and all sub-contractors adhering to the principles of Rethinking Construction.
Record Drawings and Documents	A current and complete written and drawn record of the building(s), grounds and installations to be available for inspection prior to the Service Availability Date.
Compliance with Statutory Requirements	Compliance with all relevant statutory requirements in the design, implementation and operation of the Centre and its facilities.
Life Expectancy of Building Elements	A balance between life expectancy of materials and components used, and the life-cycle maintenance regime associated with those choices. Decisions regarding the life expectancy of the Centre, or of its major components, must reflect decisions about the terms of the Agreement, the likely requirement for continued use after the end of the Agreement, and affordability constraints of the Authority.
Weather Protection	All elements of the building fabric, components and installations to provide resistance to penetration by rain, snow and wind, and to moisture rising from the ground
Acoustics	A Centre which performs well, acoustically, and where staff and visitors are not disturbed by extraneous noise and privacy is maintained.
Building Services – Mechanical Installations	Provision, operation and maintenance of effective heating, cooling and ventilation systems, hot and cold water supplies, drainage, gas and lifts where appropriate, which must meet the performance criteria set out in this Output Specification.
Building Services – Electrical Installations	Provision, operation and maintenance of electrical supply installations to meet the needs of the Centre, which must meet the performance criteria set out in the Output Specification
Building Services - ICT	Provision and maintenance of an integrated data and voice network infrastructure to meet the needs of the Centre.
Accommodation for continuous Stakeholder Service Delivery	To the extent that the construction programme and activities would inhibit, restrict or prevent the provision of existing public sector services the Contractor must provide the facilities required to enable continued service delivery. This requirement will not apply to the Library service, during the construction, fitting out and commissioning phases, as alternative temporary accommodation will be provided by the Council.
Services Specification	
Facilities Management - General	Comprehensive facilities management (FM) services to the Centre to achieve the following overriding objectives over the life of the Agreement: • agreed levels of service quality that support the operational objectives of the Centre; • a single point of contact between the Council's duly designated representatives and the Contractor; • a pro-active and responsive service within agreed timescales; • service delivery that fosters measurable, continuous improvement in line with the Centre's core operating objectives and Best Value.

Service	Required Outcome
Management of the Centre	Professional management of the routine operation of the Centre to facilitate the efficient delivery of Stakeholder services, promote a secure and safe environment and an atmosphere of customer care; liaison with the Stakeholder Contractors and the undertaking of ad hoc tasks which ameliorate the smooth day-to-day running of the Centre
Cleaning and Waste Management	Cleaning of the Centre and identified external areas general and clinical waste removal in such a way as to maintain a clean, healthy safe and tidy environment for users; allow the Stakeholder Contractors the efficient and effective operational use of facilities; and promote a positive image of the Centre to the staff and public.
Security and Health and Safety	A safe and secure environment established and maintained for all users of the Centre and the public during construction and operational stages, and the protection of the Centre building(s), their contents and the external grounds at all times in order to minimise the risk of injury, theft or damage.
Building, Installations and Asset Maintenance	A good quality, weather tight, safe comfortable and secure environment in accordance with the Area Data Sheets, for all users of the Centre throughout the period of the Agreement through the provision of a complete maintenance service for all the Centres' facilities, including the retail element. The service must minimise breakdowns and maintain: • the required Availability of the Centre and parts thereof; • the building elements , associated services, non clinical furniture and equipment (excluding furniture and equipment supplied by the Council) The condition and appearance of the Centre shall remain that of a well-maintained facility in accordance with the Minimum Acceptable Conditions, appended to the Output Specification
Ground Maintenance	Provision, maintenance and renewal as necessary of those parts of the Site, with the exception of the existing Playground, consisting of external works, hard surfacing, soft landscaping, planting, walls, fences, gates, site furniture and equipment etc., in an external environment that is accessible, attractive, clean, safe and secure for all users of the Centre throughout the year
Utilities Management	The efficient, effective, safe, and timely supply of energy and utilities including electricity, gas, oil, solid fuel and water. Provision for the removal of all effluents including, but not limited to, sewage, run-off, and waste. Monitoring and management of energy consumption in accordance with recognised good practice to produce an energy efficient development
Furniture, fittings and equipment	Provision and maintenance of furniture, fittings and equipment (non-clinical), as listed on the Area Data Sheets, (other than that supplied by the Council) throughout the period of the Agreement. Such provision to ensure Value for Money, flexibility and choice, together with proper use of equipment through training, and effective maintenance management to minimise disruption to the centre.
Best Value and Quality Assurance	The Council is able to demonstrate that it is achieving Best Value in the delivery of FM services at the District Centre

186. Soft Facilities Management

- 186.1 As mentioned above, one of the key issues that required careful consideration was how the joint facility would be looked after on a day to day basis. Given that individual Contractors would only occupy specified areas, what would happen to the common parts? Would individual occupiers have their own solutions for dealing with waste disposal, collation of post and security? Since one of the main purposes of the Centre was to ensure all occupants could benefit from the efficiencies of co-location, it was decided that responsibilities for so called soft facilities management services would be transferred to

the Contractor. It would be best placed to ensure the whole Centre ran efficiently, was kept secure and the various requirements of its occupants were adequately addressed.

186.2 Such responsibilities included the following:-

- Cleaning and waste management
- window cleaning
- management of the centre/premises management
- external grounds maintenance
- all building installations, asset maintenance and repairs (including mechanical and electrical, and internal repairs
- Utilities Management
- provision of non clinical furniture, fixtures, fittings and equipment
- information technology and communications infrastructure
- internal decoration
- safety & electrical equipment testing
- Buildings insurance
- Comprehensive “handy person” service during Priority 1 (Core) hours;
- Robust on-site security presence between the hours of 06:30am and [0.00am]
- Accreditation to BS 7499 (Code of Practice for the provision of Static guarding and mobile patrols) standard
- Provision of consumables to all accommodation
- Health and Safety; including fire safety and emergency evacuation
- Robust responsive maintenance and cleaning service supported by on site handy persons

186.3 To ensure the differing standards required for each occupant (eg health service required more specific and higher standards of waste disposal than the other occupants) were adequately addressed, the Contractor was responsible for ensuring the layout of the Centre facilitated its ability to meet all such requirements.

186.4 There was some deliberation over whether catering services should be provided by the Contractor, but due to it was decided that a Community café as part of the retail element of the Centre would provide the most economical catering solution.

187. **ICT**

187.1 In determining which services should be within the PFI project, SIG spent a considerable amount of time exploring how the provision of ICT services should be provided. The ability of all Contractors to gather, hold, update and share information about individual Centre users, as well as be linked to their respective departmental databases was identified as a valuable tool for all Centre occupants. Such information would not only enable them to review their performance and develop appropriate strategies but it would assist in integrating all Contractors within the Centre as well as ensuring they have access to the necessary databases and information portals of sister agencies.

187.2 Against the obvious benefits of an integrated ICT service, lay the constraints of considerable additional investment, especially given that existing resources used by the various occupants were not compatible and required considerable modification before such bodies could share and exchange information.

- 187.3 The soft market testing exercise revealed there were essentially three options for ICT;:
- include no ICT provision within the PFI project and contract separately with an existing or new ICT provider;
 - include only ICT infrastructure within the PFI eg cabling, switches and data ports etc; or
 - include all ICT provision (hardware, software and infrastructure) within the PFI.
- 187.4 Additional complexities arose due to the different levels of ICT usage amongst the various occupants of the Centre and the extent to which the required capital and maintenance costs could be justified or met by the parties over the course of the PFI contract. Furthermore, PFI contracts span 20-25 years whereas technological requirements change more frequently and it is difficult to imagine the commercial rationale for entering into an ICT contract for a period in excess of 7-10 years.
- 187.5 The Council concluded that only ICT infrastructure would be included within the PFI project, with all requirements to align with Council's existing legacy systems. Although this would not initially facilitate integration between Centre occupants since the PCT and the Council would initially have separate services but it was anticipated that this could be overcome over time.
188. **Retail**
- 188.1 14 of the 16 retail units situated at the Bentilee estate shopping parade were trading in September 2001. This relatively high level of provision despite the poor condition of the parade was largely attributed to the inability of the local population to access other local shopping facilities, all of which involved a bus or car journey. Therefore in view of the importance of such retail to local inhabitants, the Council wanted to use the opportunity provided by the PFI project to discover how such provision could be improved. Most of the retail units were leased from the Council by commercial partners. The Council was particularly interested in identifying the extent to which income from the retail units could be used to off-set payments due to the PFI Contractor through the Unitary Charge.
- 188.2 The Council's considered a number of options, including whether to undertake a separate retail development prior to, alongside or after the PFI for the Centre or include some or all retail within the PFI project. Both formal (soft market testing) and informal soundings from existing occupying retailers and national and local commercial retailers suggested that being part of a redeveloped retail centre was appealing. However there was some nervousness surrounding the inclusion of retail within the PFI project, particularly due to the limited understanding of PFI by some commercial property developers.
- 188.3 Evidence from other authorities is varied as to the incorporation of retail within PFI projects, since although a limited number of PFI schemes have incorporated some retail redevelopment, these have mainly tended to involve large schemes with high land values and good commercial opportunities, which didn't align with the Council's objective of a local regeneration scheme.
- 188.4 The Council did not want to undertake two separate developments either simultaneously or consecutively since it believed such schemes may not be complimentary and benefit from the synergies that a single scheme could offer, and it was unlikely that the market would be interested in a parallel small retail development alongside a PFI. The attraction of PFI was the ability to transfer some, if not all, of the demand risk to the Contractor and the opportunity to exploit the synergies that such joined-up working offered, by designing retail as an integral part of the project. Since the soft market testing had identified there

was reluctance on the part of the market to accept any kind of retail demand, an option to restrict retail to sympathetic retail was considered as a compromise.

- 188.5 Consequently it was agreed that the Contractor would remove and replace the old dilapidated shops and flats with 12 new build retail units. Two retail units (pharmacy and café) will be located within the heart of the Centre amongst public service accommodation, with the remaining 10 easily accessible off a secure internal street linking them to the public sector services.
- 188.6 The Council would grant a 25 year lease for the retail element to the Contractor who would then act as the retail landlord, sub-leasing to retail tenants on short term lease agreements within the 25 year period, thereby resulting in the Contractor retaining the demand risk for such units.
- 188.7 It was envisaged that the Contractor would directly negotiate with existing retail tenants with respect to the terms and conditions pursuant to which they might occupy new accommodation within the new Centre and temporary accommodation during the construction phase of the Project. However such terms would comply with the terms of a form of sub-lease pre-agreed between the Council and the Contractor.
- 188.8 The Contractor guaranteed a fixed annual income for the Council for the duration of the 25 year lease of the retail units, and the Council could set off such income against the annual Unitary Charge.
- 188.9 Any shortfall in the payment of such sum by the Contractor would be deducted from the Unitary Charge subject to the Contractor being given the opportunity to remedy the breach. The parties would share the gross rent received over and above the guaranteed amount (subject to the deduction by the Contractor of various pre-agreed proper costs such as letting fees etc) equally.
- 188.10 Although the performance standards in the Output Specification did not apply to the retail element of the project, the Contractor was incentivised to maintain it to the same standard as the rest of the Centre because it was landlord of the retail tenants and a failure to do so would constitute a Persistent Breach under the Project Agreement.
- 188.11 This solution was initially well received by stakeholders including council members and community representatives, since this provided an open air market, retail deliveries car parking facilities and access to and from the Centre.

189. **Economic Reinstatement**

- 189.1 One of the key issues which emerged within the project was the funders' insistence on the inclusion of an economic reinstatement test within the Project Agreement. This raised considerable fears within the Council and the PCT who faced the prospect of being left with no Centre and no insurance funds with which to redevelop it in the event that the Centre was substantially destroyed in a single event or series of related events.
- 189.2 Within PFI, responsibility for arranging and acquiring adequate insurance provision generally lies with the Contractor. Since the Contractor is a special purpose vehicle it will usually have no funds or assets and therefore, the funder will want certainty as to the availability of sufficient funds to repair, reinstate and/or replace all project assets, in the event such assets are destroyed or substantially damaged.
- 189.3 Project Agreements usually require the Contractor to use construction all risks and material damage policy proceeds to repair, reinstate and replace project assets, by way of a Reinstatement Plan, which is agreed and negotiated between the Contractor and the Authority. However, if a single catastrophic event wholly or substantially destroys the

asset(s) supplied under the contract, the availability of such insurance proceeds for application in accordance with the Reinstatement Plan may be subject to an economic test.

- 189.4 The economic test essentially stipulates that if all project assets are totally or substantially destroyed in a single event or series of related events and the sum of any insurance proceeds together with any other funds available to the Contractor are equal to or greater than the amount required to reinstate such project assets, then the Contractor must calculate the senior debt loan life cover ratio. If the loan life cover ratio is greater than or equal to sums available, the Contractor may implement the Reinstatement Plan. However, if the ratio is less than the sums available, thereby suggesting the Contractor will not be able to service the debt if reinstatement took place, then an amount equal to the outstanding senior debt (or if insufficient, the amount in the joint insurance account) is recoverable by the Lender.
- 189.5 SoPC makes clear⁵⁹ that such "heading for the hills action" by Lenders should not be a "first resort." Instead, the Authority should seek good reasons before agreeing to the inclusion of an economic reinstatement test in the Project Agreement. SoPC states that the economic reinstatement test is only necessary where there is a high risk of the total or near total destruction of the project assets (i.e. single site projects). In such cases, Lenders must not be allowed to abandon the project if the test shows that debt service is achievable, regardless of the margin. However given the reference to single site projects in SoPC, this is now commonly used as a justification for inclusion of the test in such schemes.
- 189.6 If the Lender takes the insurance proceeds (or an amount equal to the outstanding senior debt), the Contractor will remain liable to reinstate the asset, an obligation it will be unable to honour and thereby causing it to be in breach of the Project Agreement. Once the Contractor is in breach, the Authority can terminate the agreement and seek to rebuild the asset through a new competition provided it has sufficient funds or elect to follow the no-retendering route for calculating compensation and then retendering the contract on a different basis.
- 189.7 Although the economic reinstatement test was incorporated into the Project Agreement, a consultation process was also built in so that rather than the funder having an automatic right to walk away if its loan life cover ratio was breached, the parties could meet to determine whether at that point to meet the shortfall in funds required to ensure the test is met and the Project can continue.

190. **Vandalism**

- 190.1 Due to the location and history of the Bentilee estate, the risk of vandalism was perceived as greater than the norm. The Council would have preferred that the Contractor took all vandalism risk but following negotiations it was agreed, in accordance with SoPC3, that:
- The Council would be responsible for the cost of repair of any vandalism (excluding graffiti removal and any removal cleaning, painting and repairing that can be achieved by the Contractor at no marginal cost) to designated Authority only areas;
 - The Contractor would be responsible for the cost of repair of any vandalism to areas designated as Contractor only areas;
 - The parties would share equally the cost of repair of vandalism to any areas designated as "Shared Areas" during "Occupational Hours"

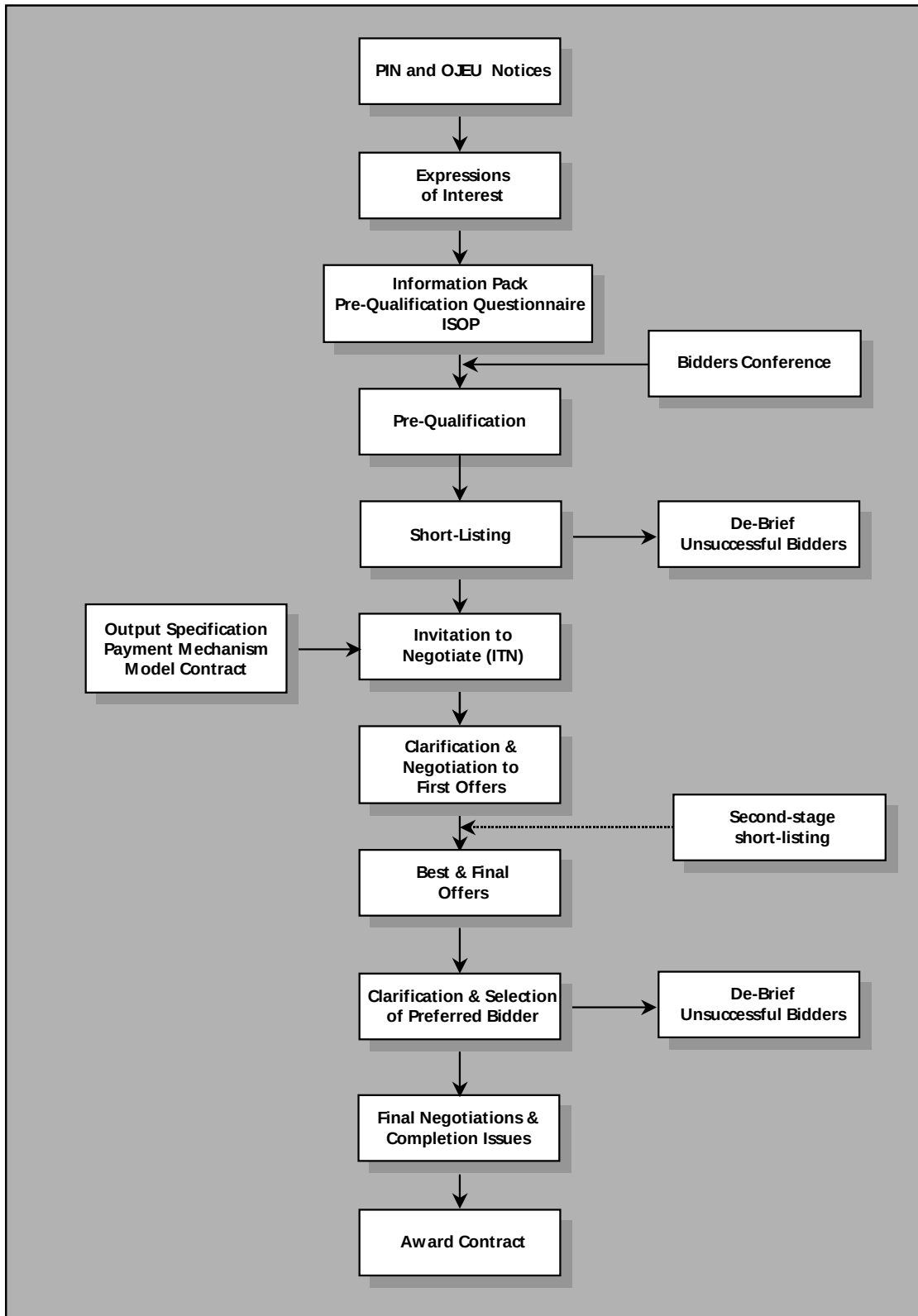
⁵⁹ See section 24.6 –24.9 SoPC 2002

- The Contractor capped its aggregate annual liability;
 - Any repairs due to "Graffiti" which was defined as " any damage to any part of the Facility caused by third parties which can be painted, cleaned or repaired but which does not involve replacement" was outside of the scope of the Contractor's capped liability and was subject to the general repair obligations of the Contractor under the Project Agreement.
- 190.2 In addition the Council and the PCT agreed to increase security provision so as to minimise the risk of vandalism occurring.
- 190.3 The PCT had separate manned security arrangements provided by members of their own staff for the Walk In Centre.
- 190.4 Security, safety and vandalism were taken into consideration in the choice of materials for the building fabric. Examples are as follows:
- Building alarm – general perimeter protection and movement detection linked via Redcare to monitoring station;
 - Electronic door access system to staff only areas;
 - CCTV - part static and part PTZ system to cover car park areas and perimeter of building linked to multiplexer system with multi-monitor viewing. The entrance security cameras include wedge style vandal resistant enclosures and the external security cameras include dome enclosure types to disguise camera view angles and positions. Internal system to cover vulnerable and general circulation areas. Screens located in caretakers office and HOMECARE for core hours and out of hours monitoring;
 - There are no rainwater or other down-pipes on the external elevations of the building;
 - Exposed steelwork is predominantly located at high level;
 - All external refuse/service enclosures have secure gating;
 - All bricks are smoothed to ease the cleaning of graffiti;
 - Glass block walls – full joint reinforcement included;
 - External doors that are not part of the curtain walling doors are to be steel plated solid core flush doors. Internal solid core doors;
 - All external glazing will be double-glazed units with laminated outer panes. Safety standard glazing will be provided to all low level areas and at appropriate heights to doorways;
 - Bollards have been incorporated into the scheme;
 - External lighting of the scheme has been provided through a combination of façade mounted luminaries, stand alone bollards and architectural columns for paths and car parks. All lighting columns coated with anti-climb paint and lockable boxes;
 - Internal and emergency lighting;
 - Public announcement system;
 - Panic buttons – cash office and alarms in disabled toilets;

- Public toilets to be solid laminate panels carried on heavy-duty pedestals and fixings with equal ironmongery. Wall finishes will have ceramic tile splash backs to basins and walls will be emulsion painted; and
 - Internal security shutters provided to circulation corridors.
- 190.5 The Contractor would employ uniformed on-site facilities management staff during the non core hours including dedicated on site security provision in the evening.
- 190.6 Out of hours CCTV surveillance and response is undertaken and managed by the Contractor's off site call centre, which is connected to the police. The Centre Manager (employed by the Contractor) would ultimately responsible for security at the Centre.
- 190.7 The on-site staff are fully trained and equipped to undertake the following duties::
- Management of access into and out of the Centre (secure areas);
 - Managed interventions in cases of nuisance behaviour;
 - Responsive cleaning and 'make safe' services for acts of graffiti, vandalism and malicious and accidental damage;
 - Safety and security inspections;
 - Patrols; and
 - Emergency management and management of fire safety.
- 190.8 Recurring incidents of nuisance will be referred to the Centre Manager for appropriate enforcement in consultation with local Police and/or Joint service centres Department and agreed in the operation protocols to be developed with the Council.
- 190.9 The Contractor also made a commitment to engage with the Bentilee community so that the community enjoyed a sense of ownership of the Centre, through the development of a community chest to help promote new activities within the community.

Section 5: PFI Process Map

A: Stages in the Procurement Process



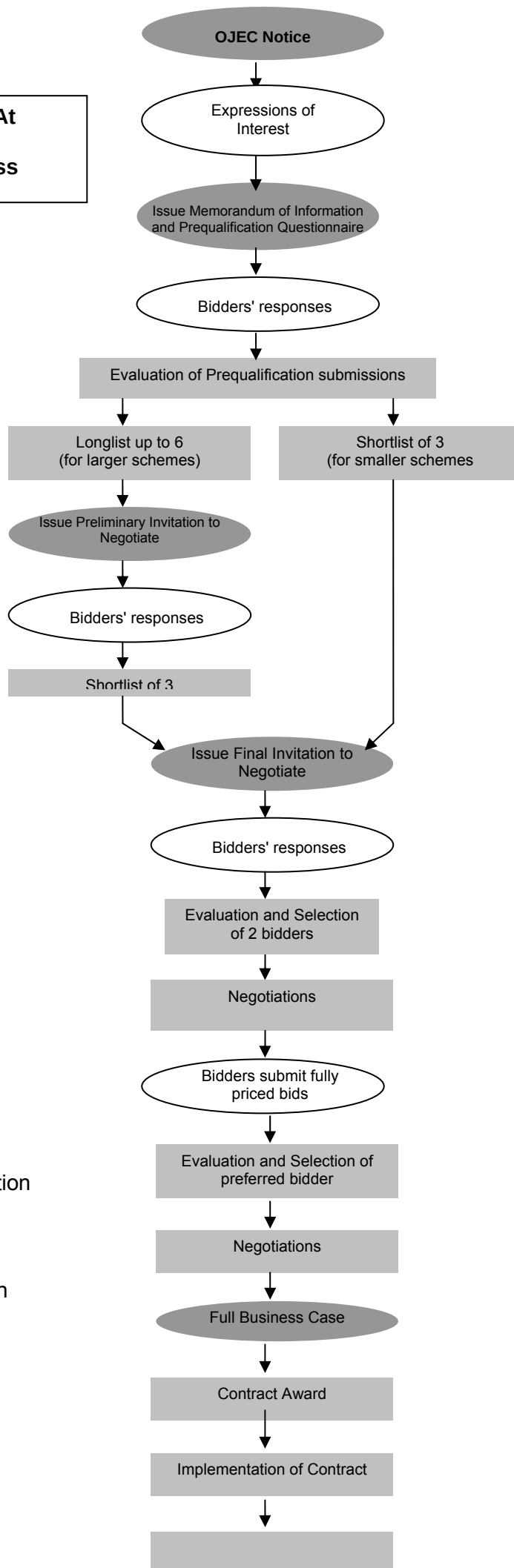
B: Key Documents At Each Stage of the Procurement Process

Key

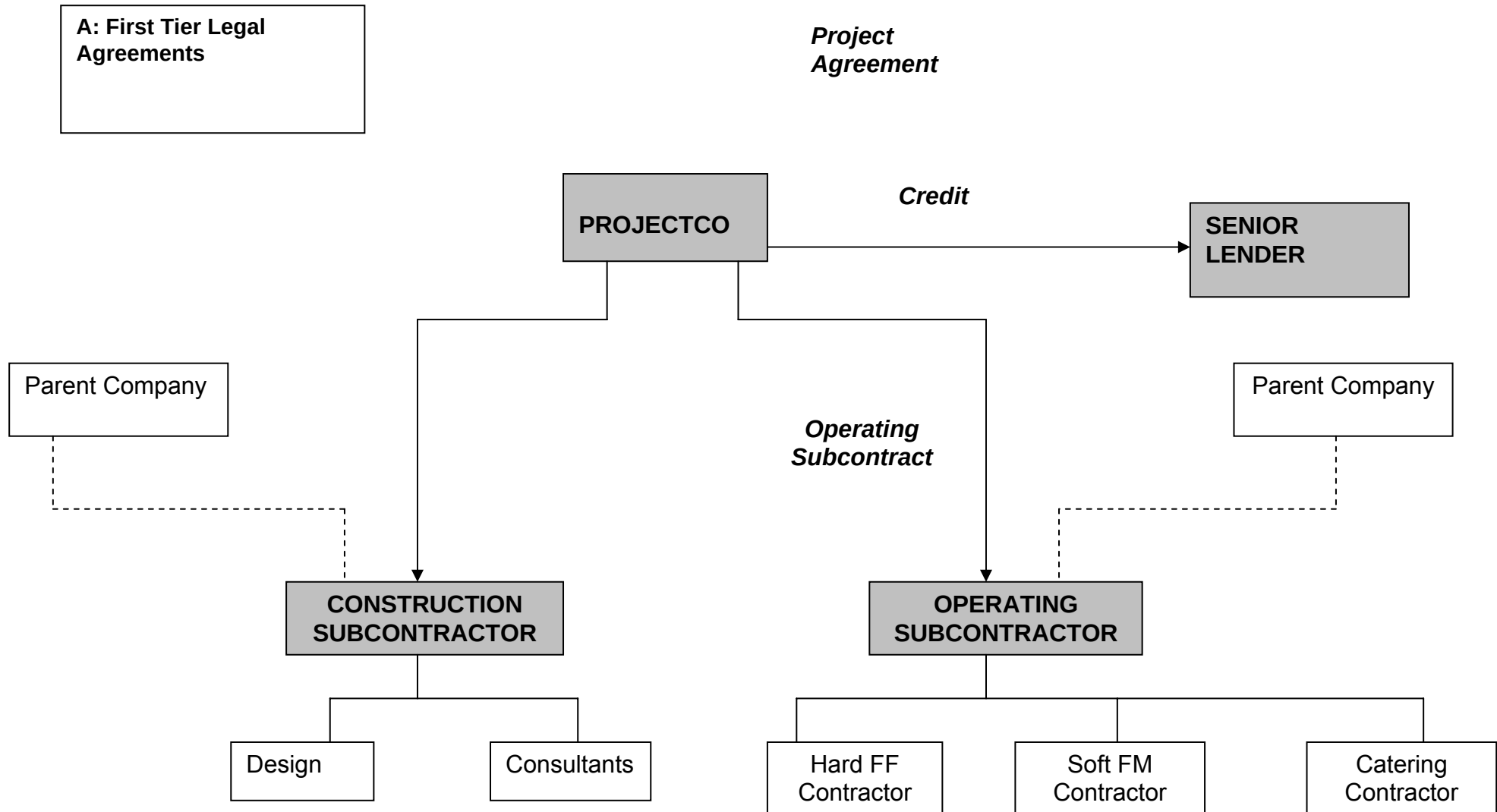
Authority Documentation

Bidder Documentation

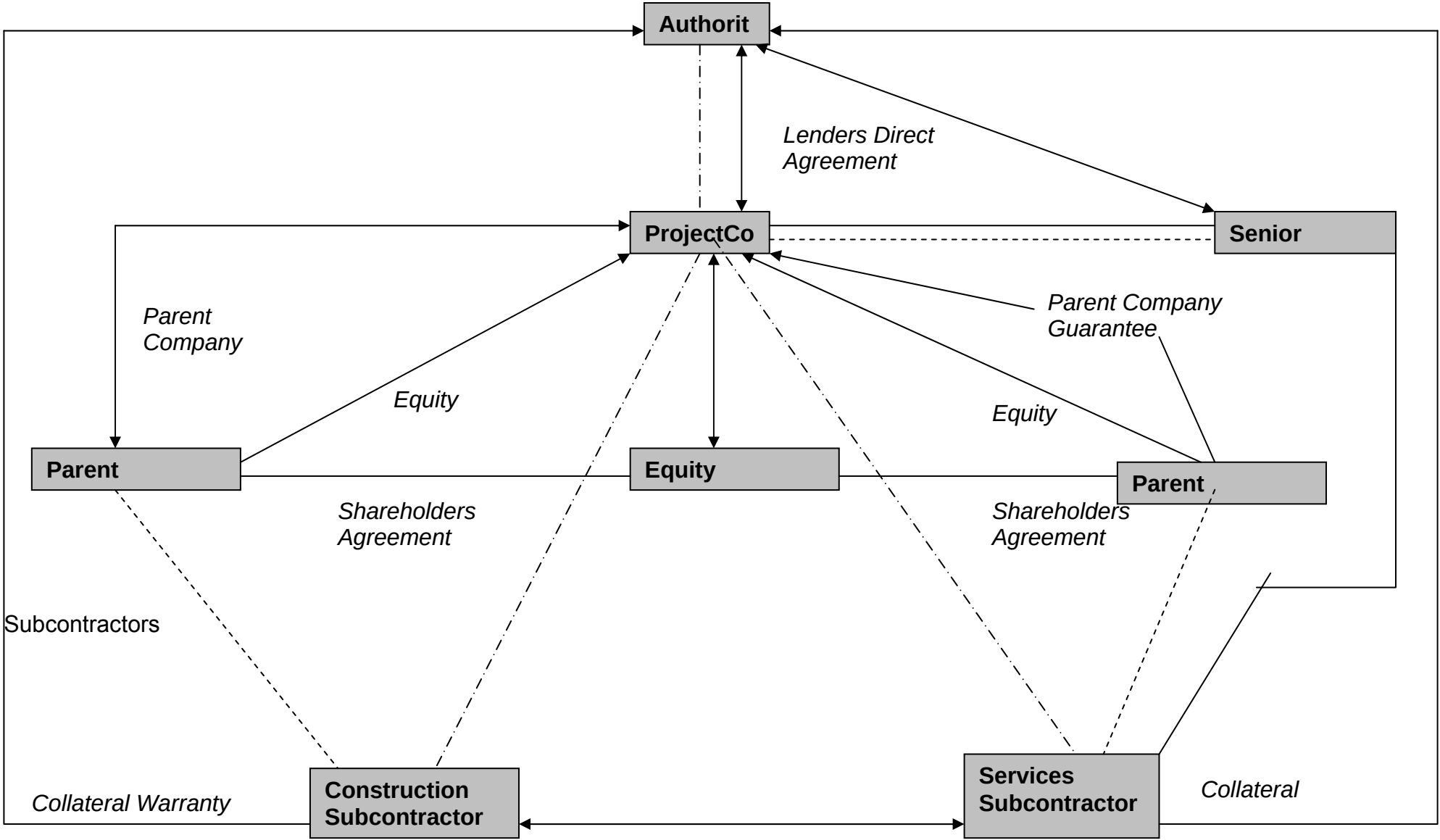
Development Stages



Section 6: Key Legal Documents



B: Second Tier Agreements



Section 7: Section 31 Health Act 1999 Partnership Arrangements

191. Section 31 of the Health Act 1999 ("1999 Act") contains specific powers enabling NHS Bodies and local authorities to enter into arrangements between themselves ("Partnership Arrangements") in relation to certain prescribed functions of NHS Bodies ("NHS functions") and prescribed health-related functions of local authorities ("health-related functions"). Such partnership arrangements may be entered into if they are likely to lead to an improvement in the way in which those functions are exercised.
192. For the purposes of enabling Partnership Arrangements, an "NHS Body" includes a Health Authority, Primary Care Trust or NHS Trust and a "local authority" means a district council, county council, unitary council or London Borough. Although most Partnership Arrangements will involve county councils, unitary councils or London Boroughs, district councils are not precluded from participating in such Partnership Arrangements for discharge of their functions, for example, in pursuit of their well-being objectives.
193. Although the primary enabling powers are contained in Section 31 of the 1999 Act, the detailed implementation is through regulations made pursuant to that section, namely the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 ("the 2000 Regulations").
194. The 2000 Regulations prescribe both the NHS functions and the health-related functions which may be the subject of Partnership Arrangements. The NHS functions are set out in Figure 26 below and the health-related functions in Figure 27 below.

Figure 28

NHS Functions
The function of providing or making arrangements for the provision of the following services: • hospital accommodation • other accommodation • medical, dental, nursing and ambulance services • facilities for the care of expectant and nursing mothers and young children • facilities for the prevention of illness, the care of persons suffering from illness, together with the appropriate after-care for such persons • diagnosis and treatment of illness; and • intended to avoid admission to hospital • medical inspection at appropriate intervals of pupils in attendance at schools maintained by local education authorities and the treatment of such pupils • provision of advice on contraception, medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptives • dental inspection of pupils in attendance at schools maintained by local education authorities, together with the provision of any dental treatment and education of such pupils in dental health. • the provision of medical or dental inspection or treatment or education in dental health of: - o senior pupils attending an educational establishment other than a school, which is maintained

NHS Functions
by the authority and at which full time further education is provided; or o any child or young person receiving primary or secondary education in a pupil referral unit, or through some other arrangement than at school, due to the pupil's illness, exclusion or special educational needs.
Functions relating to the provision of after-care services for a patient, who has attained the age of 16 years, and is liable to be detained in a hospital due to a mental disorder and the belief there would be a substantial risk of serious harm to the health or safety of the patient, of other persons or of the patient being seriously exploited if he did not received such after-care services. The functions listed in paragraph 1 above do not include: surgery, radiotherapy, termination of pregnancies, endoscopy, use of Class 4 laser treatments and other invasive treatments and emergency ambulance services.

Figure 29

Health-Related Functions
Provision of the following social services • protection of young people in relation to criminal and summary proceedings, children appearing before court as in need of care, protection or control, committal of children to approved school or care of a fit person and the provision of remand homes, approved schools and appropriate care. • provision of residential accommodation for the aged, infirm, needy and expectant mothers in need of care, welfare of persons who are deaf, blind, dumb or otherwise handicapped or are suffering from a mental disorder and the temporary protection of property belonging to persons in hospital or accommodation. • provision of facilities for enabling disabled persons to be employed or work under special conditions • provision of welfare and accommodation for mentally disabled persons • research into matters relating to local authority welfare services and functions of local authorities • powers relating to young persons in need of care, protection or control and their protection in relating to criminal proceedings • provision of the welfare of old people • financial and other assistance to voluntary organisations • supervision of ward of court • obtaining information as to the need for and publishing information as to the existence of welfare services • applications by local authorities for revocation or enquiries in relation to custodianship orders • provision and maintenance of resettlement units for persons without a settled way of living • care of mothers and young children including protection, after care, home help and laundry facilities; • welfare of the mentally disabled, guardianship, exercise of functions of nearest relative in relation to applications to Mental Health Review Tribunals, together with the appointment of approved social workers. • burial or cremations of persons (aged, infirm or needy and expectant mothers in need of care) dying

Health-Related Functions

in accommodation provided by local authorities;

- representation and assessment of disabled persons
- child welfare reports, family assistance orders, inspection of children's homes; research and functions in relation to children's accommodation
- preparation of plans and assessment of needs for community care services
- assisting local education authorities in providing educational services
- assessment of carers and their needs, to provide care and provision of services and vouchers to carers
- co-operation in respect of (intercounty) adoption

The functions relating to disabled persons leaving special education; patients suffering from mental disorders or receiving treatment for mental disorders being discharged from hospital, and the duty of local authorities to take into account the abilities of carers (except in so far as any such functions are assigned to local education authorities).

The functions of providing for security the provision of recreational facilities.

The functions of local education authorities under the Education Act.

The provision of grants from local joint service centres authorities towards the cost of works required for facilities for disabled persons in dwellings, houseboats and park homes and in common parts of buildings containing one or more flats.

The allocation of joint service centres accommodation, the provision of free advice and information about homelessness, the prevention of homelessness and assistance to homeless persons through the provision of accommodation, furniture or other goods and the availability of staff support.

Power of the Secretary of State to give financial assistance for regeneration and development of an area, including contributing to economic development, preventing crime, improving joint service centres, social or recreational facilities, providing employment, training, educational or health services and assisting local people with special needs.

Regulatory functions of waste collection or waste disposal in connection with the improvement of the control of pollution.

The functions of providing environmental health services.

Provision of road safety information and training, and the maintenance and improvement of highways.

The provision of appropriate passenger transport, especially taking into account the transport needs of disabled or elderly members of the public and travel concession schemes for travel on public transport.

Where partners enter into Partnering Arrangements, the functions of charging for residential accommodation for the aged, infirm, needy and expectant mothers in need of care

Where partners enter into Partnering Arrangements for the care of mothers and young children, the prevention of illness, the provision of care and after-care, home help and laundry facilities, the functions of charging for such services.

195. The Partnership Arrangements must fulfil the objectives of the health improvement plan of the Health Authority in whose area the Partnership Arrangements will operate. Before entering into Partnership Arrangements, the "partner" NHS Body and local authority must consult jointly such persons as appear to them to be affected by the Partnership Arrangements.

196. One of the principal novel areas of Partnership Arrangements under the 1999 Act is that the partner NHS Body and local authority may establish and maintain a "pooled fund". This "pooled fund" is made up of contributions by the partners and from which either or

both partners are entitled to deploy expenditure in the exercise of any NHS function or health-related function (the pooled fund can only be operated in respect of these functions and not others).

197. There are detailed provisions in the 2000 Regulations dealing with the operation of any pooled fund. First, an NHS Trust may not enter into a pooled fund arrangement with a local authority partner unless it obtains the consent of each Health Authority with which it has an NHS contract for the provision of services to persons who will be affected by the pooled fund arrangement. Secondly, where the partners decide to enter into a pooled fund arrangement, they must have an agreement in writing specifying the matters set out in Figure 28 below.
198. The partners must agree which one of them will be the "Host Partner" for the pooled fund. The Host Partner will be responsible for the accounts and audit of the pooled fund arrangement. The Host Partner must appoint one of their officers as the "Pool Manager".
199. The Pool Manager is responsible for firstly, managing the pooled fund on behalf of the partners and, secondly, for submitting to the partners quarterly reports and an annual return relating to the income and expenditure in the pooled fund together with other information by which the partners can monitor the effectiveness of the pooled fund arrangement.

Figure 30

Prescribed Contents of a Pooled Funds Agreement	
• The agreed aims and outcome of the pooled fund arrangements; • The contributions to be made to the pooled fund by each of the partners and how those contributions may be varied; • Details of the NHS functions and local authority health-related functions which are the subject of the pooled fund arrangements; • The types of persons and services in respect of which the NHS functions and the health-related functions will be exercised; • The staff, goods, services or accommodation to be provided by the partners in connection with the arrangements; • The duration of the arrangements and provisions for the review, variation or termination of the arrangements; and • How the pooled fund is to be managed and monitored including the partner who is to be the "Host Partner" for the pooled fund.	

200. The Host Partner must arrange for the audit of the pooled fund accounts and for the Audit Commission to make arrangements to certify an annual return of those accounts. Finally, the partners may agree that an officer of either partner may exercise both the NHS functions and health-related functions which are the subject of the pooled fund arrangements.
201. The underlying legal basis for the partnering arrangements involves enabling an NHS Body to exercise local authority health-related functions and enabling a local authority to exercise NHS functions, in either case, in conjunction with, respectively, their NHS functions or health-related functions. This enables the NHS Body or the local authority to undertake the other's prescribed functions or for them to exercise such functions jointly.

202. Where NHS functions or health-related functions are exercised by the other parties, there must be an agreement in writing between the parties specifying the matters set out in Figure 31 below.

Figure 31

Prescribed Contents of Partnership Agreements	
• The agreed aims and outcomes of the Partnership Arrangements; • The payments to be made from one partner to the other; • The NHS functions and/or health-related functions to be the subject of the agreement; • The types of persons and services in respect of which the NHS functions and/or health-related functions will be exercised; • The staff, goods, services or accommodation to be provided by the partners in connection with the arrangements; • The duration of the arrangements and provisions for the review, variation or termination of the arrangements; and • The arrangements in place for monitoring the exercise of the functions by the other partner.	

203. Whichever of the NHS Body or the local authority is exercising the prescribed functions, they must report to the other, both quarterly and annually, on the exercise of the prescribed functions which are the subject of the Partnership Arrangements.
204. Any partner may agree to provide staff, services or accommodation to another partner in connection with the Partnership Arrangements. However, with fixed and current assets the partners need to decide which partner is to retain ownership and/or which partner is to obtain the benefits of the assets on dissolution of the arrangements. There may be practical legal difficulties, in particular, of jointly owning land. The partners need also to be cognisant of any VAT consequences of providing services from one to the other.
205. The position of employees may be particularly complex due to the difficult legislation affecting employees and terms and conditions of employees of NHS Bodies and local authorities. The partners will have to decide how they wish to treat employees. Various options are available; a transfer from one partner to the other under TUPE, the secondment from one partner to the other or one partner retaining the employees and acting as an agent for the other. A transfer, if under TUPE, can bring about issues associated with a "two-tier" workforce since there will be two sets of employees under two sets of terms and conditions. Pension issues also arise as it is not certain whether one partner's employees may be able to join the pension scheme of the other or, if so, at what cost? (e.g. is the pension scheme fully funded?). There will also be VAT consequences for the party benefiting from the secondment. The partners will also need to decide which of them will employ new employees.
206. The partners may form a joint committee to take responsibility for the management of the Partnership Arrangements which may include monitoring and receiving reports and information on the operation of the arrangement. If the relevant local authority partner is operating executive arrangements, then any joint committee may include any member whether or not he or she is a member of the executive of that local authority. Where the partners have formed a joint committee, they may agree that a sub-contractor or member

of the joint committee may consider complaints about the Partnership Arrangements made by or on behalf of service users.

207. Where the partners do form a joint committee, the committee is only for the management of the Partnership Arrangements. As a consequence, the partners themselves retain legal responsibility for the provision of their respective services. There is also no specific power to delegate functions (which remains with the NHS Body or the local authority exercising the relevant prescribed functions) as opposed to management decision making.

DEVELOPING JOINT SERVICE CENTRES

PART A3

Development of JSCs through NHS LIFT

Contents

Section 1: Opportunities for Developing JSC Projects Through NHS LIFT

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Section 4 Newcastle City Council's Customer Service Centres Developed Through NHS LIFT

Section 5: NHS LIFT Process Map

Section 1: Opportunities for Developing JSC Projects through NHS LIFT

208. Part A1 Section 6: Introduction to Procurement Options specified that NHS LIFT will only be an option for local authorities seeking to develop JSCs provided such authorities satisfy the following criteria:-
- the authority is situated within an existing NHS LIFT designated area;
 - the authority was named or will be named in the OJEU advertising the establishment of the local NHS LIFT scheme;
 - the proposed JSC will only include health, social care and related authority services or those services specified in the OJEU notice advertising the scheme; and
 - the authority is seeking to work strategically with its local health care providers.
209. Unlike authorities seeking to use the PFI, there is no capital value restriction concerning the size of projects capable of being developed through NHS LIFT. Therefore, authorities requiring the development of JSCs with relatively small capital values and which comply with the above criteria, should view NHS LIFT will be a viable and potentially attractive option.
210. In this Section we examine the significance and application of the above criteria to assist authorities determine when they should consider following this approach.

NHS LIFT Designated Areas

211. At the time of writing 51 NHS LIFT projects have been approved in the first four waves of schemes by the Department of Health throughout England, details of which are set out in Figure 32 below⁶⁰

Figure 32

NHS LIFT Wave 1 Areas; East London & City Manchester, Salford & Trafford Barnsley Sandwell Newcastle and North Tyneside Camden & Islington	NHS LIFT Wave 2 Areas Liverpool & Sefton North Staffordshire East Lancashire Bedford Hull Birmingham & Solihull Coventry Leicester City Medway Redbridge & Waltham Forrest Cornwall & isle of Scilly Barking & Havering	NHS LIFT Wave 3 Areas Greater Nottingham Ashton, Leigh & Wigan Southern Derbyshire Doncaster North Nottingham Leeds Oldham Sheffield St Helens, Knowlsey, Halton, Warr Tees Valley Wolverhampton Barnet, Enfield & Haringey Bristol Bromley, Bexley and Greenwich Ealing, Hammersmith and Hounslow Lambeth, Southwark & Lewisham South west London Dudley South East Hampshire, Fareham/Gosport Plymouth Brent, Harrow & Hillingdon Oxford City Norfolk Colchester & Tendring
NHS LIFT Wave 4 Areas Bury, Tameside & Glossop Kent Rochdale, Bolton and Heywood & Middleton South East Midlands South East Essex South Midlands Kensington & Chelsea Wiltshire South West Hants		

⁶⁰ Further details of all NHS LIFT areas can be found on the 4ps website at www.4ps.gov.uk

212. Since NHS LIFT areas do not geographically accord with local authority boundaries, any authority seeking to procure a JSC which may include primary and social health care provision should explore the extent to which they are situated within a NHS LIFT area. This may have an important bearing on the extent to which the authority will be able to work with its local health care partners (for example primary care trusts, general practitioners, mental and ambulance trusts and strategic health authorities). Any health care providers involved in existing LIFT schemes may have granted their local LIFT Co the first right of refusal to develop all their major capital infrastructure projects, which will necessarily restrict the extent to which an authority together with its local health care providers can seek an alternative development route for such facilities. Note however, NHS LIFT is only relevant to the extent an authority is seeking to provide community based social and health care provision, although if the initial OJEU notice is drafted widely, additional services/facilities could be included. Legal advice should be sought when drafting appropriate OJEU notices.
213. Having identified that an authority is located within a designated NHS LIFT area, it should then proceed to identify the nature and progress of the local scheme. Schemes will either be in procurement or operational and the manner in which authorities can procure their accommodation needs through their local NHS LIFT scheme will depend on the current status of the scheme.

213.1 Schemes In Procurement

213.1.1 This category relates to schemes in which the special purpose vehicle ("LIFT Co") responsible for delivering facilities such as JSCs has not yet been established. Instead the procuring authorities (which will include local primary care trusts, health trusts, the strategic health authority as well as one or more local authorities) will be undertaking an EU compliant procurement process which will seek to result in the award of a works and services contract to a private sector partner who will own a majority stake in LIFT Co (a private sector controlled company in which the public sector partners may also take equity if they so wish), establish a Strategic Partnering Board to devise the strategy for the local health and social care accommodation needs of the locality as well as execute a number of documents. One such document will be individual Lease Plus Agreements relating to the facilities which LIFT Co will develop following completion of the procurement process, and it will be pursuant to such a Lease Plus Agreement that an authority, together with its partners will occupy the new or refurbished JSC.

213.1.2 If a local scheme is in development authorities are advised to ensure they participate in the procurement process, determine which level of participation they want to take in the local NHS LIFT scheme and understand the nature of the documents being agreed since these will influence the ability of the authority to have any of its accommodation needs delivered through LIFT Co. Further information about this stage is contained in Part A3 Section 2.

213.2 Operational Schemes

213.2.1 In areas where schemes are in operation (of which there are approximately 30 at the time of writing), authorities may procure the delivery of their JSC facilities provided they follow the New Projects Process as set out in the Strategic Partnering Agreement to which they must be a signatory. In such schemes the basis of the documentation will to a large extent have been agreed but the

authority will be able to specify its specification requirements in conjunction with those of its partners.

213.2.2 However, in this instance it may be more difficult for the authority to ensure its scheme is developed as soon as required unless there is considerable support for the development of the facility from the other public sector parties involved in the scheme. The Strategic Partnering board is responsible for determining the priority of new projects that are delivered by LIFT Co and it is through this body that the authority must seek to obtain the necessary approval for developing the scheme.

213.3 NHS LIFT envisages different public sector partners being engaged in local schemes at different levels at various times during the usual 25 year duration of the scheme and therefore, authorities not initially involved in local schemes should not feel inhibited from participating or investigating what their local schemes can offer.

NHS LIFT Standard OJEU Notice

214. The authority must consult the OJEU notice issued for their local NHS LIFT scheme to ensure they have been expressly referred to as a contracting authority for the purposes of the scheme. Partnerships for Health, a company representing the Department of Health in all NHS LIFT projects, has produced standard documentation for use in all schemes including a standard NHS LIFT OJEU notice⁶¹. This OJEU notice stipulates that local authorities within designated areas should be specified in the notice even though their initial involvement may be minimal or even none at all. This allows authorities access to the arrangements established following the procurement at any time during the usual 25 year duration of schemes, even though some authorities may initially decide they do not wish to engage with the scheme.
215. If an authority is not expressly named in the OJEU notice, it will need to undertake a separate procurement process if it is to be able to receive works and services from LIFT Co (or any of its subsidiaries). This is because the nature of the facilities to be developed by LIFT Co will be serviced accommodation, as for the PFI, and given that the value of such works and services are likely to be greater than the financial thresholds stipulated in the EU procurement rules, authorities cannot award such contracts without having complied with the EU procurement regime. Note however, authorities may take a standard lease from LIFT Co for a particular facility (since pure leasehold agreements are not subject to the procurement rules). However, to be confident that the EU procurement rules do not apply, authorities must be certain that LIFT Co (or the relevant landlord) is not providing services other than those normally and reasonably expected of a landlord and the value of any such services provided does not exceed the EU financial thresholds. Further information about the type of arrangements pursuant to which authorities can occupy LIFT Co property is discussed in the next Section.

Community Based Health and Social Care

216. The standard NHS LIFT OJEU notices specify the parameters within which any contracts can be awarded by the contracting authorities to the successful bidder selected at the end of the procurement process. In particular, the standard NHS LIFT OJEU notice specifies as follows:-

"The PPP vehicle will also provide/manage the provision by its supply chain of a mixture of new build and refurbished serviced community based health and social care facilities under lease arrangements. These may include: intermediate

⁶¹ References to the standard NHS LIFT OJEU relates to the OJEUs issued for use on all wave 1, 2 and 3 schemes.

care facilities, health centres, resource centres, walk-in centres, drop-in centres, outpatient and diagnostic facilities and GP and dentists accommodation, pharmacies, facilities for allied health professionals, facilities for social inclusion and for the voluntary sector.⁶²”

217. Consequently, the nature of facilities which can be developed by LIFT Co is generally restricted by the above terms (as supplemented by the CPV codes), unless project specific amendments have been made to the notice reflecting local requirements⁶³. Given that NHS LIFT is a Department for Health driven initiative and the main power enabling authorities to work in partnership with their local health providers is contained in Section 31 of the Health Act 1999.
218. Authorities seeking to develop JSCs which provide services not covered by the text and CPV codes in the relevant OJEU notice must either modify the OJEU notice before it is issued (if the scheme is at an early stage in development) or seek to procure such facilities through another mechanism. For authorities in designated BSF areas, development of the JSC through the programme might be feasible if the relevant BSF OJEU is sufficient to allow the nature of services and facilities envisaged by the authority. Since BSF essentially concerns the school estate, authorities seeking to procure facilities predominantly comprising of children's centres should strongly consider BSF as an alternative solution.
219. Provided the relevant OJEU notice is broad enough to permit the envisaged authority services, NHS LIFT is an option which authorities should explore since offers considerable savings by having only one procurement exercise which will enable facilities to be developed throughout the 25 year term of the arrangement as well as enable authorities to work in partnership with their local primary health and social care providers. If the scheme OJEU is not sufficiently broad, authorities should consider their alternative options for developing their JSC.

Collaboration

220. Equally of significance is the acknowledgement that NHS LIFT will be the main option for authorities situated in NHS LIFT designated areas who want to work in partnership with the local primary health care providers to develop facilities. As mentioned earlier PCTs and other health providers are required by standard NHS LIFT documentation to grant LIFT Co the first right of refusal to develop all their major capital projects during the 25 year duration of the arrangement. Therefore, primary care trusts and strategic health authorities, unless they have been able to obtain a carve out from the arrangements, may not be able to develop any of their accommodation needs other than through LIFT Co. For this reason, NHS LIFT is now likely to be the single most important source of delivery for a local primary and social care providers seeking to procure capital resources.
221. This has wide reaching implications for local authorities who are pursuing a policy agenda aimed at 'joining up' with colleagues from the health sector to deliver a more holistic and integrated health related service to users. Whilst a local authority is free to explore any number of procurement options, if the local authority wants to join a primary care trust and/or or other health bodies through a one-stop-shop or a JSC, it will more than likely find that the primary care trust is unable to procure, unless the facility is procured through LIFT.

⁶² All standard NHS LIFT documentation is available by contacting the Department of Health or Partnerships for Health

⁶³ A full explanation of each of the CPV codes used in the standard NHS LIFT OJEU can be accessed from the 4ps NHS LIFT Extranet by subscribers. For further details please see www.4ps.gov.uk.

222. Given the emphasis on generating efficiency savings, collaborating in procurement processes and re-configuring service delivery around the needs of service users, this restriction should be appreciated by authorities to ensure they do not hamper any opportunities to work with their local health care providers in the future.

Section 2: Strategy and Process for Developing JSCs Through NHS LIFT

223. Once an authority has concluded that it satisfies the initial criteria discussed in Part A3 Section 1: Opportunities for Developing JSCs through NHS LIFT, it will need to consider the process with which it must comply and develop a strategy for developing their JSC.
224. In this Section we will examine the following to assist authorities map out their strategy;-
- an overview of the structure an approach of NHS LIFT
 - an overview of the process for developing JSCs through schemes in procurement and operational schemes;
 - the allocation of responsibility for the JSC; and
 - the key features of using NHS LIFT for developing JSCs.

Structure of NHS LIFT

225. Existing schemes suggest that the main impetus for authorities to use NHS LIFT has been the identification of capital requirements for improved social care services and facilities, since many of their existing facilities are no longer fit for their purpose, do not comply with current legislative requirements (eg Disability Discrimination Act 1995) or allow provision which satisfies national care standards for models of social care. This has led to the identification of projects for residential, day-care and nursing care supported joint service centres, with the envisaged facilities being designed to offer better choice, integration and quality of life for vulnerable groups such as the elderly, children, the disabled and people with learning difficulties. Other authorities have used the initiative to deliver one stop shops providing a combination of authority information and services as well as a health drop-in clinic or family planning centre. Local authorities considering any of these objectives should ensure they properly appraise and understand their options for involvement in NHS LIFT, especially since opportunities for collaboration with many local primary care bodies may be limited if involvement in NHS LIFT is declined.
226. For authorities NHS LIFT offers an alternative option to Section 31 Health Act 1999 arrangements, allowing authorities and health providers to join forces to plan strategically for their accommodation needs and to deliver integrated health and health related services to users. Significantly for JSCs, LIFT offers a practical solution where local authorities and health providers have identified a need to co-locate to develop a more joined up service through the development of one-stop-shop JSCs.
227. The NHS LIFT involves all local health stakeholders jointly developing a strategic service development plan, incorporating local primary care service needs and relationships with intermediate care and local authority services (e.g. social services).
228. LIFT is fundamentally about engaging a private sector partner to deliver a stream of accommodation and related services through a supply chain, established following a competitive procurement exercise. This is different from either a conventional procurement or a PFI project, which is usually concerned with the delivery of a single facility (or a group of identified buildings) together with related services. NHS LIFT has the potential to meet ongoing accommodation needs and is designed to be a flexible procurement tool which can be adapted (within the parameters of the original OJEU) to meet evolving local needs over a period of time.

229. All NHS LIFT schemes are being delivered through a common approach, developed by Partnerships for Health (PfH). PfH is a national joint venture company established by the central bodies involved in promoting the LIFT initiative, namely, the Department of Health (DoH) and Partnerships UK (PUK). PfH works with local health and social care economies to plan and manage procurement, through competition, of private sector joint venture partners for local LIFT schemes.
230. Local LIFTs (LIFT Cos) are joint venture companies in which the private sector partner will work with health authorities and primary care trusts (PCTs) local authorities and other stakeholders in the local health and social care economy (for example GPs, dentists, voluntary sector bodies and others) to deliver property related investment, services and facilities to end users over a 20-25 year period. LIFT Co will manage and implement not only services and requirements identified for the purposes of the initial procurement competition (i.e. when the LIFT partner was selected) but will also be responsible for helping to plan future estate services to meet the needs of the local health and social care economy for at least a generation. LIFT Co may discharge its obligations to deliver developments itself or through a special purpose company(s) wholly owned by it.
231. Figure 31; NHS LIFT Structure sets out a diagrammatic representation of the arrangements although authorities should appreciate that there are a number of operational schemes as well as schemes in procurement which have slightly modified the structure. Three models are being followed:-
- **One Tier** – this structure involves LIFT Co as the primary delivery vehicle for all facilities thereby removing the need for a subsidiary or a Fund Co. However, this structure contains a number of disadvantages relating to an inability to ringfence external funding which is brought in to assist LIFT Co on future developments and thereby reducing the extent to which LIFT Co's liabilities can be ringfenced. This structure is not recommended for general use by all authorities.
 - **Two Tier** – this structure removes the need for an intermediary subsidiary between LIFT Co and Fund Co.
 - **Three Tier** – this structure as represented in Figure 31 involves LIFT Co, a subsidiary (Hold Co) and a further subsidiary (Fund Co). This approach is recommended for use by Partnerships for Health.
232. Authorities may become involved in NHS LIFT schemes at a number of different levels:
- No involvement at all
 - **Level 1** – being named as a contracting authority for the NHS LIFT OJEU notice but not signing any of the three principal LIFT agreements;
 - **Level 2** – become a Participant in the strategic partnering arrangements by becoming a signatory to the Strategic Partnering Agreement but without signing the LIFT Co Shareholders Agreement nor becoming a Tenant under any Lease Plus Agreement for a facility;
 - **Level 3** – become a Participant in the strategic partnering arrangements by becoming a signatory to the Strategic Partnering Agreement and become a Tenant by signing at least one Lease Plus Agreement for a facility or part thereof;

- **Level 4** - become a Shareholder in LIFT Co by signing the Shareholders Agreement. This option can be combined with Levels 2 and 3 or can be a stand alone option.
233. Authorities may decide to become a Tenant and a Shareholder (or either or neither) as well as use option 3 or 4 but it is important for individual authorities to consider carefully each option as early as possible in the procurement cycle of the relevant LIFT scheme, not least due to the potential implications on bid costs. Moreover, some rights and advantages are only 'on offer' for a limited period such as the ability (and consequential advantages) of being a "Founder" shareholder of LIFT Co. Further details about options are contained in Part C of this Procurement Pack.
234. Figure 31 also depicts the main contractual agreements involved in a NHS LIFT scheme which involve:-
- the Lease Plus Agreement – this is the primary agreement pursuant to which an authority would occupy a JSC developed under the scheme. Unlike the PFI, NHS LIFT schemes are essentially property arrangements. LIFT Co will acquire property from third parties (some of which may include the public partners involved in the scheme) and in return LIFT Co will refurbish or construct new premises and then lease them to the public partners involved in the scheme, thereby allowing LIFT Co to take all residual value risk. Therefore authorities will essentially be tenants in facilities developed by NHS LIFT albeit they will receive additional services from LIFT Co relating to property and facilities management and assistance with developing and implementing the strategy for local health and social care needs in the area. It will not own the facility although there are a number of ways in which it may obtain the right to do so, all of which are discussed in Part C.
 - the Strategic Partnering Agreement – this agreement defines the relationship between LIFT Co and the public sector partners in the NHS LIFT scheme. It lays down the framework in accordance with which such bodies will work together to devise an annual strategy (Strategic Service Delivery Plan) for meeting the local infrastructure requirements for health and social care provision within the locality. As referred to above, authorities may decide to enter into exclusive arrangements with LIFT Co concerning their future capital development needs (further details of which can be obtained from the next Section) but health care bodies generally have no choice and are required to put all their major capital projects through LIFT Co. This distinction is highly important and should be assessed carefully by authorities, and further guidance on exclusivity is set out in the next Section.
 - the Shareholders Agreement – authorities may decide to become shareholders in LIFT Co and thereby acquire an opportunity to influence the direction and activities of LIFT Co (as acquirer, developer, landlord and facilities manager of a range of property) as well as receive any dividends as and when they are declared. Although the restrictions on authorities participating in companies have been reduced through recent amendments to Part V LGHA, authorities should assess the financial and legal consequences of entering into any such arrangement, even though they will only be permitted to obtain a minority interest. Further details concerning the considerations which should be borne in mind are set out in the next Section.

Developing JSCS Through Schemes in Procurement and Operational Schemes

235. Different considerations and processes apply for authorities considering involvement in NHS LIFT schemes depending on the stage of development of the scheme. At the time

of writing it is envisaged that most of the 42 wave 1,2 and 3 NHS LIFT schemes will reach financial close in 2004/05 thereby creating a large number of operational schemes, with the other 9 wave 4 schemes about to embark upon the procurement process in 2005/06.

236. One of the key tenets of NHS LIFT is that it allows public sector participants to reduce their expenditure on procurement costs by undertaking a single procurement exercise to award a contract and establish a structure which will enable them to obtain a series of serviced facilities and operational services over a 25 year term. In this sense it is rather like a partnering arrangement and unlike traditional PFI authorities involved in NHS LIFT schemes will not be required to undertake a separate procurement exercise every time they want to build a new facility.
237. For this reason, authorities have a greater role in the manner in which their scheme is developed and run, and the choice of private sector partner and funder if they are involved during the procurement process of their local scheme. There is less opportunity to influence such factors if a scheme is already operational and to some extent the main aim of the authority at this stage will be to assess the extent to which it can persuade LIFT Co and the Strategic Partnering Board that its requirements should be taken on board and developed. For such reasons authorities should ensure they are aware of the progress of their schemes since this has implications on the process they need to follow to develop their JSC.

237.1 Schemes in Procurement

- 237.1.1 Authorities should liaise with their public sector partners involved in the NHS LIFT scheme and identify the nature of schemes that will be signed at completion. Such parties should also work together to identify whether any proposed schemes could be amended to take into account the requirements of the authority.
- 237.1.2 During the procurement of the LIFT Co partner, the authority together with the other public sector parties should seek to develop a specification for the JSC and test it with bidders as sample schemes. This will highlight the extent to which their proposals are workable and how they could possibly be adapted to make the scheme provide better value for money.
- 237.1.3 Testing and modifying proposals during the procurement process enables the authority and its partners to ensure they select a partner who is capable of addressing their specific concerns and willing to develop innovative proposals suitable for facilities accommodating a range of providers.
- 237.1.4 The specification of the authority should be refined and the terms of the Lease Plus Agreement negotiated after preferred bidder has been appointed, thereby enabling the JSC to be one of the initial projects undertaken by LIFT Co.

237.2 Operational Schemes

- 237.2.1 Authorities must follow the new projects procedures specified in Schedule 4 of the Strategic Partnering Agreement, which initially requires inclusion of the proposed JSC project within the Strategic Service Delivery Plan (SSDP). The SSDP is developed and drafted by LIFT Co in consultation with the members of the Strategic Partnering Board (SPB) and is subject to SPB (i.e. public sector partner) approval.

237.2.2 Once the SSDP including initial details about the proposed JSC project has been approved by the SPB, LIFT Co is responsible for developing a firm proposal. Such a proposal should include:-

- a description of the JSC;
- details of the intended JSC tenant or tenants,
- indicative details of how the intended tenants will fund their costs; and
- explanation of how the JSC fits into the strategy set out in the SSDP.

237.2.3 The proposal is then subject to approval from the SPB and if approved LIFT Co undertakes more detailed work for a full proposal. This full proposal will include the following details:-

- designs, plans and drawings of the JSC
- how the site for the JSC will be acquired and planning permission obtained;
- the financial model
- a (or multiple depending on who will become tenants of the JSC) draft Lease Plus Agreement(s)
- timetable for completion.

237.2.4 The full proposal is submitted once more to the SPB for approval and if so approved LIFT Co will built the JSC.

237.2.5 This is an overview of the structure and a more detailed explanation is contained in Part C of this Procurement Pack which authorities should consult before undertaking any action. There are significant cost implications for authorities pursuing this project as well as restrictions on the circumstances within which a proposal can be rejected, modified or procured elsewhere other than through LIFT Co, all of which should be carefully considered.

Allocations of Responsibility

238. As mentioned above since NHS LIFT schemes are largely property transactions, LIFT Co (or one of its subsidiaries depending on the structure) will act as landlord of the facility with the authority and its partners as tenants. For JSCs it is envisaged that the centre itself will be occupied by a number of different tenants (some of which will sign Lease Plus Agreements) and the landlord will undertake all common landlord services. However there is nothing in the existing documents which concern service integration and how this can be facilitated amongst all tenants within a facility. Also importantly in this respect the provision of soft facilities management services are not included within the original OJEU.

239. The landlord will generally be responsible for:-

- developing the facility in accordance with the specifications stipulated by the tenant;
- undertaking normal landlord services as well as appropriate partnering services (It is mainly LIFT Co that will be responsible for undertaking partnering services

which include estate and property management, property development, services planning and supply chain management) ;

- monitoring its own performance, the standard of operational services and rectifying reported defaults/poor performance;
- reviewing its own performance through the use of customer satisfaction surveys;
- ongoing maintenance of the facility;
- insuring the facility;
- deals with all subcontracting arrangements and replacement of supply chain members;

240. Tenants will generally be responsible for;

- developing their specification for the facility with LIFT Co;
- paying rental payments to the landlord (which will include rental costs, any pass through costs such as insurance and business rates, utilities costs and VAT. Also taken into account will be any deductions from such costs due to the poor performance of the landlord).
- using the facility only for the purposes for which they are permitted under the Lease Plus Agreement;
- sub-letting the facility to other users;
- making minor alterations to the facility;
- termination rights in certain circumstances; and
- if the tenant is the main public sector it will have an option to acquire the whole facility (and not just the part for which it has a Lease Plus Agreement) at the end of the 25 term of the Lease Plus Agreement. Tenants are also protected by the provisions of the Landlord and Tenant Act 1954 as commercial tenants..

241. One of the deficiencies of the NHS LIFT structure is that it does not readily facilitate service integration between the various tenants in a JSC, since they have a direct relationship with the landlord and no real relationship with other occupants unless such occupants of their own volition make arrangements to consider how they can co-ordinate and integrate the provision of their services. Service integration really only becomes an issue when tenants have moved into the JSC and realise there are unnecessary duplication of services and numerous reception desks around which users have to navigate. Further guidance on such issues are explored in the next Section.

Key Features of Using NHS LIFT

242. The key features of using NHS LIFT include the following:

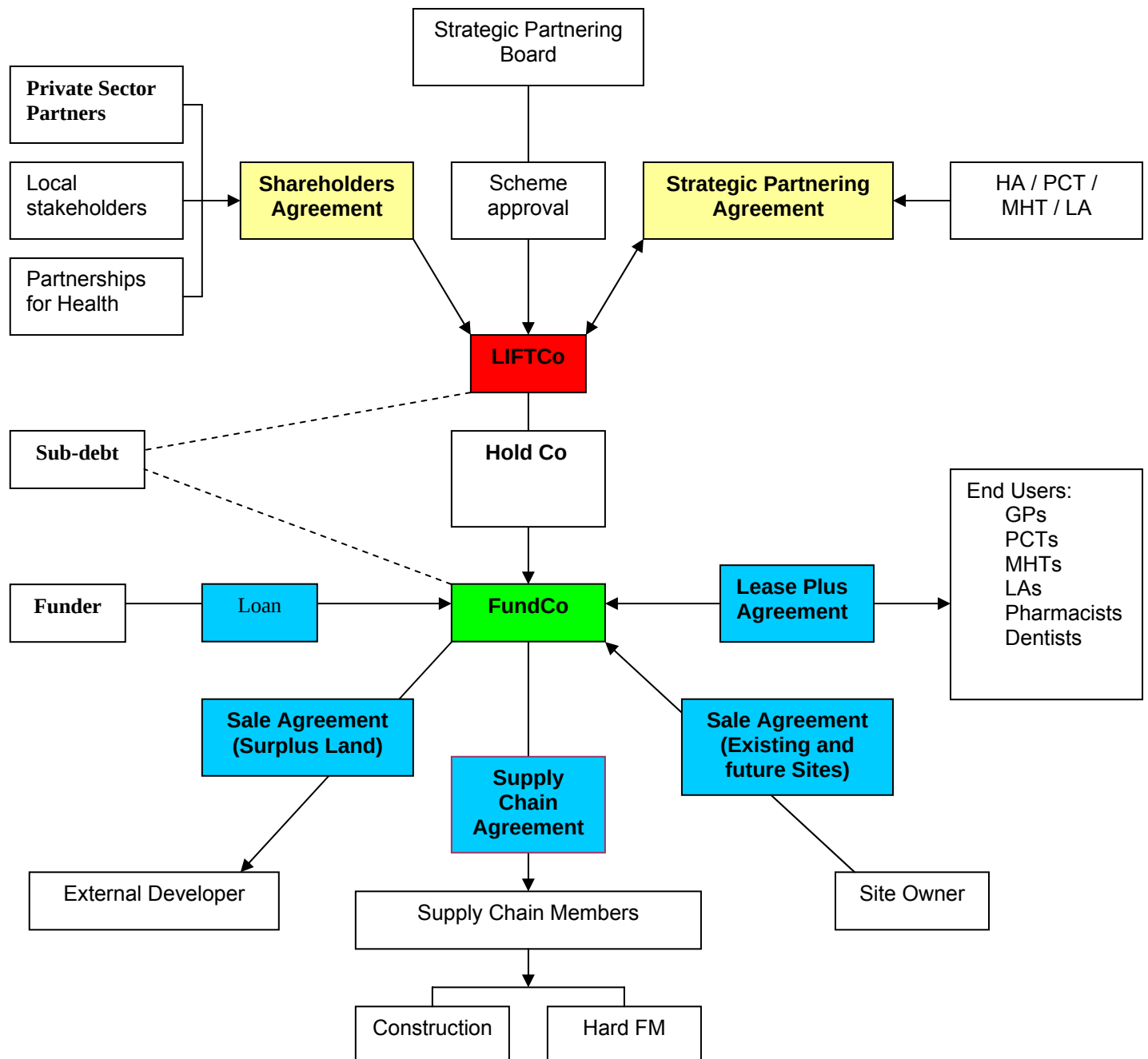
- it enables both the private and public sector to limit expenditure on procurement costs to the initial procurement exercise. This is a significant cost saving, especially since the procurement costs of a single accommodation procurement can be in the region of £0.5million – £1.5million for the public sector alone. Add to this, the potential additional costs and uncertainty of private sector contractors

bidding for a number of single schemes, and the attractions of NHS LIFT to the private sector become more apparent.

- given the presumption that procuring capital projects with a value of £20million or less through the PFI does not provide value for money, NHS LIFT is an attractive option for JSC schemes which often have relatively low capital values
- bidders welcome the opportunity to enter into long term arrangements through which a series of facilities and services can be provided rather than 'one-off' projects.
- using NHS LIFT might be the only practical way in which authorities can implement strategies for working with their work their local primary health care providers to streamline health and social care services;
- similarly to the PFI, central government support in the form of PFI credits is available to support authorities procuring JSCs through the initiative. Newcastle City Council have procured 4 JSCs through their local NHS LIFT scheme and received support for all. Further details of their approach and experience can be found in Section 4.
- the centralised and standard process helps to ensure the timeframe involved in developing and awarding contracts for JSC schemes should be reduced. Partnerships for Health suggest schemes in procurement should be capable of reaching financial close within 12 months-18. The envisaged timeframe for awarding a Lease Plus Agreement for a JSC under an operational scheme is 9-12 months. It is expected that such time periods should be reduced further as the market matures.
- JSCs in respect of which there are a number of Lease Plus Tenants will need to ensure adequate provision is made in respect of the provision of soft facilities management and ICT services since these are not covered within the standard NHS LIFT OJEU for the first three waves of NHS LIFT. For future waves of NHS LIFT schemes specific reference should be made to the relevant OJEU notice or advice sought from Partnerships for Health.

Figure 33 NHS LIFT Structure

LIFT Structure



Key:

Red = LIFTCo

Yellow = Documents entered into by LIFTCo

Green = Fundco

Blue = Documents entered into by Fundco

Section 3: Key Issues Arising in JSCs Developed Through NHS LIFT

243. This Section seeks to explore the issues which commonly arise when developing JSCs through NHS LIFT schemes as well as provide a steer as to how such issues can best be managed.

Service integration

244. Most of the service integration issues, which are fundamental to achieving a good outcome, are the same as for other forms of procurement and are set out in Section 5 of Part A1 (paragraphs 84-87).

Standard Documentation

245. Having learnt the lessons from the standardisation of the PFI, during the initial stages of the initiative Partnerships for Health (the body primarily responsible for co-ordinating and assisting the roll out and development of NHS LIFT projects) issued a standard suite of documents which all participants in NHS LIFT schemes would be required to use. Such documents have been approved by HM Treasury for use on such schemes, and subject to amendments for project specific requirements only, the form of such documents should otherwise be adhered to.
246. The main relevant documents are the Lease Plus Agreement, the Strategic Partnering Agreement and the Shareholders Agreement, which are reviewed and revised by Partnerships for Health following the closure of schemes, if it is felt any market developments should be reflected in the documents.
247. Standard procurement documents have also been issued by Partnerships for Health. This includes an OJEU notice, templates for the pre-qualification questionnaire, evaluation methodologies and the invitation to negotiate. Guidance accompanying such documents is also available and authorities should contact Partnerships for Health or the 4ps to obtain copies of all such documents.

Levels of Participation

248. Authorities must determine the extent of their involvement in the LIFT scheme and explore with their internal and external advisers the implications of involvement or non involvement at each level. Their options are briefly set out below and further guidance is available in Part C;
- No involvement at all
 - Become a Tenant under a Lease Plus Agreement in respect of particular premises;
 - Enter into the strategic partnering arrangements by becoming a signatory to the Strategic Partnering Agreement but without granting exclusivity to LIFT Co;
 - Enter into the strategic partnering arrangements by becoming a signatory to the Strategic Partnering Agreement and grant exclusivity to LIFT Co; and/or
 - Become a Shareholder in LIFT Co

Exclusivity

249. Closely aligned to the issue of the level at which authorities decide to engage in their local NHS LIFT scheme, is the extent to which authorities are willing to grant exclusivity to LIFT Co. In this regard, and unlike their local health care partners, authorities have a choice; they can still participate in the strategic planning arrangements whether or not they grant exclusivity.
250. In simple terms exclusivity obliges a party to put all their proposals for capital development related to the provision of health and social care to LIFT Co throughout the life of the arrangement. In respect of local health care bodies, this obligation is not onerous since all their projects will be related to the provision primary health care. However, authorities have a wide range of accommodation requirements, many of which will not relate to the provision of health and social care and therefore it is unrealistic to expect authorities to sign up to an absolute exclusivity requirement . In addition authorities undertake a lot of services such as commissioning, estate and property management etc in-house and will therefore not always want such services to be performed by others For these reasons it is imperative for authorities to be clear about the extent of their obligations under the Strategic Partnering Agreement since any breach of its terms could result in the authority being required to pay substantial compensation for its default.
251. Exclusivity relates to two areas, namely (1) new build or capital projects and (2) Partnering Services.
- 251.1 New Build or Capital Projects**
- 251.1.1 New build or capital projects for the enhancement of primary and community health and social care facilities (not contained in the SSDP) in the LIFT Co area, with a capital value in excess of £20,000 (index linked) are subject to exclusivity as well as non-capital transactions for the provision of accommodation (in simple terms facilities management services). In some schemes the capital value threshold of £20,000 has been re-negotiated at a specific local amendment.
- 251.1.2 Exclusivity applies to the initial sample projects put to bidders and in terms of future accommodation, only accommodation expressly stated in the Strategic Service Delivery Plan (SSDP) or specified in Schedule 14 (Council Accommodation) of the Strategic Partnering Agreement and agreed by the Strategic Partnering Board will be caught.
- 251.2 Partnering Services**
- 251.2.1 Exclusivity also relates to Partnering Services. These are services set out in Schedule 17 (Partnering Services) of the SPA which include services relating to planning, estate management, property development and the provision of regeneration advice. An authority will generally have capacity and arrangements to deliver such services in-house and will normally have concern regarding any exclusivity arrangements relating to any such services. Such services which do not relate to the existing LIFT Co estate, nor to the development of new projects will not be subject to exclusivity.
252. In most cases authorities tend to reserve their position and have no obligation to put any future projects through LIFT Co, whilst still having the option to do so if they so wish. However authorities should be careful to ensure only projects they seek to be procured by LIFT Co are included within the SSDP, unless there is an express exclusion.

Property Issues

253. Since LIFT is essentially a framework within which property transactions will take place, authorities must ask themselves the following questions:-
- do they want to transfer any land to LIFT Co whether in return for cash consideration or a shareholding in LIFT Co?
 - if they do want to transfer any land to LIFT Co, will they transfer a long term leasehold interest or the freehold?
 - once such land has been identified, what powers and procedures the authorities needs to comply with to ensure any such disposal is in accordance with its statutory duties and internal standing orders?
 - whether the occupation of the authority and its partners in the JSC will be pursuant to separate Lease Plus Agreements or whether one body will take a Lease Plus Agreement over the whole of the JSC and then sub-lease certain parts to the other partners pursuant to normal leases?
 - which of the public sector partners occupying the JSC will be the main public sector partner who has the right to purchase the whole centre at the end of the 25 year term of the Lease Plus Agreement
254. Obtaining the requisite consents and planning approvals is an obligation upon LIFT Co and there should be no assumption that because the authority is the planning authority for the area, any planning approvals process will be any different to that ordinarily required for such a development. Additional issues which could affect the grant of any planning consents as well as lead to a delay in the progress of the scheme include:-
- impact of any Section 106 agreements under the Town and Country-Planning Act.
 - applications for either the stopping up or diversion of roads, public footpaths and general rights of way.
 - valuation of sites by the district auditor.
 - highways alteration.
 - restrictive covenants.
 - obtaining certificate of title.
 - judicial review period.
255. To ensure all the various property arrangements are managed, co-ordinated and progressed in accordance with the project timetable, it is usually advisable for authority's to nominate an authority officer to report and co-ordinate progress, particularly where there are transactions involving more than one site..

Internal Local Authority Governance Structures

256. Account should be taken of the authority's decision making process and the procedures within which the authority is required to make decisions. The forum for providing decisions on key strategic issues will usually require a full Cabinet of the authority. It is also likely that if the authority is signing up to the Strategic Partnering Agreement and/or Shareholders Agreement, approval of the decision to enter into the financial deal prior to financial close will be required. In general such Cabinet meetings tend to take place on a limited basis (1 per quarter). Therefore it is essential that the authority's officers involved in the LIFT scheme confirm with the respective lead officer that the full Cabinet is able to delegate a decision to one of its sub committee cabinet groups. Such delegation would allow the sub-committee to hold special meetings. Alternatively, authorities can consider allowing their LIFT lead officer to hold a special meeting to sign off at executive level the

key strategic decision prior to full Cabinet reports. If an authority is in favour of allowing full Cabinet to verify decisions in relation to the LIFT scheme then the lead authority representative must liaise closely with the LIFT Project Director to ensure a correlation of dates leading to a successful programmed completion.

Ambit of LIFT

257. The standard LIFT OJEU Notice covers primary health and social care provision. However, the OJEU CPV codes whilst covering local authority customer service centres, elderly care centres and libraries may not encompass social care joint service centres but may include social joint service centres with dedicated care. It is advisable to ensure early and specific legal advice is sought to ensure the full integration of an authority's social care agenda within LIFT is possible and authorities can undertake the activities originally and subsequently envisaged.

Soft Facilities Management Services

258. The standard NHS LIFT documents do not assume that LIFT Co (or the relevant landlord) will provide soft facilities management services to tenants. In fact the standard NHS LIFT OJEU for waves 1,2 and 3 does not include soft FM services thereby precluding the provision of such services by LIFT Co even if this was the desired solution by all JSC occupants. This results in a significant gap in service provision for occupants of a JSC since it seems unrealistic to expect each tenant to retain their existing cleaner and security personnel to clean and secure only the parts of the JSC occupied by their employer. Furthermore, this does not assist in achieving service integration nor removing inefficiencies and unnecessary duplication in services.
259. On existing operational schemes this has been a significant issue which the parties have only really attempted to grasp once the facilities are operational and they realise there is no procedure for dealing with post and service users are confused by the various reception desks. Some authorities such as Newcastle have undertaken a bespoke soft FM procurement exercise to enable LIFT Co as well as other parties interested in the market to apply to provide such provision whilst others have sought to utilise existing authority or primary care trust provision. Whichever option is chosen, authorities are advised to check that any option they seek to pursue is conducted in accordance with the EU procurement regime.
260. There are also considerable issues which will need to be resolved in relation to soft FM provision such as who will bear the costs of any procurement exercise if a new exercise is needed as well as trying to balance needs and costs.. For example a general practitioner will have different waste management requirements which will cost substantially more than the waste disposal needs of the council. Should the occupying GP be required to pay more because its requirements are substantially more expensive or should individual occupants be left to make their own arrangements?
261. Authorities may want to consider whether they could use their Direct Service Organisations to provide soft FM services, and possible legally acceptable routes for structuring the arrangement may involve use of the Local Authorities (Goods and Services) Act 1970 or, and more likely, ensure such provision is provided pursuant to an agreement under Section 31 of the Health Act 1999.
262. Regardless of which option is chosen, authorities using NHS LIFT for their JSC should give early attention to the following:-
- identify the nature of the soft FM services required by JSC occupiers,

- the standards of performance required for each such service by each occupier,
 - the practicalities associated with the application of soft FM services to common parts of the facility; and
 - the identity of the party who will be providing soft FM services.
263. The 4ps in conjunction with Newcastle City Council have developed a suit of model documentation for adaptation and use by authorities seeking to undertake a separate procurement exercise for the appointment of a soft FM provider. Copies of such documentation is available at the Model Documents: NHS LIFT section of this Procurement Pack.

ICT and Fixed Furniture and Fittings

264. Similar considerations apply to the provision of ICT and fixed furniture and fittings (FFE) within NHS LIFT supplied facilities as those concerning soft FM services since both these items do not appear within the scope of the standard NHS LIFT OJEU for waves 1,2 and 3. It is inevitable that all parties will have different ICT systems and varying FFE requirements. If the authority together with its partners seeks to achieve the efficiencies and improvement in service delivery that service integration can bring, as well as the feel of a single unified centre, identifying a practical solution to how communications both internally within the JSC, with the sister organisations of occupants as well as with third parties will be conducted must be seen as an essential element in developing the strategy for the operation of the JSC.
265. We are aware that some authorities have utilised ICT and FFE provision pursuant to the framework agreements negotiated by the Office of Government Commerce. Since these are generally negotiated on behalf of the public sector as a whole, their proper use should not lead to any procurement difficulties. However it is advisable for authorities to consider their options and liaise with their partners to ensure the level of ICT provision within the JSC facilitates and enables improvements in service delivery and does not hamper progress in this area. FFE provision should be simpler to source, although there may be some negotiation required over which is suitable.

Lease Plus Consolidated Rents

266. To comply with local authority Best Value legislation by opening up all service arrangements to competition, consultation, challenge and comparison (4cs) local authorities are obliged to provide evidence that the procurement of services through LIFT represent value for money. LIFT is procured within the open market and hence should give precise up to date value for money. It important to recognise that the concept of LIFT is one of partnership, requiring public sector bodies to work together and share common resources. It is for this reason that each tranche of buildings delivered by LIFT Co is based on a single consolidated rental charge (i.e. each service deliverer will be charged the same rental per square meter of building occupied). Authorities may wish to take further comfort by comparing such rental charges with the costs involved in the other available procurement routes.

Powers

267. Powers for authorities to participate in LIFT will depend to a certain extent upon the level of participation. Where an authority is merely taking up occupation through a Lease Plus, the powers are no different to those which would enable an authority to acquire premises or a traditional lease over premises. Either an express power is contained within the legislation relating to the function or otherwise the taking of the Lease Plus

may be authorised as an acquisition of land in respect of a function-related activity under Section 120 of Local Government Act 1972. Alternatively, taking the lease could be construed as "incidental or conducive to or facilitate a discharge of the functions of the local authority" in accordance with Section 111 of the Local Government Act 1972. The managed services aspects of the Lease Plus will be authorised under Section 1 Local Government (Contracts) Act 1997.

268. The same powers will be applicable for authorities entering into the SPA in relation to new projects. As mentioned earlier, the well-being power contained in Section 2 of the Local Government Act 2000 will be of assistance since the activities undertaken will invariably be for the social or economic well-being of the inhabitants in the authority's area. In addition, there may be elements of the services which are to be provided "jointly" by the local authority and the PCT and powers for such activities can be found within Section 31 of the Health Act 1999 and the Regulations made under that Section.
269. In respect of acquiring a shareholding in LIFT Co, the well-being powers in Section 2 of the Local Government Act 2000 and the new best value powers to be enacted in an Order made under Section 16 of the Local Government Act 1999, together with the incidental powers contained in Section 111 of the Local Government Act 1972 should be of assistance.
270. Authorities may also transfer land to LIFT Co. However, without the benefit of a ministerial consent, the transfer must, in accordance with Section 123 of the Local Government Act 1972, be for the best consideration reasonably obtainable. Consideration payable to the local authority may be cash or other non-monetary consideration such as shares in LIFT Co. Disposals at an undervalue of no more than £2million are also permitted in accordance with the Local Government Act 1972: general Disposal Consent order issued in August 2004 which allows such disposals where they would improve or enhance the economic, social or environmental well being of the area.⁶⁴

Long Term Contract

271. Regardless of the level of participation in a scheme by an authority, it will essentially be entering into a long term commitment, not unlike that entered into in relation to a PFI project. If the authority merely takes the grant of a Lease Plus, it will be entering into a contract to pay the rent for the premises occupied by it over the term of the lease. Notwithstanding that the NHS LIFT initiative contemplates flexibility of leasing arrangements, it is likely that authorities, both for their own operational reasons and for LIFT Co's certainty of investment, will take a long lease on refurbished, redeveloped or new premises, probably to make the investment period in the region of 25 years.
272. Being a party to the SPA potentially also involves a long-term commitment. However, the extent of this commitment will depend upon the level of participation by the authority in LIFT. For example, they will be a member of the Strategic Partnering Board and therefore will be required to give commitment to the Strategic Partnering Board's ongoing review of strategic policy and approval of the Strategic Service Delivery Plan. The authority may determine that it is in its best interest and constitutes value for money to give LIFT Co a certain amount of exclusivity over new projects providing health and social care premises to be occupied by the authority. Such exclusivity may be given in relation to sector-specific premises or alternatively for premises covered under an agreement with the PCT under Section 31 of the Health Act 1999. Alternatively, the authority may decide against granting exclusivity, preferring to offer the first right of

⁶⁴ Details of the criteria is available at the ODPM website at www.odpm.gov.uk

refusal to LIFT Co for projects as and when they arise (subject to complying with the EU procurement rules).

273. The authority participating in and subscribing for shares in LIFT Co is the most extensive participation in LIFT. In doing so, the authority will be committing an investment in LIFT Co in return for dividends paid out of the profits of LIFT Co. Subject to the authority transferring its shares (subject to the first right of refusal of the other public sector participants in LIFT Co and if they refuse, the private sector partner at open market value), the authority will be participating in LIFT Co for the duration of the joint venture.

Residual Value

274. Buildings owned by LIFT Co (unlike under most PFI transactions) will not revert to the authority at the end of the term. LIFT projects are structured so that LIFT Co takes residual value risk (i.e. the risk that the value of the properties transferred to or acquired by LIFT Co at the end of the contract differs from that forecast at the beginning of the contract and by reference to which payments under the Lease Plus were fixed). The rents payable under the Lease Plus reflect the forecast residual value at the beginning of the contract. LIFT Co takes the risk of any reduction and the benefit of any increase in values from those forecast. However, this does not mean that the authority will need to vacate the premises immediately at the end of the contract. This is because there is a right to purchase the premises in favour of the main tenant of the premises (which may be the local authority or a primary care trust or by agreement, either of them) at market value. Furthermore, the local authority as a business tenant under the Landlord and Tenant Act 1954 will have the opportunity to renew the Lease Plus as of right. The residual value risk taken by LIFT Co forms a part of the assessment of the risks for the purposes of assessing the accounting treatment of the property under the lease in accordance with FRS 5.

Exit Strategy

275. Unlike PFI, premises which are the subject of LIFT do not automatically revert to the authority at the end of the contract (subject to the right to purchase, Landlord and Tenant Act protected rights and the right to extend the existing Lease Plus). As a consequence, an authority participating in LIFT needs to give consideration to an exit strategy on the expiry of the Lease Plus. Such a strategy is likely to encompass one or more of three options, namely setting aside funds to purchase the properties at the end of the term of the Lease Plus, continuing to pay the rent under the Lease Plus following the continuation of the Lease Plus and seeking alternative accommodation towards the end of the Lease Plus. Unlike PFI, the exit strategy at the end of a Lease Plus will involve the authority taking positive action in relation to distinct options for the provision of premises to discharge the functions currently undertaken on premises covered by a Lease Plus.

Value for Money

276. As part of the original options appraisal process of comparing NHS LIFT against other procurement options such as PFI and traditional procurement, the authority will examine the respective impact on value for money of the different approaches. In doing so the authority should endeavour to examine the respective whole life costs of works and services for each of the two approaches taking into account the respective risk profiles. However, it is accepted that it will not always be realistic to anticipate being able to follow alternative means of procurement in the same circumstances. As explained previously, it is likely that the PCT may be constrained financially, practically and by its exclusivity obligations, from following any alternative form of procurement other than through the NHS LIFT initiative. In which case, the local authority will need to demonstrate value for

money by virtue of the procurement process under NHS LIFT and by also demonstrating value for money against a public sector comparator.

277. Authorities should be aware that HM Treasury's value for money assessment model requires both a quantitative and qualitative analysis with neither taking precedence over the other.

FRS 5.

278. PFI credits and revenue support may be available to fund the notional capital element of Lease Plus obligations under LIFT (subject to the availability of Government funding and to meeting the criteria set out in the ODPM Procurement Note: "PFI Support for Local Authorities taking out a Lease Plus in an NHS LIFT Building⁶⁵"). As a consequence, local authorities will (other than on an exceptional basis) have to demonstrate that a Lease Plus taken by them has the same risk profile as a PFI Contract and is also off the local authority balance sheet (as determined in accordance with proper accounting practices). The "off balance sheet" test will be scheme specific and local authorities need to take early advice on this crucial issue as part of their preparatory work for the development of the OBC (or LIFT equivalent process). They will also need to review any assessment at frequent intervals and key stages of the LIFT procurement process. It is envisaged currently, because of the limited nature of available central government funding through PFI credits, that the majority of LIFT schemes in which local authorities participate will be funded from resources other than PFI credits.

Best Value

279. The Local Government Supplement to the Standardisation of PFI Contract 2004⁶⁶ reconciles long term PPP contracts with the statutory duty upon local authorities to ensure continuous improvement. The standard NHS LIFT Lease Plus contains provisions enabling local authority tenant to undertake minor alterations to the premises with the consent of LIFT Co and also to instruct LIFT Co to undertake minor alterations of an agreed price. These provisions allow an authority to instigate changes to comply with its best value duties. Given that the premises held by local authorities under the LIFT initiative will probably be small in nature, as compared to an authority's health and social care estate, these provisions should provide sufficient flexibility for authorities. For this reason it would appear unnecessary to incorporate the best value drafting contained in the Local Government Supplement in such circumstances. However, incorporation of the Local Government Supplement drafting should be considered where the scale of premises held under the LIFT initiative becomes significant. In any event, the requirement on LIFT Co to market-test new or second generation projects should ensure compliance with an authority's best value duty in relation to demonstrating value for money. Changes arising from best value considerations could also be worked into new projects.

Local Government (Contracts) Act 1997

280. The Local Government (Contracts) Act 1997 (the "1997 Act") is widely used by local government when awarding PFI/PPP contracts and fulfils a number of roles;-
- it clarifies the powers of authorities to enter into certain long term contracts which are "for the purposes of, or in connection with, the discharge of" local authority functions";

⁶⁵ A copy of which is available from www.odpm.gov.uk

⁶⁶ A copy of which is available at www.4ps.gov.uk

- enables Local Authorities to certify certain long term contracts as "intra vires" and thereby prevents such contracts from being challenged in a private law action by one of the parties to the contract (certified contracts may still be challenged by way of judicial or audit review);
 - assures contractors that they would be compensated if the certified contract is set aside; and
 - enables Local Authorities to agree with contractors the terms which would survive the setting aside of the certified contract (relevant discharge terms). .
281. The protections listed above are only applicable if the certification procedures detailed in the 1997 Act and accompanying regulations are adhered to within the requisite period (6 weeks from the execution of the contract). Note however, that only specific contracts are capable of certification, namely
- contracts for "the provision or making available of services (whether or not together with assets or goods) for the purposes of or in connection with the discharge by the local authority of its functions" intended to operate for a minimum period of 5 years, and
 - contracts relating to the provision of finance or insurance to the provider in respect of the provision contracts referred to above.
282. The Lease Plus Agreement is a long-term contract for the provision of assets/services to which the certification procedure laid down in the 1997 Act could apply. The Funder's Direct Agreement arguably also comes within the definition contained in the 1997 Act. However whether certification should also apply to the Shareholders' Agreement and the Strategic Partnering Agreement is less clear. They do not appear to come within the definition set out in Sections 1(1) or 1(2).
283. Local authorities will be aware of the time and procedural difficulties involved in obtaining such certification and the presumption should be that certification should not be offered to private sector partners as of right. There may, however, be circumstances specific to a particular scheme which might require a vires certificate to be issued. A number of operational schemes have issued certificates whereas others have successfully resisted and therefore it is for authorities to assure themselves of the extent to which it is appropriate and/or necessary to award a certificate.
284. Similar certification is not required from health care bodies and the Department of Health will not, on policy grounds, issue externally financed development agreement certification pursuant to the National Health Service (Private Finance) Act 1997 in respect of PCT involvement in NHS LIFT schemes. Therefore, it is advisable that all public sector parties entering into NHS LIFT agreements should identify the legal powers under which they are purporting to act and agree a common position in relation to the degree of 'comfort' to be provided to funders with regard to their powers to enter into such transactions. To assist authorities 4ps have developed a standard set of template certificates for use by authorities on NHS LIFT schemes, together with a standard set of relevant discharge terms which should be consulted. Copies of such documentation is available from the 4ps website at www.4ps.gov.uk.

Stamp Duty Land Tax

285. The applicable tax considerations should be assessed by authorities prior to any involvement. In particular authorities should note that stamp duty land tax (SDLT) will be chargeable on all "land transactions". Unlike health trusts, local authorities are not

exempt from SDLT, although there are a number of useful general exemptions which may be applicable. Land transactions involving non-residential property in disadvantaged areas are exempt from SDLT, further details of which can be found on the Inland Revenue website. Similarly, the "leaseback" element of a sale and leaseback of a property can be exempt from SDLT.

286. Where a local authority is taking a "lease plus" lease from LIFT Co as part of NHS LIFT arrangements and none of the above exemptions apply, it should consider its exposure to SDLT. SDLT is payable on the "net present value" of the lease, which is calculated by reference to the term of the lease and the rent (plus VAT if applicable) payable over the term. Lease Plus Agreements generally comprise leases for serviced buildings with the amount expressly apportioned to the rent that the Inland Revenue can assess a lease to SDLT on the basis of an apportionment if that is "just and reasonable".

Section 4: Newcastle City Council's Customer Service Centres Developed Through NHS LIFT

Introduction

287. Having considered some of the key issues which commonly arise within NHS LIFT developed JSCs, we consider below the approach adopted by Newcastle City Council who have opened three Customer Service Centres, with their remaining sites to be developed through their local LIFT project (Newcastle & North Tyneside LIFT Partnership), two of which are Joint Service Centres with Health.

Strategic Context

288. Newcastle City Council is undergoing major transformation to deliver services to meet customer expectations. Reflecting the Council's 'excellent' CPA rating, major modernisation and improving the Council's performance is high on the agenda. The Council's Customer Service Strategy identifies the need to provide access to services through different channels this is being achieved through innovative use of resources. The main aims of the Customer Service Strategy are to ensure that the Council provides high quality, responsive and accessible services that are efficient, cost effective and provide customers with a choice about how and when to access them.
289. A major element of the Customer Service Strategy is to establish a citywide network of Customer Service Centres (CSCs), each 'face-to-face' facility making the best use of staff, buildings and information technology; providing access to council and other public services 'under one roof' within the local community, for the first time, with the majority of enquiries resolved at first point of contact, and when established the network will provide 91.3% of the population with access to one or more of these facilities.
290. The Customer Service Strategy was developed in response to findings from the Customer Service Green Paper where the general view of residents is that CSCs should be provided locally enabling the Council to provide a 'one stop shop' approach to the delivery of council and other public services.

Customer Service Centres – the Story So Far!

291. The Council's first CSC was opened in the Civic Centre in September 2000. Its aim to make services more accessible, replacing the 18 different reception points within the Civic Centre building with once centralised delivery point for over 90 different services on behalf of the 6 directorates of the Council. The success of the Council's first CSC demonstrated in winning a National Customer Service Award in competition with the private sector for 'Best Use of Technology' and in December 2002 achieved a Charter Mark for Customer Service Excellence.
292. A significant achievement for the Council in 2003 was a challenging project to open 2 further local Customer Service Centres, both CSCs significantly contributing to achieving the Council's Local Public Service Agreement (LPSA) targets for Customer Service, to achieve 200,000 visitors showing 90% customer satisfaction levels measured by 6 monthly surveys.

293. To achieve these challenging targets, Customer Relationship Management (CRM) has been 'innovatively' developed to support frontline staff working in local Customer Service Centres and has been a fundamental element contributing to their successful delivery.
294. Council services provided from Customer Service Centres include cash payments, Council Tax, Housing Benefit, Corporate Complaints, Electoral Registration, Environmental and Public Health Services, Repairs and Maintenance, Parking, Leisure Services, Social Services as well as many others. Standard facilities include comfortable waiting areas, private interview rooms, free phones, baby changing facilities and children's play equipment.
295. In developing the range of services to be provided from CSCs, ground breaking work has been ongoing to encourage and develop partnership working arrangements with external agencies and other public bodies.
296. The overall mix of service provision is location specific and differs in each of the CSCs. Key public service providers include JobCentre Plus, Connexions, Paypoint, Citizens Advice Bureau, Workfinder, Age Concern, New Pathways, North East Pensioners Association, Age Concern, Inland Revenue, Workfinder, Credit Union, Child Contact Centres, Shaw Trust, Community Police, and Adult Basic Skills. together with a number of other voluntary and community services.
297. Partners have been chosen because of the value their services could bring to customers through joint working within a CSC and also because a number of services were requested by community representatives during the consultation process.
298. Imaginative working practices have been put into place ranging from permanently based staff rotas, weekly surgeries, free phone, electronic contact and video conferencing as well as general signposting and provision of information to customers. Work is underway to secure longer term partnerships to enable the Council to develop and sustain service delivery through local CSCs.
299. Community Focus Groups, made up of local people have met every 6 weeks, since July 2002 to facilitate community participation in the development of each CSC. Representatives have helped to influence the range of Council and other external agency services to be provided and assist in the development and usage of information technology and self-service initiatives. They have also been involved in the development of publicity material and provided a valuable channel of communication with the wider community and have assisted in evaluating the success of the local CSCs in March 2004.
300. Staff have been recruited from across the Council to work in the local CSCs and have undertaken an intensive training programme to provide them with the skills, knowledge and expertise to deliver Council services from local CSCs. A major challenge has been integrating CSC staff with staff from other Council directorates and external public service providers, facilitating an environment where staff can work together in a positive and professional manner, providing multi functional service provision in the local community for the first time.

301. Significant cultural and organisational barriers have been broken down by developing and engaging staff. Encouraging such a positive attitude towards what was a radical change process has been achieved and embedded through a number of initiatives including:
- Change Management Strategy (City Service)
 - Framework for Effective Communication & Consultation
 - Regular Briefings (CSC Vision & Objectives) for Managers, Staff, Trade Unions and Elected Members
 - Supportive Consultation through Staff Focus Groups
 - Work Shadowing
302. Management arrangements ensure clarity in terms of project team roles and responsibilities and that project team representatives are easily accessible and approachable, listening positively and responding to any issues raised by staff. The framework for effective communication ensures that timely information is available to everyone and regular reporting arrangements means that all risks are managed and everyone is continually involved in the project development process.
303. Staff performance is managed through regular appraisals to recognise individual achievements and evaluate training needs and performance. Individual and team targets are linked to Service Improvement Plans and Portfolio Balanced Scorecards. Staff training is ongoing and is related to the Council's policies set out in its Customer Service Charter, Customer Service Handbook for Staff and Serving the Public Leaflet.
304. Change management initiatives have generated a sense of ownership and staff 'buy in' where staff feel empowered to work together to make the opening of each local CSC a huge success for customers and staff alike. As well as motivating Customer Service staff, opportunities have been created to involve wider groups of Council officers through our communication process. This helped to encourage wider ownership of CSCs and was fundamental to cascading a positive message throughout the Council, of the benefits that CSCs – together with CRM technology – bring for both customers and staff.
305. The success of the Council's two LPSA Customer Service Centres is reflected in customer satisfaction levels of 95.7% (Survey – January 2005). The introduction of Customer Relationship Management has supported increased generic service provision across all three Customer Service Centres with 'first point of contact resolution' at 83%. In 2004 the Council was awarded both the Association of Public Service Excellence (APSE) and the British Computer Society (BCS) Awards for innovative use of CRM Technology in delivering local Customer Service Centres.
306. Both local Customer Service Centres were procured and funded by the Council through a combination of capital receipts and its general available funds with a £1million of government grant through attainment of LPSA targets.
307. Due to the envisaged cost of the additional proposed Customer Service Centres, all of which require substantial investment, the Council decided to use PFI to develop its remaining Customer Service Centres to enable access to third party finance. The introduction of a further procurement route, NHS LIFT, which allows access to third party finance but also sought to facilitate partnership working between the authority and its partnering public sector agencies presented the authority with another option.
308. The Council undertook a value for money comparison between their PSC, PFI and the LIFT approach which resulted in the latter proving to be more beneficial for the authority. It therefore decided to procure the remainder of its CSCs through NHS LIFT.

309. Following the successful allocation of PFI credit (£13.7 million) for Customer Service Centres by the Office of the Deputy Prime Minister (ODPM) and the financial close of the public private partnership known as LIFT in May 2004, project work commenced and is progressing at varying stages in terms of delivering the remaining 4 Customer Service Centre sites.
310. The Kenton Centre, scheduled to open in October 2005 is the first of two multi agency buildings with the Health Authority and as well as a Customer Service Centre will provide a new library, Your Homes Newcastle office and base for the Social Service Elderly Resource team. Development of the CSC will provide the potential for meaningful working with Health as well as fully exploring a joint working initiative between 'generic' CSC Officers and Libraries staff.
311. As work is progressing to develop the Kenton Centre; the Council is striving to ensure that service integration is developed in a meaningful way with Health. A Service Integration Group has been set up to ensure that services and systems are integrated and developed in such a way that they produce a beneficial outcome for the customer. Key service integration issues that are being progressed include:
- Design – Look, Layout & Brand Identity
 - Procurement of Fixtures, Fittings & Equipment
 - Telephony & Technology
 - Security Solutions to meet Joint Requirements
 - Stakeholder Involvement
 - Customer Experience
 - Operations Management
 - Relative capacity and experience of partners
312. Supporting the Council's network of primary Customer Service Centres, is the development of a number of Satellite CSCs, each satellite facility providing the opportunity for further decentralised service delivery. The first Satellite facility is currently being developed at Walker in partnership with Health (to open in May 2005), where a new building will provide a Your Homes Newcastle office together with accommodation for Social Services Welfare Rights.
313. Site assembly work is progressing for the three remaining Customer Service Centre sites with a target programme to open a further Customer Service Centre in September 2006, with the two remaining Customer Service Centres opened in 2007.
314. The next section explores how Newcastle City Council undertook its value for money comparison between their PSC, PFI and the LIFT approach, resulting in LIFT proving to be the most beneficial route for the Council.

Soft Market Testing

315. A soft market testing exercise was undertaken by the Council's financial advisers to ascertain whether there was sufficient market interest to justify taking the proposal to develop four new Customer Service Centres to the market. This exercise was more designed to ascertain whether the project itself would be sufficient to attract organizations experienced in the PFI sector. The attraction of NHS LIFT was already apparent since the project had identified three viable bidders at ITN stage of the procurement. It was envisaged that an additional £15million of support would be required from government funds or third party finance.

316. In November 2002 the Council authority wrote to a number of organisations who they believed might be interested in this project which included a range of providers known for their interest in accommodation PFI projects. A comprehensive pack of information was given to them detailing the authority's requirements and such organisations were asked to discuss their approach to the following issues:-
- risk allocation
 - length of contract
 - financing of the project
 - contractual arrangements and
 - whether the project was attractive to the market.
317. Their responses to such issues were instrumental in assisting the authority to conclude that it was a viable project and appreciate the constraints within which the private sector would be willing to bid for such a project. Out of the 11 organisations asked to respond, 6 did so whilst the others indicated they were not interested in pursuing this sector. The others indicated the project was bankable and capable of delivery. The private sector interest in the LIFT market was more buoyant and enthusiastic.

Procurement

318. The default procurement route for the project was the PFI, although for a considerable period of time PFI and NHS LIFT were twin tracked whilst the authority sought to examine which would provide Newcastle with the best value for money option. Since Newcastle was a signatory to the original OJEU notice for the LIFT scheme this was not an unviable option.
319. A project management team was established to deliver the project and would remain despite the eventual choice of procurement route. Specialist input was assigned from the authority's legal, financial, architectural, planning, property and ICT departments with much needed project and political "buy-in" from elected members representing a range of portfolios covering the services to be provided from Customer Service Centres.
320. External financial advisers were appointed principally to assist the authority in undertaking its value for money assessment to help it determine which procurement route would provide best value and legal advisers were appointed through the 4ps.

Legal Issues

321. In terms of legal documentation, Newcastle appreciated the standard documentation developed by Partnerships for Health for use in NHS LIFT projects but noted that they required minor drafting amendments to make them suitable for use by local government. Given the health driven focus of the initiative, Newcastle quickly discovered that the Lease Plus Agreement, Shareholders Agreement and the Strategic Partnering Agreement did not take account of the legal constraints within which authorities operate. Therefore, in conjunction with 4ps, Newcastle negotiated a series of amendments to enable them to enter into such agreements.
322. The use of a Lease Plus Agreement did not create any vires issues for the authority since they were accustomed to entering into leasehold arrangements as well as disposing of land.
323. The powers pursuant to which the authority entered into the agreements included
- Section 2 of the LGA 2000 - well being
 - Section 120 of the Local Government Act 1972 - acquire land

- Section 123 of the Local Government Act 1972 - land disposals
 - Section 16 of the Local Government Act 1999 - best value
 - Sections 27-31 of the Health Act 1999 - partnering with health bodies
 - Section 111 of the Local Government Act 1972 - incidental powers.
324. The main issues exercising the authority were the extent to which they would be willing to give exclusivity to LIFT Co for the duration of any Lease Plus Agreement, whether the authority needed to certify the agreements pursuant to the Local Government (Contracts) Act 1997 as well as the interest of the authority in LIFT Co.
325. Since the authority did not want to be restricted in terms of its ability to procure the development of major facilities, it resisted any attempt to give LIFT Co the first right to develop all its major projects by seeking a carve out from the provisions in the SPA.
326. The private sector partner, together with its funder were adamant that certificates should be awarded in respect of the LPA and SPA and therefore the deal could not be signed without them, although from a technically legal perspective there is no reason why the SPA should be so certified given that it is not a usual services contract and the original legislation was only specifically designed to cover PFI project agreements and lenders direct agreements.
327. As Class B shareholders in LIFT Co, Newcastle had to determine alongside its other public sector partners in the LIFT scheme (North Tyneside Council & local PCTs) by whom they would be represented on the board and how such parties would exercise their votes given that usually separate and largely autonomous bodies would be represented with a single voice on the LIFT Co board.

Business Case

328. Newcastle tested the business need for the improved levels of service provision by undertaking a review of existing provision. The existing services were provided from a range of ill-suited locations in a largely fragmented manner and located in buildings which were inaccessible (many of which did not comply with the Disability Discrimination Act requirements) and in a poor state of repair thereby making them expensive to maintain and operate.
329. In undertaking a comprehensive options appraisal it was clear to the authority that;
- the "do nothing" option was not an option since this would not enable the authority to achieve its corporate objectives nor to meet its obligations pursuant to the Government's modernising government agenda;
 - the do minimum option (i.e. to modify the existing buildings from which services were currently being provided) was also considered against the location criteria for the CSCs specified above. The existing buildings were not located within the natural centres of communities and would not therefore enable the authority to ensure all residents were within 1.5m of a CSC. In addition, the costs involved in maintaining as well as refurbishing existing buildings so they complied with modern legislative and operational requirements were substantial and could not be justified given the state of the infrastructure of most existing buildings;
 - piggybacking (i.e. providing facilities in other existing developments) would be insufficient in and of itself to increase the accessibility of services since they would not be located in accessible places and the desire of the authority to design services around the needs of the customer would not be fully achieved. In any event such

facilities were already very cramped in terms of accommodating their existing requirements, with very limited scope for expansion.

330. Developing four new Customer Service Centres was the ideal option, although the cost of such provision exceeded all the other options but the authority believed so would the advantages.
331. When evaluating each of the options, the authority considered not just the accommodation related costs (i.e. capital build as well as infrastructure, whole life costs and capital replacement costs, soft FM and hard FM) but also accounted for incremental revenue costs such as staffing requirements, staff uniforms, training, printing, stationary and general administrative support, IT software and support and telecommunications charges. Only such an analysis enabled a comprehensive appraisal.
332. In addition the final option was in accordance with the authority's Capital Strategy and Asset Management Plan which recognised the need to rationalise the authority's portfolio of public buildings and community facilities, many of which were incapable of bringing into line with modern legislative requirements, incapable of refurbishing with modern ICT infrastructure without incurring excessive costs and unsuitable for the functions they will now be required to fulfil.
333. The Asset Management Plan made specific reference to the need for the authority to reduce the 22 joint service centres offices, 41 social services offices and 20 branch libraries from which the authority initially operated.
334. A risk workshop was held by the authority in November 2002 comprising of authority officers and the authority's financial advisers. All project risks were assessed as high, medium or low with the potential cost implications of all high and medium risks being quantified. Such an analysis allowed the authority to work out a PSC against which a PFI reference project was assessed as well as a high level estimate of the cost of procuring the project through NHS LIFT.
335. The LIFT comparator comprised of an estimate of the potential lease plus payments due from the authority adjusted to reflect the additional cost to the authority of procuring those services not included within LIFT (i.e. principally soft FM and ICT) but included within the PFI reference project. The indicative LIFT cost demonstrated a marginally better value for money for the authority than PFI.

Soft Facilities Management

336. Newcastle City Council has obtained legal advice on the options for soft FM provision within the LIFT Co structure. The following preferred options have been identified:
- Plan A: to allow LIFT Co to provide all soft FM services to the Phase 1 developments as an additional service to the LPA; or
 - Plan B: to allow the Council's Direct Services Organisation to provide all soft FM services to the phase 1 developments through a separate soft FM contract with either: (1) LIFT Co itself or (2) directly with the tenants; or
 - Plan C: to let a separate contract for soft FM. This would be let by the tenants, not LIFT Co.
337. Plan C was preferred for propriety and governance reasons, and has been implemented via an OJEU tender with Newcastle City Council action on behalf of the tenant partners;

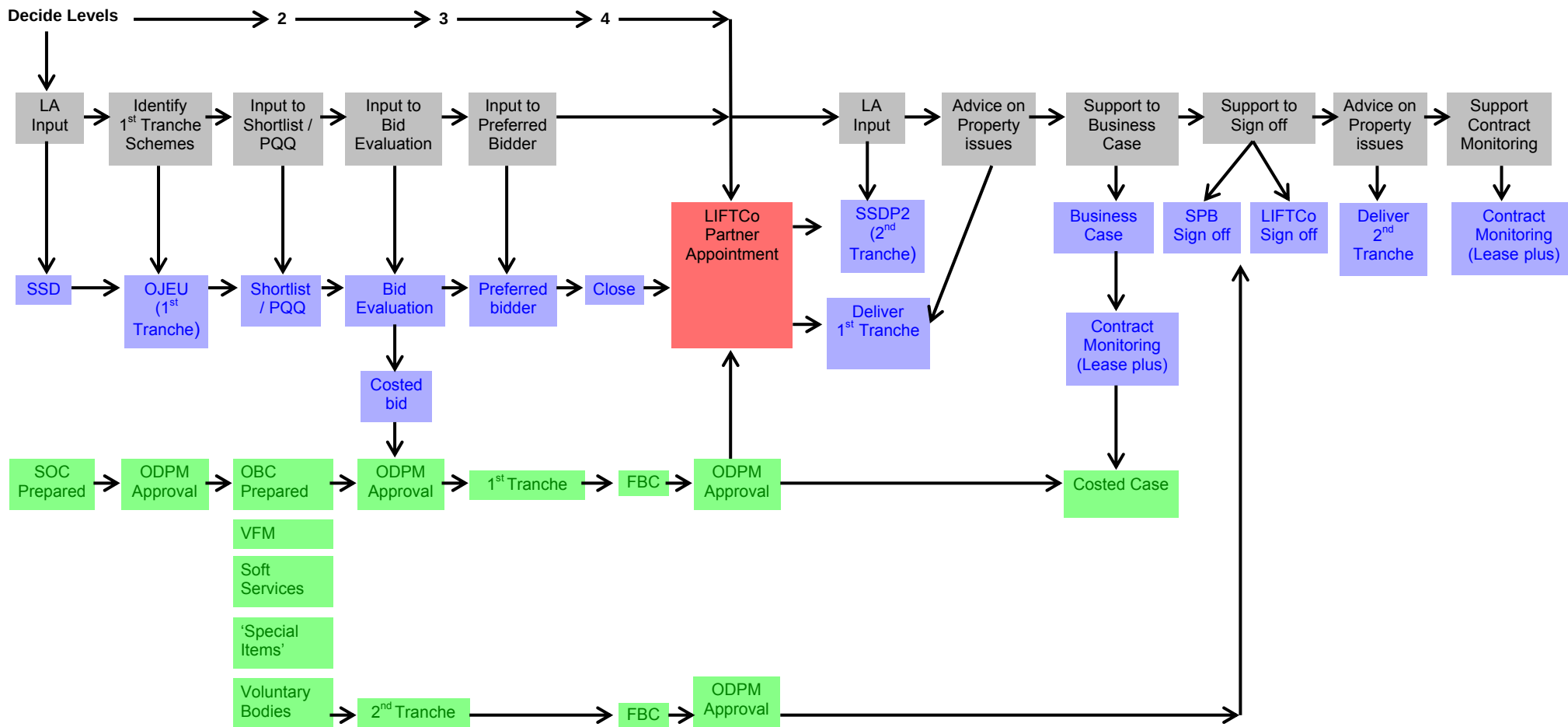
NCC will also administer the contract, which will be managed by a jointly appointed and funded technical manager.

338. A comprehensive soft FM specification was prepared for all sites, with Robertson preparing detailed cleaning specifications that would need to be adhered to by the soft FM provider that is chosen and discussions with affected NHS staff are being conducted via their employing organisations. The contract is expected to be finalised in April / May 2005.

Please note this table only deals with NHS LIFT Schemes in Procurement. Details of the process to be undertaken for operational NHS LIFT schemes can be found at Part C

Section 5: NHS LIFT Process Map

Delivering Joint Service Centres through LIFT – Process Map


$$= LA$$

= LIFT Procurement &

= LA PFI Credit Approved

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DEVELOPING JOINT SERVICE CENTRES

PART A4

Development of JSCs through BSF

Contents

Section 1: Opportunities for Developing JSC Projects Through BSF

Section 2: Strategy and Process for Developing JSCs Through BSF

Section 3: The BSF Structure

Section 1: Opportunities for Developing JSC Projects through BSF

The Building Schools for the Future Programme (BSF)

339. The Department for Education and Skills' (DfES) BSF programme embodies the Government's commitment to improve educational performance and standards through increased capital investment:-

"Transformation of standards and performance will be driven by the government's commitment to a new approach to capital investment - enormously increased from £700 million in 1997 to over £5 billion by 2005 –06.

"The scale of BSF allows the opportunity to move from patch and mend spending on schools to rebuild and renewal, with a more strategic approach to funding, design, and procurement of buildings. As a building programme aimed at improving learning, BSF funding allocations will address whole areas, demanding profound reshaping of local educational visions. LEAs and communities will be guided by government education policy, taking into account what is required today and can be adapted for future needs."⁶⁷

340. Building upon the model and structure used in NHS LIFT schemes, the BSF programme seeks to combine strategic planning with the delivery of capital investment pursuant to a single standardised process. Partnerships for Schools (PfS), a non-departmental body aligned to the DfES has been given the responsibility for delivering the programme through the appointment of consultants designed to assist local schemes as well as the production of a suit of standard BSF documentation which can be accessed from www.p4s.org.uk/StandardDocumentation.htm. Such documentation includes general advice on project planning, procurement, competition, funding sources as well as the following template documents for use on all projects (subject only to project specific amendments):-

- Strategic Partnership Agreement (including partnering services specification);
- LEP Shareholders Agreement;
- BSF PFI Project Agreement (including payment mechanism, output specification and funder's direct agreement);
- BSF Design and Build Contract;
- BSF ICT Services Contract (including output specification);
- BSF Managed Services Agreement; and
- BSF Model Invitation to Negotiate.

341. As you will note from the diagram at Section 3 of this Part A4, the body responsible for developing the strategy for the provision of education in the area is the Local Education Partnership (LEP) which may be a corporate entity specifically incorporated for the purposes of the local scheme or an existing suitable entity which has been given the role envisaged for the LEP in the standard BSF documentation. Authorities seeking to use

⁶⁷ See www.p4s.org.uk and www.bsf.gov.uk for further details.

existing entities as their version of the LEP are required to satisfy PfS that such use will provide the authority with the best value for money solution.

342. Whilst the pathfinder and first three waves of BSF designated areas have been announced⁶⁸, the intention is that the programme will encompass every local education authority over the next 10-15 years. All local education authorities have been given an indication of the envisaged BSF wave (1 – 15) in which they are likely to feature, thereby allowing authorities to plan their capital investment strategies accordingly. Any authority unsure of its status should contact PfS or see www.p4s.org.uk for further details.
343. BSF funding can only be obtained for the development of the secondary school estate, although local schemes are expected to strategically plan for the development of suitable educational provision for children and young people within the locality from nursery and early years provision, primary and secondary education through to provision for the 16-19 age group. Engagement from local businesses and training organisations as well as bodies such as Connexions, Job Centre Plus and learning and skills councils is also envisaged. Given the scope of BSF, its proposed extension to all education authorities, and experience to date which demonstrates that many JSCs are situated within school sites and involve the extension of school and leisure facilities to the community, authorities are advised to consider development of their JSC projects through their local BSF scheme when it becomes operational.

When Is BSF an Option?

344. Authorities seeking to develop JSCs may have an opportunity to develop their JSC through BSF if they comply with the following criteria:-
- they are situated within a designated BSF area;
 - the proposed JSC involves educational facilities or an extension of educational facilities in the authority's area; and
 - the authority is seeking to work with local partners in the strategic planning, development and implementation of educational facilities within the locality.
345. Areas currently designated as BSF areas are set out below.

Figure 34 BSF Designated Areas

BSF Pathfinders	BSF Wave 1	BSF Wave 2	BSF Wave 3
Sheffield Bristol Bradford Southwark, Greenwich &	Gateshead & South Tyneside Knowlsey Leeds Manchester Newcastle-upon-Tyne Newham Solihull Stoke-on-Trent Sunderland Waltham Forest	Birmingham Hackney Haringey Islington Kingston-upon-Hull Lambeth Liverpool Middlesbrough Nottingham Tower Hamlets	Barnsley Derbyshire Durham Kent Luton North Lincolnshire Salford Sandwell Tameside Westminster

⁶⁸ Details of BSF designated areas can be obtained from the 4ps website or at www.bsf.gov.uk

346. In view of the increasing pressure on authorities to explore opportunities for co-operation and collaboration with partners to deliver improved and more efficient public services authorities should not dismiss the BSF programme as irrelevant for their JSC needs. Authorities should acknowledge HM Treasury's presumption that PFI does not provide a value for money solution for projects with a capital value of less than £20million and does not apply to facilities developed through BSF.
347. Authorities must review the proposed OJEU notice for the BSF scheme to establish the extent to which it will enable the Authority to carry out its envisaged activities. Since local education authorities are central to the implementation of the BSF programme they will generally always be named within a local BSF scheme. However, since some schemes may cover a number of local education authority areas (for example, Gateshead and South Tyneside) authorities must ensure they are not signed up to more than one local scheme. This is particularly important since authorities are required to give exclusivity to their BSF private sector partner and if an authority is named on more than one OJEU notice it may create difficulties when ascertaining the extent to which the authority is able to grant exclusivity under all such arrangements.
348. As well as being a named contracting authority in the relevant OJEU notice, authorities should also ensure the description/object of the contract and more importantly the CPV codes identified in the notice will permit the activities they wish to pursue through BSF. For example, if an authority wants to use BSF to develop council civic accommodation, this will only be permitted if the OJEU notice allows such activities. Since BSF envisages a 20 year relationship, it is advisable to build in as much flexibility as possible to the OJEU notices to give authorities the option to use their local scheme for developing a range of their capital infrastructure needs.
349. PfS have issued a standard BSF OJEU notice for use by authorities which can be amended or modified to take account of local specific requirements⁶⁹. Generally the standard BSF OJEU notice is very wide and covers a range of services including the following:-
- management,
 - project development.
 - procurement consultancy,
 - architectural, engineering,
 - construction,
 - technical and building services,
 - ICT
 - educational support, programme development and strategy services;
 - management and provision (through a supply chain) of new build and refurbishment of facilities under the PFI and design and build arrangements which may include hard and soft facilities management. ICT services and management and support services.

⁶⁹ Available from www.bsf.gov.uk

350. Authorities should note that the BSF programme is primarily concerned with the provision of education facilities which includes children's services. If an authority seeks to provide additional non-education related services within a facility developed under BSF, legal advice should be sought to ascertain the extent to which such a facility can be procured within the BSF scheme in accordance with the procurement rules and the powers of the authority.
351. If an authority is situated within an area which is designated both as a BSF and a NHS LIFT area, careful consideration should be given as to the obligations of the authority under both schemes (i.e. the extent to which it will give exclusivity, if any, to the delivery vehicle) and the extent to which the envisaged services are capable of being developed under each arrangement. Reference should also be made to the information concerning the development of JSCs through NHS LIFT contained in this Procurement Pack.
352. The diagram contained at Section 3 outlines the general structure of envisaged local BSF schemes, together with details of the main key documentation. This structure and documentation largely mirror those used for NHS LIFT schemes although in this instance involvement of the authority is a fundamental requirement for local BSF schemes and it must become a shareholder in the LEP (as opposed to having a discretion whether or not to do so as in NHS LIFT schemes). However, unlike NHS LIFT authorities are given more flexibility to develop and implement arrangements which differ from this approach provided any approach is capable of satisfying PfS that the alternative can provide demonstrable value for money for the constituent public sector parties.

Section 2: Strategy and Process for Developing JSCs through BSF

353. Once an authority has concluded that it satisfies the initial criteria specified in Part A4: Section 1: Opportunities for Developing JSCs through BSF, it will need to consider the process for developing their JSC.
354. In this Section, the following issues are explored:-
- an overview of the structure and approach of BSF;
 - an overview of the process for developing JSCs through a local BSF scheme; and
 - the key features of using BSF for delivery of JSCs.

Structure of BSF

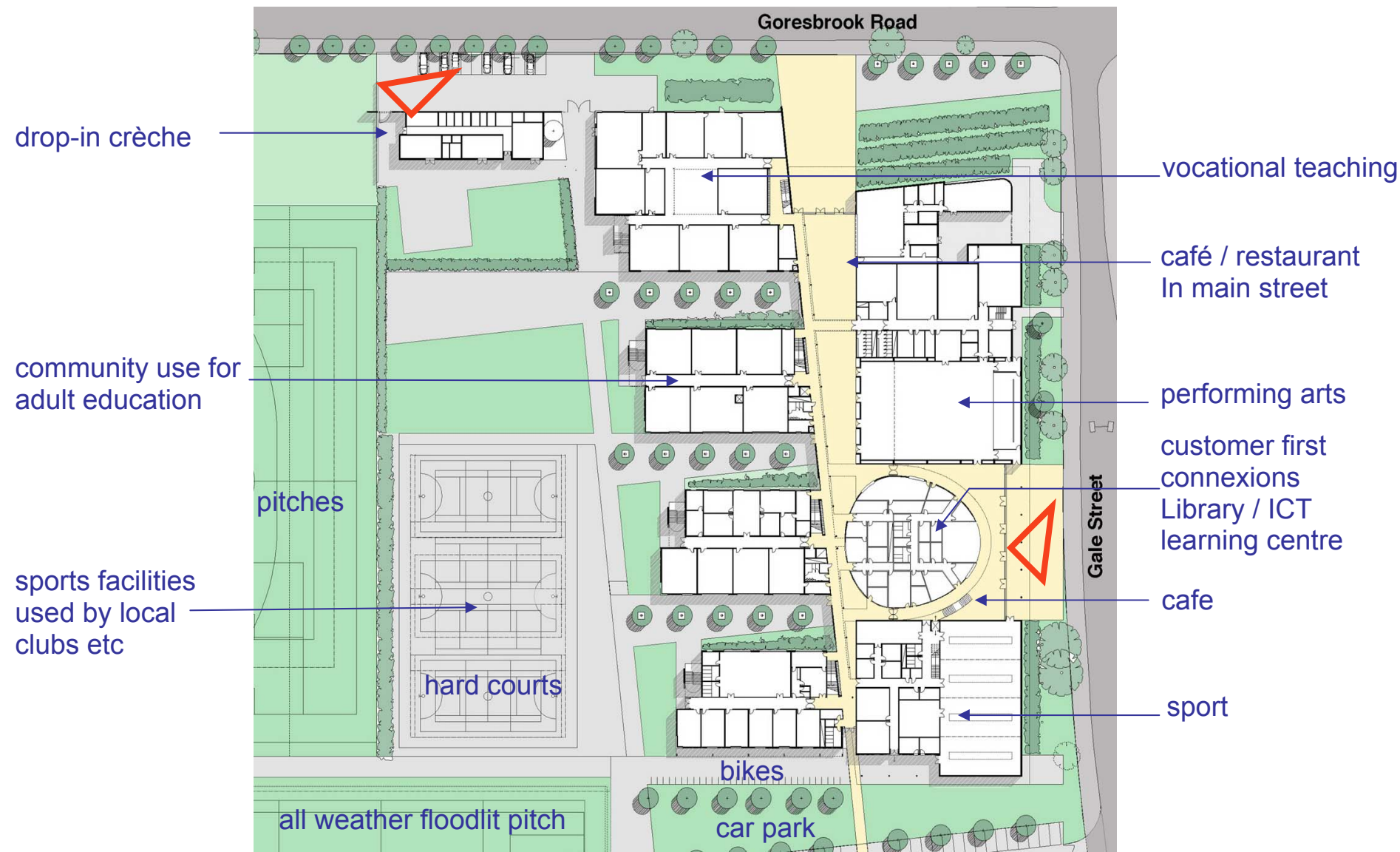
355. BSF has been developed by the DfES to transform the condition of the secondary school estate throughout England to ensure every secondary school pupil has access to school facilities which enhance educational attainment. More significantly, for authorities considering the development of JSCs, BSF facilities and requires collaboration among key local education providers (from early years care, schools and dioceses, through to institutions of further and higher education) and stakeholders, as well as other interested parties (e.g., Connexions Service, Job Centre Plus and Chamber of Commerce). Such collaboration is designed to result in a strategic "educational vision" for the locality, setting out the agreed objectives for the transforming the provision of education.
356. In developing this "educational vision" authorities are required to consult local schools and other stakeholders to assess their respective needs, including such issues as:-
- curriculum options;
 - provision of IT;
 - sustainability;
 - number of school places;
 - flexible buildings and classrooms, capable of adapting to changing requirements;
 - community use outside of school hours; and
 - diversity and accessibility of services and facilities.

Once developed and regularly reviewed, the "educational vision" for the locality should form the basis upon which business cases can be developed identifying the priorities for specific capital investment needs, all of which must be geared around improving educational attainment.

357. The relevance of BSF to the development of JSCs lies both in historic precedent and the increasing acknowledgement of the roles schools and educational facilities can play to generate active and sustainable communities. Many existing JSCs have developed as extensions to existing or refurbished schools. For example, the London Borough of Barking and Dagenham developed a JSC at Castle Vale, allowing the community to share use of the school sports areas, library and ICT suite, performing arts facilities and located a children's "drop-in" crèche within the school. As well as ensuring the design of the JSC allowed easy access for members of the public to the various services and

facilities available at the school, the Council worked with the PFI contractor (appointed to develop the JSC and the School) to ensure there was adequate security arrangements to ensure use of the school by the community and pupils was clearly segregated. Extending the use of school facilities to the community is to be encouraged especially when you consider the amount of investment required to construct and run a school compared against the time available both within (i.e. when the school sports hall or the school theatre is not being used by pupils) and outside of normal school hours (i.e. school holidays, weekends and before and after normal school hours) for potential community use. Figure 33 below contains an overview of the layout of the Castle Vale JSC to demonstrate how an extended school JSC could look.

Figure 35 The London Borough of Barking and Dagenham – Castle Vale Extended School JSC



358. The Dfes' extended schools agenda (see www.dfes.gov.uk) actively encourages schools to consider making their facilities available for community use, whilst authorities entering into PFI project agreements are increasingly incorporating provisions to incentivise contractors to ensure maximum third party and community use of the facilities outside of normal school use. In some cases this has been a useful way in which contractors and schools have been able to generate third party income (i.e. charging the community to use the swimming pool or hiring out the IT suite for pre-booked and specified sessions with different rates applicable to commercial, voluntary and community groups).
359. Through the establishment of a local education partnership ("LEP") or the adaptation of an existing model which is shown to provide a value for money solution for the authority, BSF allows authorities to harness the expertise of a private sector partner who will, through its supply chain, deliver the authority's capital and certain specified services for the 20 years of the partnership, in accordance with the "educational vision" for the locality. Section 3 contains an overview of the BSF scheme which can be modified or adapted by an authority to implement or fit into its existing frameworks or structures, provided such an approach satisfies PfS that is capable of providing better value for money than the adoption of the standard BSF LEP model. A number of authorities in the first wave of BSF schemes are embarking upon non-LEP models (for example the London Borough of Greenwich and Manchester City Council) but before considering such an approach, authorities are advised to liaise closely with PfS.

Service integration

360. Most of the service integration issues, which are fundamental to achieving a good outcome, are the same as for other other forms of procurement and are set out in Section 5 of Part A1 (paragraphs 84-87).

Process

361. The process for any authority seeking to develop their JSC through BSF can be summarised as follows:
- 361.1 obtain information from the local PfS project director as to when the authority will be able to participate in the BSF programme. This will allow the authority to identify how long it has and what it needs to do before the project starts. Such preparatory activities will involve consulting local stakeholders, starting off the process for determining the strategic educational vision (which may include the provision of children's centres and extended use of schools by the community), and the governance and resource arrangements for the project;
 - 361.2 develop a project initiative document which sets out the goals and objectives of the project against which the project board can assess and monitor performance;
 - 361.3 develop a strategic business case which contains a robust analysis of the need, associated costs, risks and outcomes to be expected from the project, as well as outlines how capital projects (including the children's centres, extended schools JSC or stand-alone JSC) will be identified, scoped, developed and prioritised;
 - 361.4 develop an outline business case for the JSC which details the scope, cost, affordability, risks, procurement route and timetable for the project as well as any others to be developed at the same time. The document should be in a form which can be approved by PRG for normal PFI projects;

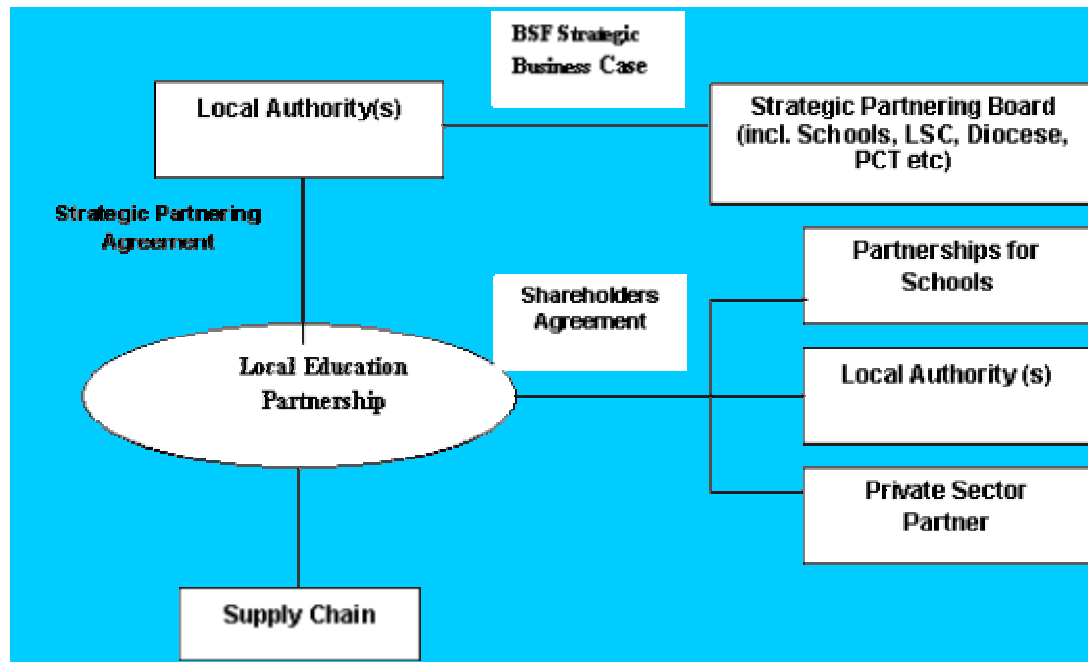
- 361.5 procure a private sector partner with whom to create the LEP. Since PfS have made available a suite of template documents spanning the procurement process, this should assist in making this stage easier and quicker;
- 361.6 enter into the strategic partnering agreement, shareholders agreement and any PFI or design and build or ICT contracts for the proposed JSC as well as receive any central government funding for the project;
- 361.7 monitor the contract during the construction phase of the JSC, although the LEP will have primary responsibility for managing its supply chain and ensuring each member provides an integrated and timely service to the authority. There may also be decanting and mobilisation arrangements which require authority co-operation;
- 361.8 once the JSC has been built, the authority must monitor the performance of the service providers (in relation to operational services and planned maintenance) as well as ensure the LEP and the authority benchmark/market test service costs at intervals agreed in the contractual documents. The authority may also require the LEP to formulate new projects for delivering some of the services or other services in better ways.
362. It is important that the authority ensure it is clear about what it wants in terms of services from the LEP concerning the JSC - what it will comprise of, will it involve a new build/refurbishment of an existing facility, will the LEP have to find a new site or can one be identified by the authority or its partners, will the authority want to undertake the design work in-house or award a PFI contract and who will operate/run the facility and be responsible for security, cleaning, management etc?
363. Once a clear idea of the nature of the JSC has been developed, the authority must ensure such plans come within the parameters set in the BSF OJEU notice to enable the authority to have the facility procured through BSF. Please refer to paragraphs 325 – 329 above for further guidance on the OJEU notice.
364. During the procurement of the LEP private sector partner, the authority will need to decide the extent to which it will factor in the specific skills and expertise required in relation to the JSC into the overall evaluation since it is highly likely this will be a small element of the work undertaken by the LEP. This is unless the authority decide every school within the locality should be an extended school, open for community use outside and sometimes within school hours.
365. The Authority must also review the LEP strategic partnering agreement and the shareholders agreement to ensure the obligations contained therein are acceptable. These documents largely mirror their counterparts in NHS LIFT. An overview of the main provisions of both these agreements can be found at www.p4s.org.uk
366. Authorities must also choose the manner in which to design, construct and run the facility when operational and BSF offers a number of different options including a BSF PFI project agreement, design and build contract, managed service contract and ICT service contract, each of which should be amended to ensure it is appropriately tailored for local requirements. An overview of each of these documents together with the full text of such documents is available from www.p4s.org.uk.

Key Features of BSF

- Suitable for JSCs situated within schools or on school sites in accordance with the extended schools agenda

- Flexibility to determine which services are required from LEP and which can be provided by the Authority in-house.
- Enables ICT provision to be uniform across the locality, thereby facilitating compatibility between schools and other facilities developed under BSF.
- Central government funding is available to support projects.

Section 3: The BSF Structure



DEVELOPING JOINT SERVICE CENTRES

PART A5

Options Appraisal

Contents

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Section 2: Developing the Outline Business Case

Section 3: Standard Risk Registers

Section 4: Comparative Analysis of the Approach Used in the PFI and
NHS LIFT

Section 5: Comparison of the Approach Used in NHS LIFT
and BSF

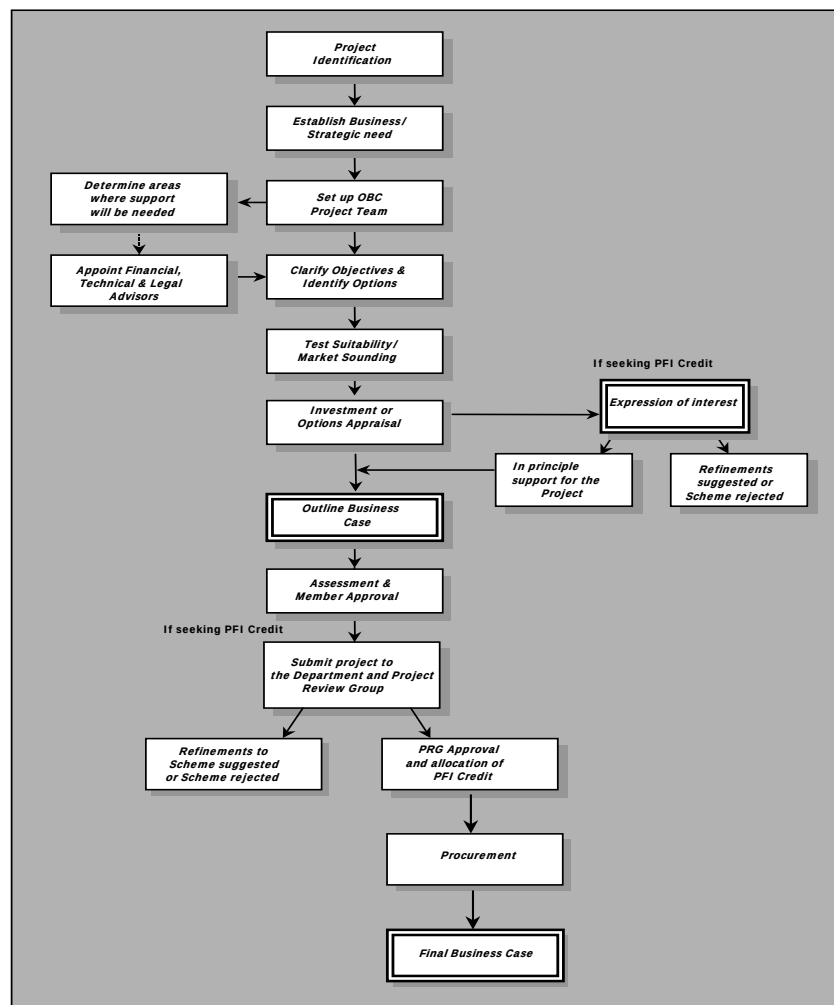
Section 1: The Outline Business Case

367. The choice of service delivery route for a JSC project should be fully supported by a comprehensive review of the options available and the conclusions supporting that decision documented in a business case. The business case is an evolving document which will be developed throughout the progress of the project, In its initial form it will usually be known as an Expression of Interest, which will be developed into a fuller Outline Business Case before a Full Business Case is presented prior to contract award. Each of these stages are examined below following a general overview of the main purpose behind the business case.

Purpose of the Business Case

368. The purpose of the Business Case is to support and justify the choice of service delivery route and to provide the decision-makers with all of the relevant project information to enable approval to be given. Project approval will necessarily depend upon the business case clearly demonstrating that the preferred option best meets the Authority's objectives and requirements at an affordable cost.
369. If the need for improvements to the services to be provided within the Joint Service Centre has been identified from a strategic review of the service (such as part of a CPA, or as a specific Best Value Review), the next stage should be to investigate fully the project options and procurement options for delivering such services. The results of these options or investment appraisal exercises, should be documented in the Business Case. The decision to procure services through a particular service delivery route should be fully supported by a comprehensive review of the options available and the conclusions supporting that decision also documented.
370. In many ways the assets involved in Joint Service Centre projects will be quite standard accommodation. Many of the unusual features which will therefore be of particular importance in the Business Case, will involve:
- the services being provided, and any consequent effects on the assets needed and the form of contract; and
 - joint procurement or sponsorship by Local Authorities together with their partners, whether they be PCTs, other Local Authorities, voluntary groups or other public sector bodies).
371. A summary of the approach leading to the development of the Business Case is shown in Figure 34. This shows the key stages of Expression of Interest (EoI), Outline Business Case (OBC) and Final Business Case (FBC).
372. The 4ps have produced general guidance on options appraisal and developing the OBC, and a copy of that guidance is available from the 4ps website at www.4ps.gov.uk. This specific 4ps guidance should be read together with the Local Authority's own procedures and other relevant guidance.
373. In addition, Local Authorities considering the development and procurement of a Joint Service Centre project are advised to contact one or two Local Authorities that have previously undertaken such a project and, ideally, to look at their respective OBCs.

Figure 14 Developing the Business Case



Central government support

374. If a Local Authority is considering seeking central Government support towards the cost of the project, the EoI, OBC and FBC will also play a key role in achieving approval. Although the procedures and requirements set out below are those currently required, it is important that Local Authorities considering developing a Joint Service Centre project which requires central Government support contact the relevant Government department for the latest advice.

Expression of Interest

375. Although future opportunities for obtaining central government support for Joint Service Centre projects cannot be definitively predicted the current pattern, in common with most PFI sectors, has been for an annual competitive bidding round. Proposals are not being considered outside of this formal process. This involves submitting an EoI in response to an invitation letter. The EoIs will be used to prioritise proposals.
376. The format of the proposal will be set out in the invitation letter, but will generally need to be short (15 pages for the 2004 round). It will focus largely on the policy criteria, ie what assets and services are being proposed to meet what need. However, there will also need to be some reassurance that the proposals are viable and the financial elements

sufficiently robust that some provisional allocation of resources can be made. The requirements of the 2004 round were:

- Description of the services and assets to be provided. The core of the proposal, to show the proposed services and how they would be delivered; partner agencies to be involved; plans to exploit synergies and go beyond co-location; and the assets needed to achieve those outputs.
- The level of PFI credits requested, based on estimated capital expenditure.
- The need and expected demand for the facilities.
- How the proposal fits into wider Local Authority strategies and meets wider Government objectives.
- A brief acknowledgement and commitment to meeting contract, accounting and design requirements set down by central government.
- A descriptive options appraisal to show how and why the services and assets in the proposal were selected.
- The strategy for stakeholder consultation.
- A qualitative assessment of the best value for money procurement route.
- Confirmation of councillor and partner commitment.
- A description of the project management approach and team.
- Timetable.
- Any early market soundings, if these are available.

Outline Business Case

377. Those LAs with projects which are prioritised will be asked to develop their proposal further by producing an OBC. Upon completion of the OBC the project will be considered by the relevant government departments (whether ODPM, DH, DfES, DCMS and/or DoH). If the OBC continues to meet the departmental criteria then ministerial approval is secured. It will then be further reviewed by the inter-departmental Project Review Group (PRG), chaired by HM Treasury, to ensure that it meets the criteria for progressing to procurement.
378. As part of the analysis in preparation for submission to PRG, the financial case for the project will be scrutinized by Partnerships UK (PUK). PUK will prepare a report for PRG, recommending whether the project should be approved for PFI credit allocation. Authorities can expect to receive a list of questions from PUK within the month prior to the OBC going to PRG. Most of these questions will be of a financial nature, and can be addressed through a combination of a written response and a meeting.
379. The OBC will be put before PRG by the relevant Department who will answer questions on behalf of the Local Authority. The relevant Department may wish to review drafts of the OBC as they become available to ensure that the business case is being developed appropriately to meet criteria and to ensure that the links between business need, project scope, contractual proposals, output specification and the financial assessments are all logical and outlined in sufficient detail. Certainly, contact with the relevant department(s)

should be maintained throughout the process of developing the OBC. Input from the 4ps can be of great benefit in identifying areas where the OBC can be improved or expanded.

380. More detail of the proposed project will be needed in the OBC compared to the EoI, but it is important to balance this with the need to be concise. As the EoI will have been approved previously, it will be the starting point for producing the OBC. In addition to the main sections described in the contents section, an OBC should include the following:

Executive Summary

381. This should set out a brief overview of the OBC process, including:
- What is the project and what PFI credits (if any) the Local Authority is seeking
 - A summary of the key conclusions and recommendations arising from developing the OBC and an analysis of the next steps required for taking forward the project
 - A statement of the support and commitment of the Local Authority and its partners (together with that of other key service stakeholders)
 - An analysis of the strategic context in which the services are provided, the business need for the services (including details of the contribution that improved services should make to the Local Authority's corporate strategy) and the synergies that exist between the services and the Local Authority's corporate objectives
 - An overview of the existing services provided, including analysis of the existing service strengths and weaknesses, key service standards and outputs, the condition of the current facilities and standards of provision, and trends in public opinion about the service
 - A summary of the Local Authority's objectives for the relevant services within the scope, and used in conducting the appraisal of project and procurement options
 - A brief description of the options appraisal process that was followed in order to identify the preferred project and procurement option (including a summary analysis of the financial and non-financial outcomes)
 - An assessment of the economic benefits, value for money, affordability and bankability of the preferred service delivery option. This should include confirmation that soft market testing has demonstrated that there appears to be market interest in the project
 - An overview of the Local Authority's approach to developing and delivering the project, including consideration of key contractual terms and conditions, the balance sheet treatment and project management arrangements.
382. The Executive Summary should efficiently convey the key messages arising from the OBC process such that decision makers gain a good appreciation of the need for change, the appropriateness of the recommended option, and the implications of the decision to proceed.

Checklist

383. One of the uses of the OBC will be to determine whether all of the general PFI qualifying criteria have been met. These are covered in Section B of the ODPM document "PFI Project Support - A Guide", available at www.local.odpm.gov.uk/pfi/grantcond.pdf. As indicated in that Guide, the OBC should always include a checklist indicating the paragraph numbers in the main documentation where information on each of the qualifying criteria, and any sector specific criteria, is to be found. This will help authorities to ensure that all points have been covered and assist departments and the PRG when processing applications.

Final Business Case

384. Before finally issuing support a sponsoring central Government department will request a FBC to provide reassurance that the final project continues to meet requirements. The aim of the FBC is to provide re-assurance that the project continues to support the aims and outputs approved at OBC, that it continues to provide value for money. The main areas the Authority should cover therefore are:-
- Reassurance that the project continues to support the original agreed aims and outputs, or that any changes proposed since the OBC have been agreed with the sponsoring department in advance.
 - An update of any material already provided in the OBC to reflect changes in the scope of the project, better financial information and other data, and progress in procurement. Where the business case has not changed from the OBC, material does not need to be repeated, but the FBC should confirm that there is no change. Possible changes include: the vfm assessment, risk allocation, PFI credits, accounting treatment.
 - A re-affirmation that the project continues to be affordable to the authority (if any of the financial data has changed).
 - A description of the procurement process, showing how well competition was maintained to obtain vfm (including a description of the level of competition at key stages and the approach taken to a possible reserve bidder), and an update on how risks, including statutory issues, were handled and if any remain.
 - Confirmation that standardised contract documentation has been followed and that any derogations have been agreed with the Treasury. It should be noted here that an electronic copy of the final contract will need to be sent to the Treasury.
385. If some of that material has not changed from OBC there are two options, both equally valid:
1. To repeat the material, but to highlight in the FBC what has not changed. Some authorities have found this to be a useful way to proceed as the FBC then becomes a more complete and useful document internally as the project proceeds.
 2. To indicate in the FBC that sections have not changed and refer back to the OBC. The FBC is then shorter, but for the authority to use it as the project proceeds will require reference back to the OBC.
386. As with the OBC the 4ps have produced general advice on producing an FBC, available from the 4ps website at www.4ps.gov.uk.

LIFT Projects

387. Sponsoring Departments will assess LIFT projects in a similar way to any other proposal for PFI credits at the initial prioritisation stage - indeed the two will be assessed together and no distinction made at this stage. The EoI will therefore need to be just the same for LIFT projects.
388. However, at OBC stage, it is not necessary for a LIFT contract to be technically reviewed by the PRG, since the project will go through an alternative and equally rigorous gateway process in the development and approval of the Strategic Service Development Plans prepared for all NHS LIFT schemes. A LIFT project can therefore be endorsed by the sponsoring department as soon as they are content with the OBC.
389. Material needed in OBCs submitted for LIFT projects therefore differs in some areas from that for a normal PFI project. Various criteria which would normally be required in a PFI OBC will have been addressed in the SSDP checklist, and therefore do not need to be repeated in the OBC, as follows:
- Design Quality/Sustainability - incorporated into the standard specification.
 - Outputs/Specification - compliance with the standard specification.
 - Risk transfer - incorporated into standard approach and agreements, including capital charges guidance.
 - Contract terms & conditions – compliance with standard agreements.
 - Advisors - use of nationally appointed advisors.
 - Bankability - incorporated into standard approach and agreements. Site availability and commercial opportunities are specifically addressed. LIFT addresses bankability at “programme” level, i.e. as a programmed initiative.
390. Many areas will not differ, however, and these are as follows:
- Compliance with general and sector criteria.
 - Diversity/Innovation/Consistency with wider plans.
 - Commitment of sponsors & users.
 - Business need/Project options - a description of how 'soft FM' services (cleaning, security, etc) and the provision of fixed furniture and fittings and ICT will be handled must also be included.
 - VFM/PSC Comparison - any independent review which the District Valuer (DV) may have carried out on behalf of the PCT in assessing the value for money of the proposed rentals (or other similar reviews) may also be useful if available to further inform the assessment.
 - Accounting treatment.
 - PFI credits required/Affordability (including LA agreement to their contribution.
 - Project management.

- Timetable.
 - Statutory processes.
391. Where the project is being developed as part of an existing LIFT company and there is therefore a very short period between receiving the OBC and contract signature, it may not be necessary to submit a separate FBC. A short letter confirming the date of contract signature and that there have been no changes may suffice. The sponsoring department should be consulted on this.

Managing the Business Case Process

392. It is important that the Local Authority puts in place a project plan to deliver the OBC in accordance with the timetable agreed as part of the strategic service review. The project plan should be agreed prior to commencing the OBC process and should ideally be based on the principles of PRINCE II methodology.
393. This plan must outline as a minimum:
- The project team, and any requirement to buy in external advice to supplement the skills of the internal team;
 - The input required from different officers/departments within the Local Authority and, where appropriate, other stakeholders;
 - The skills and expertise required for delivering the OBC, in particular the option appraisal process, development of the financial models, and assessment of costs, benefits and risks;
 - The timetable for the process;
 - The approval arrangements (internal and external) to develop the project and OBC.
394. A critical success factor in the efficient and successful development of major projects is establishing robust project management arrangements. In practice, for the development of the OBC, this means that there should be a clearly identified project sponsor (ideally at a senior management level within the Local Authority) with overall responsibility for ensuring the delivery of the OBC and with the project management skills to deliver the project beyond the OBC submission. Experience has shown that without this commitment it is very hard for an OBC to be delivered within a reasonable timescale.
395. Day-to-day responsibility for the delivery of the OBC should rest with a project director, supported by a small project team with the relevant skills and expertise to carry out the detailed work. If the necessary skills and expertise for developing the OBC are not available in-house, the Local Authority will need to consider the appointment of financial advisors (for the financial modeling, value for money and affordability) and/or technical advisors (for feasibility studies and site conditions) to support and assist with the development of the OBC. The 4ps can provide further guidance and assistance to Local Authorities on the appointment and role of external advisors.

Section 2: Developing the Outline Business Case

396. Many of the general considerations of the various sections are the same whether at Expression of Interest or Outline Business Case stage. This section is therefore arranged by topic and the differences in approach in the two documents is noted at the end of each topic.

Description of the services to be provided

397. This section should form the core details of the proposal, describing the scope of the project service/facility in terms of its outputs,. Logically the issues addressed here are the result of considerations of need/demand and the options appraisal which looks at why the particular proposal was chosen, both of which are addressed later. However, because it provides readers with the best overview of what the project is about it can be useful to set it at the start of the OBC. Overlap can often be handled by cross-references.

397.1 Services

- Different authorities approach the development of Joint Service Centres, and the mix of services and users within such centres in different and innovative ways, rendering it difficult to define any generic or precedent detailed output specification. Sections of the OBC dealing with this subject may therefore be more extensive than in many other sectors, and one of the first tasks in developing an OBC is to determine the scope of services. The careful definition of this is vital to the sound progression of the OBC, as this will enable clear judgements to be made about costs, risks and the benefits of different project and service delivery options.
- An essential core requirement for projects seeking ODPM Joint Service Centre support is that all bids must demonstrate is that one of the services to be provided is a 'one stop shop' facility for the general public, offering advice and information on authority and partner agency services. Centres will also offer other facilities and the combination will depend on local circumstances. Whilst centres may have a particular emphasis on a particular section of the community, eg children or users of particular social services, they should not be exclusively for their use.
- As bidders become more involved they will wish to tie down the types of users since these matters have implications for staffing, insurance, facilities management and so on. There is also scope for misunderstanding between stakeholders if these issues are not thoroughly discussed. An eligibility criteria document should be included within the ITN and will need to be finalised prior to the date the contract is entered into.

397.2 Partner agencies

- Some of the services provided are likely to include those provided by other agencies, whether those be other tier local authority, health service, central government, other public sector agencies or voluntary bodies. Local Authorities will need to assess the options available locally and determine the most appropriate scope of a project given the local circumstances.

397.3 Synergies

- In developing the OBC, the Local Authority, together with its partners (if any) should consider how the proposed project fits with their overall approach to service

delivery. Although the current style and arrangement of services may have a significant influence on the shape of the project, this should not prevent a thorough investigation of new approaches that offer the opportunity to modernise and improve.

- It is important that the authority considers how services could be delivered in a 'joined-up' manner which goes beyond co-location. The quality of services provided should be improved by their association with each other. Thoughts on possible synergies, efficiencies and integration should be provided, together with a strategy for developing these.
- Eol: all the issues noted above should be covered since this will be the basis for decisions on whether the proposal meets the policy requirements sufficiently to be prioritised.
- OBC: should expand on the Eol where appropriate. The reasons for any change in scope, whether through further consultation with stakeholders or the local population, or any other reason, should in particular be covered in detail. It is important that, whilst some changes in emphasis might be a natural result of more detailed thinking, the project essentially remains that which was originally approved.

Output specification/description of assets

398. The OBC should include a first draft of an Output Specification which should be set out as a clear definition of the objectives and outputs needed, with the standards required. This is a key characteristic of PFI contracts and allows for innovation and efficiency on the part of the private sector. An illustrative solution will generally be needed in order to undertake the necessary financial analysis, but it should be clear that this does not constrain the final solution.
399. The 4ps output specification guidance should be used as a starting point⁷⁰. The OBC should include a summary of the key elements of the draft Output Specification and commentary on how it will be developed further. In Joint Service Centre projects the Output Specification will comprise at least the building specification and the facilities management specification, specified in terms of project outcomes and outputs.
400. The buildings should be described in terms of their location and estimated size in terms of floor area. Any particular requirements in terms of design will also be useful, particularly where they relate to facilitating joint working. Authorities should give an indication of their initial thoughts on the proportion of space which would be occupied by the various services, reflecting the way in which those services will be delivered. That will include the level of involvement of other agencies, eg if they are likely to have permanent accommodation or will operate via outreach or clinics.
401. Joint Service Centres often require facilities capable of accommodating a range of different types of service provision within one building or at the same site. Consideration needs to be given as to whether there are issues about these services being co-located in terms of practicality and security. If there are clear requirements for separate entrances, or separate receptions or secure areas then this should be clearly marked out within the building output specification so that bidders can provide a design that will meet the Local Authority's requirements.
402. Information and communications technology (ICT) will be essential to any project of this type. The authority should explain what systems are or will be available to support the

⁷⁰ A copy of such guidance is available from the 4ps website at www.4ps.gov.uk

joint service centre proposal, including in terms of working with partner agencies. However, central government support is not available for call centres or for ICT beyond the infrastructure necessary for the functioning of the buildings. Nor is support available for office accommodation unless it can be shown that it is necessary to have back office functions co-located to allow the facility to operate efficiently.

Eol: a preliminary description of the anticipated assets should be included so that those assessing the bids have a picture of the proposal to compare to others.

OBC: should expand on the Eol where appropriate. As with services any changes in scope should be covered in more detail.

Strategic context and evidence of need / demand

403. To provide a clear focus for the options appraisal (and ultimately project delivery) it will be necessary to develop a range of aims and objectives that highlight the business need for the services and the improvements required from the project. These strategic aims and project objectives should flow from the strategic services review (or LTP, CPA or Best Value Review) and be used to evaluate the project options and procurement options available for future provision of such services through the Joint Service Centre. Wherever possible, the objectives should be SMART (specific, measurable, agreed, realistic and timely). This is achieved by providing objectives in terms of outcomes, outputs and levels of performance, rather than in terms of inputs and resources required.

403.1 Strategic context

- There should be a clear linkage from authority priorities through strategic planning and business planning process to project objectives. Schemes should therefore be an integral part of existing wider strategy frameworks. Authorities should outline how the proposal fits into the broader picture, including wider regeneration or sustainable community initiatives, strategies for the area, and priorities for service improvement in the CPA. Documents to consider include community strategies, cultural strategies, asset management plans, capital strategies and best value reviews.
- The OBC should be supported by a strategic analysis of the relationship and synergies between the vision, corporate strategies, policies and plans of the procuring Local Authority and its partners (if any). This section of the OBC should outline the key issues addressed as part of the strategic assessment and highlight the contribution the services can (or could) make to broader strategies of the Local Authority and its partners. A strong OBC will be able to demonstrate that the project forms a logical and coherent part of the Local Authority's strategies and plans, as well as those of its partners.
- Sponsoring departments will be looking for reassurance that the project flows from the authority's proper processes and has not simply been put together artificially with a view to securing PFI credits by meeting the criteria set out in the invitation letter.

403.2 Wider Government objectives

- Projects should also seek to address wider Government priorities (e.g. addressing social inclusion or diversity issues), providing they are able to demonstrate coherence. Any links to other initiatives such as New Deal for Communities etc should be clearly explained.

403.3 Need and demand

- This section of the OBC should provide an analysis of the existing service delivery arrangements for the Local Authority's services to be provided in the Joint Service Centre. This analysis should include details of the current service costs/budgets, analysis of the organisational arrangements and management responsibilities in place for the services, the contractual arrangements in place to deliver the existing services, and the standards of services being delivered. The OBC should demonstrate how the existing services contribute to the delivery of the Local Authority's objectives and whether the current level of resource and service delivery model support the services and the Local Authority's objectives in the future. The OBC should highlight where the current services fail to maximise its contribution to the Local Authority's strategies.
- Analysis of current services standards/arrangements might include:
 - o Key policies/strategies in place
 - o Trends in the recent services costs/budgets;
 - o Performance against Best Value Performance Indicators and any Local Performance Indicators;
 - o Arrangements in place for the discharge of design, maintenance and energy procurement functions; and
 - o Key features of the cyclical maintenance regime in place.
- In addition, this section of the OBC should include commentary on the condition, age profile and risks associated with the current building infrastructure. It may be prudent at this stage to engage technical advisers to undertake building condition surveys, site surveys and feasibilities.
- Authorities should also describe the anticipated demand for proposed new facilities, and how this has been determined. The OBC could usefully summarise any evidence of public and user perceptions of the services to be provided within the Joint Service Centre, how these perceptions have developed over time, and how they reflect demand for better quality or more efficient services. Where there is recent, available analysis of public and community opinion surveys on trends in relation to quality of the relevant services, this should be included in support of the need for effective, high-quality service provision. The OBC could also usefully include any modeling of needs.
- The proposal should also provide details of any specific community groups to be targeted and the rationale for selecting these groups.
- The OBC should also set out the impact/contribution of the project on existing partnership arrangements and other stakeholders of the relevant services. In particular, where there are partnership working arrangements or forums for working with other relevant organisations, these should be identified and partners consulted as part of the preparation of the OBC.
 - o Eol: a brief summary of these issues is required, to provide reassurance that the proposal fits sensibly into existing strategies, and there is a real need.

- o OBC: will elaborate and update the EoI. It should be noted that in any OBC submitted to central government this section continues to need to be concise. Long passages describing the local population in detail or long extracts from strategies or plans are not required and are only likely to delay assessment.

Options Appraisal

404. It is not always possible to completely separate out the two processes of (i) options appraisal (which is aimed at identifying the Preferred Project Option in terms of outputs) and (ii) value for money (which identifies the best procurement route). However, this should be done as far as possible and an options appraisal which sets out options as 'do nothing', 'do conventional procurement' and 'do PFI' will not be acceptable.

The options appraisal methodology used should be based on Treasury guidance on 'Appraisal and Evaluation in Central Government', also known as the Green Book⁷¹.

404.1 Identifying the options

- The first stage is for the OBC to identify the key viable options available to the Local Authority. It may be that a feasibility study was carried out prior to the decision to develop an OBC, in which case a long-list of options should have been considered. The options considered at this stage should be neutral so far as the type of procurement is concerned and should consider matters such as the package of services and partners, and the number, size and location of any buildings (including whether any existing buildings could be refurbished), in relation to need, local strategies, etc.
- The initial analysis of options should be strategically focused and consider different models and approaches to investment in the building infrastructure. For example, if the case for change is sufficiently robust then the 'Do Nothing' option may not be appropriate and the 'Do Minimum' option will become the lowest level option. However the OBC should document the rationale for the de-selection of any option and the basis upon which other options would be given further analysis.
- It should also be noted that a lowest level option is essential as setting a benchmark for other options, even where it does not meet all of the criteria for the project, or perform well in comparison with different options.
- Once the options are identified, they should be compared to identify the extent to which they would deliver the outputs, compared to cost. It will therefore be a cost/benefit analysis, and will indicate why and how the preferred option was chosen.

404.2 Assessing the benefits

- At an early stage in the appraisal process, the Local Authority should identify and agree the basic assumptions that will differentiate each of the options. This will provide some clarity in the dialogue surrounding the appraisal process. The process of option identification needs to be based upon an assessment of the current services delivered, and the condition of the building infrastructure.
- In order to commence the options appraisal process and to encourage dialogue, it may be beneficial to undertake a high level appraisal of the resource and service implications associated with different options. This could usefully be achieved

⁷¹ A copy of which is available from HM Treasury website at www.hm-treasury.gov.uk

through a brainstorming workshop where different approaches and options are discussed conceptually, and different data sources and approaches identified.

- Options will need to be considered in the context of the Authority's own corporate strategies and objectives, the duty to provide Best Value, and the likely service costs and risks associated with each approach.
- Since a key element of establishing a Joint Service Centre comprises of the economies of scale and benefits that can be derived from the co-location of a range of service provision and service users, the options appraisal is likely to be more complex than for other projects. This is especially so, since it must be understood why the mix of services to be provided within the Joint Service Centre will deliver improved levels of service level and greater satisfaction amongst service users.
- The OBC should include a strategic commentary on each of the options considered. This should include a high level analysis of the extent and timing of investment in relation to the Local Authority's service infrastructure. The OBC should set out the basis upon which each of the options identified should be appraised. It is important to adopt a common set of evaluation criteria that should provide the basis of an objective appraisal process.
- Each of the project options identified should be individually appraised to identify the non-financial benefits associated with the option. In conducting the appraisal process, it is important that the Local Authority balance the need to conduct a thorough analysis of the options with the need to develop the appraisal process. It is important not to become too entrenched in a detailed analysis of each of the options and potential variants at this stage in the appraisal process.
- The next stage in the appraisal process is to define each of the options carried forward in more detail and to appraise each according to evaluation criteria. It is important that each option is comprehensively appraised using a consistent and objective evaluation process. A weighting and scoring method is often used to appraise the benefits. Judgement is needed about the relative scores and weights and the sources of these need to be explicit.
- There also needs to be a robust means of relating these to costs in order that the relative cost-effectiveness of options can be compared. Without this any system merely identifies the option which delivers the greatest level of outputs without any relation to cost. Although it is not always possible to actually put a monetary value on some of the benefits the relative cost should be explicitly stated so that a judgement can be made.

404.3 Costing the options

- It is important to remember that the costs of the various project options must be estimated on the basis of the assumptions set out in a draft Output Specification for the scope of services to be provided in the Joint Service Centre, and not based on existing cost levels or service delivery arrangements. If the Local Authority is hoping to deliver a step-change in the delivery of the relevant services, it is important that the new service levels are reflected in the options appraisal exercises. It is also important to bear in mind that the cost bases for a long-term performance-related Contract will be different to the costs of service delivery when the Local Authority retains key risks.
- Determining the cost bases has been a difficult area for Local Authorities developing an OBC, particularly given that in many instances the existing cost base bears

limited resemblance to the specified level of service or performance-related whole life Contract. As part of developing the financial models for the options appraisal, Local Authorities are advised to test the resulting cost and accommodation assumptions for the new facilities. These costs might also be tested as part of the soft market testing exercise, through discussion with those Local Authorities already in the process of operating or procuring Joint Service Centre projects, and through discussions with the Local Authority's financial/technical advisors and the 4ps.

- Eol: should indicate why the preferred option in the proposal was chosen, expressed as a dialogue rather than any cost/benefit details.
- OBC: should include more detail of all the options considered, showing why any were rejected. The remaining options, including a lowest level option, should be scored in terms of benefits and this should be compared to relative costs. The method of relating benefits to costs should be set out.

Value For Money

405. Once a Preferred Project Option has been identified, the next stage in the appraisal process is to identify a number of possible procurement options to deliver this, and to establish which route is likely to be the most attractive to the Local Authority. That should consider at least the options of conventional procurement and PFI. If the authority is a signatory to a LIFT contract which could be used this should also be considered if appropriate, similarly with BSF.
406. Other routes that have been included by Local Authorities in the appraisal of procurement options have included:
- Working jointly with other Local Authorities or NHS partners;
 - The use of a trust or other non-profit making vehicle;
 - Leasing;
 - Joint ventures with the private sector;
 - Accessing grant funding;
407. Authorities are also encouraged to consider funding and procuring the development of the JSC themselves due to the introduction of the prudential borrowing regime and the consequent removal of constraints on the ability of Authorities to raise capital.
408. HM Treasury have introduced a standardised value for money assessment procedure - see Treasury guidance on the assessment of vfm, available at www.hm-treasury.gov.uk/media/CE2C2/pfi_vfmguidance_040819.pdf for a full description. The assessment includes both qualitative and quantitative elements, but much greater emphasis is placed on the former than has sometimes been the case in the past. Although it has always been the case that the quantitative test should not have been seen as a pass/fail test but a way of informing a wider judgement this is re-emphasised.
409. The whole assessment process now involves three stages. Sponsoring departments have already completed the Stage 1 procedure which is aimed at establishing that PFI or NHS LIFT or BSF can be an appropriate form of procurement for the sector as a whole. Authorities should complete a Stage 2 assessment in their OBC. This will build upon the Stage 1 assessment and must always be related back to the Stage 1 assessment.

410. Authorities should use the Stage 1 assessment produced by the relevant sponsoring department as the starting point and should comment on any areas where they expect their assessments to differ. Any supporting material such as comparison with similar projects would also be useful.

Qualitative Assessment

411. In areas where LIFT Companies exist, local authorities considering joint service centre projects will be required to consider 3 options, ie taking out a leaseplus agreement (LPA) in a LIFT property, and entering into a traditional PFI contract, as well as the publicly funded option. This Stage 1 assessment therefore covers all 3 options.

Use at Stage 2

412. Local authorities should use this Stage 1 assessment as the starting point for their project specific Stage 2 assessment, which should be included in the OBC. The OBC should in particular highlight areas where there are differences and explain the reasons for these. Although it is recognised that technical input from consultants may be necessary as part of this process, authorities are reminded that they are expected to have carefully considered all of these areas themselves.
413. A simple project has been used as a model. Some projects could be considerably more complex, e.g. if part of a larger regeneration scheme involving commercial redevelopment and possibly other elements. Any local authority proposing these or other complications in its project will need to consider the consequent differences between this model and the project particularly carefully.
414. The following follows the Treasury template.

Items in italics indicate where the comments on PFI differ from those on LIFT.

VIABILITY			
Investment objectives and desired outcomes need to be translatable into outputs which can be contracted for, measured and agreed. Many service areas can be described in contractual terms, but some areas will be inherently 'non-contractable'.			
Issue	Question	PFI	LIFT
Programme level objectives and outputs	Is the procuring authority satisfied that operable contracts could be contracted for projects falling in this area?	<i>A contract has been agreed for the first pathfinder project (Stoke), and this will form the basis of standard documentation in the planned procurement pack. More evidence is available from other accommodation projects which have been contracted and which have many similarities.</i>	<i>Suitable documentation for LPAs have been agreed for the first pathfinder project (Newcastle), and this will form the basis of standard documentation in the planned procurement pack.</i>
	Could the contracts describe service requirements in clear, objective, output-based terms?	We are satisfied that service requirements can be adequately described in terms of outputs and assessed in respect of deliverability against the required standards. This is rather more complicated than in many other sectors in that the requirements of different parties need to be	<i>The LPA itself will only include hard FM (building maintenance) services. Soft FM (security, cleaning, catering, etc) services usual in PFI projects will need to be the subject of separate arrangements. A standard contract is being developed by the 4ps for inclusion in the procurement pack.</i>
	Could they support assessments of whether the service has been delivered to an agreed standard?		
	Is the fit between needs and outcome		We are satisfied that

	sufficient to proceed? In the event of staff transfer, can the contracts be drafted to avoid perverse incentives and deliver quality services?	met and standards will be different for, eg health services. <i>However, it has been shown that it can be done.</i> The fit between needs and outcome will be assessed on a project specific basis, inc by local consultation. The main areas to be included in this assessment will be fit within an overall strategy on access to services; reasons for location(s), number and size of centres; and choice of services and partners. <i>Staff transfer is likely to be limited and not go beyond the normal FM services usual in PFI projects. Contracts will avoid perverse incentives by following SoPC 3.</i>	service requirements can be adequately described in terms of outputs and assessed in respect of deliverability against the required standards. This is rather more complicated than in many other sectors in that the requirements of different parties (which will usually have sub leases) need to be met and standards will be different for, eg health services. <i>There is also a complication in ensuring compatibility between the LPA and the soft FM contracts. However, we believe it can be done.</i> The fit between needs and outcome will be assessed on a project specific basis, inc by local consultation. The main areas to be included in this assessment will be fit within an overall strategy on access to services; reasons for location(s), number and size of centres; and choice of services and partners. <i>Involvement in LIFT as a leaseholder will further wider objectives in terms of developing partnership working with Primary Care Trusts (PCTs).</i> <i>Staff transfer is likely to be limited. The existence of a separate soft FM contract should not make this any more extensive, although it is too soon to identify all the consequences.</i>
Operational flexibility	Is the procuring authority satisfied that operational flexibility is likely to be maintained over the lifetime of the contract, at an acceptable cost? Have the long term tradeoffs between operational flexibility and cost been identified?	<i>Whilst PFI requires more work than a publicly funded option to ensure that adequate flexibility over time is built into the contractual terms, we believe this can be done under the SoPC LG Supplement, at an acceptable cost.</i> <i>It is recognised that the way in which front-line services will be delivered is very subject to change over time. In addition partner agencies may change, both by some leaving for reasons of their own or (more likely) others wishing to become involved</i>	<i>We believe that LIFT can offer the necessary operational flexibility over time, at an acceptable cost. The standard LPA includes provision for minor alterations, but advice on where more is needed will be included in the procurement pack.</i> <i>In one way, the LIFT Co may be able to offer more flexibility than PFI as the LIFT Co will have a portfolio of assets which it can manage, rather than a single one or just a few as under a PFI contract. On</i>

		<i>as the benefits of joint working and integration become clearer - this has been shown to occur in the early years. The involvement of small voluntary organisations also makes change more likely.</i> <i>All projects will be required to include this as a significant factor in assessing designs. We believe this can be done.</i>	<i>the other hand, there will be uncertainties over the extent to which the local authority can influence contractual arrangements (and that may depend on the level of involvement in the LIFT Co).</i> <i>It is recognised that the way in which front-line services will be delivered is very subject to change over time. In addition partner agencies may change, both by some leaving for reasons of their own or (more likely) others wishing to become involved as the benefits of joint working and integration become clearer - this has been shown to occur in the early years. The involvement of small voluntary organisations also makes change more likely.</i> <i>All projects will be required to include this as a significant factor in assessing designs. We believe this can be done.</i> <i>An additional complication exists in achieving operational flexibility as interface issues between hard and soft FM will be more complicated. However, again, standard contractual terms are being developed to address this.</i>
Equity, efficiency and accountability	Are there public equity, efficiency or accountability reasons for providing the service directly, rather than through a PFI contract? Are there regulatory or legal restrictions that require services to be provided directly? Have the expected staff terms and conditions at stage 2 been considered and what are the impacts on the contract, equity, efficiency and accountability?	<i>There are no reasons on the grounds of accountability etc. why the services should be provided directly.</i> <i>There are no statutory reasons why the services should be provided directly.</i> <i>Staff terms and conditions will follow the ODPM Code on Workforce Matters, but will be considered on a project specific basis.</i>	<i>There are no reasons on the grounds of accountability etc. why the services should be provided directly.</i> <i>There are no statutory reasons why the services should be provided directly.</i> <i>Staff terms and conditions will follow the ODPM Code on Workforce Matters, but will be considered on a project specific basis.</i>
OVERALL VIABILITY	Overall, in deciding to proceed with PFI,	<i>The assets provided will be fairly standard</i>	<i>The assets provided will be fairly standard</i>

	is the accounting officer satisfied that an operable contract with built-in flexibility can be constructed, and that strategic and regulatory issues can be overcome?	<i>accommodation (albeit with partners to be factored in). The contracts are therefore not likely to vary much from the norm. Flexibility is a major issue as noted above but we believe this can be addressed through design. There are not likely to be any special regulatory issues unless these are particular to the project. In a number of cases there may be links to wider regeneration of an area. This, and integration with retail, will need to be considered carefully on a case by case basis.</i>	<i>accommodation (albeit with partners to be factored in). The contracts are therefore not likely to vary much from the norm. Flexibility is a major issue as noted above but we believe this can be addressed through design. There are not likely to be any special regulatory issues unless these are particular to the project.</i> <i>Where LIFT is possible, local authorities will need to balance the advantages of developing partnerships with PCTs (and other advantages noted below) against potential complications caused by less clear-cut relationship with the private sector, and the interface between hard and soft FM. We believe that in most cases the advantages of LIFT will outweigh any disadvantages (although there may be specific local reasons why this might not be so in some cases).</i>

DESIRABILITY			
An increasing body of evidence has shown that better risk management in PFI results in a greater proportion of assets being delivered on time and to budget. By integrating the life-cycle and operation costs with the design and construction, PFI can provide better risk management and incentives to develop innovative approaches to output delivery. Consistent high quality services can be achieved through performance and payment mechanisms. However, risk transfer is priced into the contract. The purpose of these questions is to consider whether the benefits of PFI are likely to outweigh this additional cost.			
Issue	Question	PFI	LIFT
Risk management	Does the project involve the purchase of a significant capital asset, where the risks of cost and time over-runs are likely to be significant?	As indicated above, projects tend to be centred on building assets. <i>Whilst these have not tended to be very large or complex, future projects of over £20m will be more so, or will include the complication of multiple assets.</i>	As indicated above, projects tend to be centred on building assets. <i>Whilst these are not usually very large or complex, the costs of risk transfer are spread throughout the overall LIFT contract. As a result LIFT is suitable for smaller and less complex projects than PFI.</i>
	Does the project involve operational aspects where the risk of cost and time overrun are likely to be significant?	<i>The range of operational services will be the normal FM services expected in a building PFI contract.</i>	<i>No operational services will be included in the contract.</i>
Innovation	Does a preliminary assessment indicate that there is likely to be scope for innovation? To what extent are the projects' scope,	The innovation in these projects is around the way in which services are delivered and, especially, in the extent to which advantages in terms of both efficiency and quality of service can be	<i>In LIFT areas PCT partners will have signed an exclusivity agreement. As a result LIFT provides the only opportunity for a joined up approach to service delivery involving</i>

	specification and operation pre-set or open to negotiation with the private sector?	gained through joint working. The assets themselves do not need to be very innovative.	<i>health services. This can often be an over-riding reason to use this approach.</i> The innovation in these projects is around the way in which services are delivered and, especially, in the extent to which advantages in terms of both efficiency and quality of service can be gained through joint working. The assets themselves do not need to be very innovative.
Service provision	Are there good strategic reasons to retain soft service provision in house? Is soft service transfer essential for achieving the overall benefits of improved standards of service delivery? Where soft services are not transferred, is this consistent with the Prime Minister's commitment to flexibility of public service provision?	There is little strategic reason for retaining soft FM services (catering, security, maintenance, etc.) in-house. <i>The potential for transfer of reception duties was considered but was not considered suitable for transfer (or attractive to the private sector).</i>	There is little strategic reason for retaining soft FM services (catering, security, maintenance, etc.) in-house, <i>although that is one option along with a separate contract.</i>
Incentive and monitoring	Can the outcomes or outputs of the investment programme be described in contractual terms which would be unambiguous and measurable? Can the service be assessed against an agreed standard? Would incentives on service levels be enhanced through a PFI payment mechanism?	The outputs can be described in unambiguous contractual terms and assessed to agreed standards. The service can be measured against agreed standards which will include best value performance indicators etc. These standards may vary within a building, eg cleaning standards for health services.	The outputs can be described in unambiguous contractual terms and assessed to agreed standards. The service can be measured against agreed standards which will include best value performance indicators etc. These standards may vary within a building, eg cleaning standards for health services.
Lifecycle costs and residual value	Is it possible to integrate the design, build and operation of the project? Is a lengthy contract envisaged? Will a long-term contractual relationship be suitable (or advantageous) for the service? Are there significant	Like most building PFI Projects there will be design, build, finance and operate contracts. The contract is normally for around 25 years. Although the exact mix of services and parties may change it is likely that there will continue to be some need for face-to-face access over this period, especially for more vulnerable sections of	Like most building PFI Projects there will be design, build, finance and operate contracts. The contract is normally for around 25 years. Although the exact mix of services and parties may change it is likely that there will continue to be some need for face-to-face access over this period, especially for more vulnerable

	ongoing operating costs and maintenance requirement? Are these likely to be sensitive to the type of construction?	society. Although ongoing operating and maintenance work will involve lifecycle costs, and these are sensitive to the type of construction, this will not be more significant than the average PFI project.	sections of society. Although ongoing operating and maintenance work will involve lifecycle costs, and these are sensitive to the type of construction, this will not be more significant than the average PFI project.
OVERALL DESIRABILITY	Overall, is the accounting officer satisfied that PFI would bring sufficient benefits that would outweigh the expected higher cost of capital?	<i>Yes, we believe that risk transfer will outweigh additional costs for larger projects (where that is shown to be the case in the quantitative assessment).</i>	<i>Yes. It is effectively the only route to provide opportunities for joint working with health bodies in LIFT areas.</i> <i>The LIFT mechanism provides a way of spreading the additional costs of risk transfer (as well as procurement costs - see below). It is specifically endorsed in PFI: meeting the investment challenge as an effective way of delivering small projects.</i>

ACHIEVABILITY			
While PFI may allow a more efficient and effective combination of public and private sector skills, determining the rules that will govern the relationship between the two sectors does involve significant transaction costs. In particular, the procurement process can be complex and significant resources, including senior management time, may be required for project development and the ongoing monitoring of service delivery. Client capability will have direct consequences for procurement times. Perceptions of this capability will also affect the level and quality of market interest. PFI and other contract-based approaches should maximise the benefits of a competitive process – but the structure of proposals and the choice of procurement route should be informed by an assessment of the likely market appetite.			
Issue	Question	PFI	LIFT
Transaction costs and client capacity	Is there sufficient client-side capability to manage the procurement process and appraise ongoing performance against agreed outputs? Can appropriately skilled procurement teams be assembled in good time?	Client-side capability varies in the projects to-date. However, we will work with local authorities involved in the programme to ensure that experience gained is shared. The procurement pack to help streamline the work on the client-side. <i>As part of our assessment criteria for schemes coming onto the programme we (and PRG) evaluate the proposed procurement teams, and ensure that they are adequate to be able to complete the procurement process, and deliver a project.</i>	Client-side capability varies in the projects to-date. However, we will work with local authorities involved in the programme to ensure that experience gained is shared. <i>Where there is an established LIFT Company (many of the first local authority projects have been developed alongside negotiating the LIFT contracts themselves) the level of expertise needed is less.</i> The procurement pack to help streamline the work on the client-side. <i>There are considerable time and cost savings in procuring a JSC through LIFT where an existing contract can be used. The Joint Service Centre procurement pack should streamline the work on the</i>

			<i>client-side on adapting standard LPA agreement to fit a local authority.</i>
Competition	Is there evidence that the private sector is capable of delivering the required outcome? Is there likely to be sufficient market appetite for the project? How is it expected that the market will receive the proposed risk profile?	<i>The first PFI joint service centre appears to be capable of reaching an agreed contract (financial close has been held up because of the need for agreements to be reached with existing retailers). Other similar accommodation projects with similar risk profiles have been successfully completed.</i> <i>The first joint service centre project did encounter the problem of limited competition which is thought to have the result of a combination of a relatively small size (around £15m capital value) and an unfamiliarity of dealing with multiple partners. We believe that the latter issue has been successfully dealt with and the procurement pack will provide the necessary comfort to the private sector.</i>	<i>The first joint service centre LPAs have been agreed.</i> <i>There appears to be significant market appetite for LIFT Company contracts. Where a LIFT already exists the question does not arise at all. As they have developed the local authority role, as a LPA signatory as well as a strategic partner, has become increasingly recognised as important.</i>
OVERALL ACHIEVABILITY	Overall, is the accounting officer satisfied that a PFI procurement programme is achievable, given client side capability and the attractiveness of the proposals to the market?	<i>There is very limited evidence as yet on which to base any judgement, but we believe that the work which has been done to develop the range of projects in the programme, and to distil the results in the procurement pack, will lead to a viable but small pathfinder programme. The use of traditional PFI contracts in this programme will be considered against the alternative of taking out LIFT leaseplus agreements where that is more suitable.</i>	<i>LIFT should provide a significant advantage over PFI in terms of achievability - both in cost and time terms. The larger size of the overall contracts reduces concerns about market appetite. We believe that the work which has been done to develop the range of projects in the programme, and to distil the results in the procurement pack, will enhance this. As noted above LIFT is specifically endorsed in PFI: meeting the investment challenge as an effective way of delivering small projects.</i>

415. The Stage 2 assessment in the OBC should be related to this, but should also consider other factors where relevant. Within this framework possible areas which should be considered include:

- Ability to attract investment in the proposed scope of the scheme
- Affordability
- Time-scale to delivery
- Practicality

- Legal issues associated with the option
 - Anticipated procurement costs
 - Bankability or deliverability
 - Best Value
416. The OBC should particularly identify where the individual scheme varies from the Stage 1 assessment and discuss the reasons and implications for this.

Quantitative assessment

417. The quantitative side now involves completing a model, which is deliberately not as detailed as some public sector comparator comparisons have been in the past. Similar considerations should be followed in completing this as with the qualitative side. The model takes account of advice in the HM Treasury guidance on 'Appraisal and Evaluation in Central Government', also known as the Green Book⁷². When an Authority reaches this stage in the development of their OBC they should contact the relevant sponsoring department who will supply a copy of their completed Stage 1 assessment. As with the other parts of the value for money assessment the OBC should pay particular attention to areas where assumptions and inputs vary from Stage 1.

Eol: a full assessment is not expected, but an indication is required of any qualitative considerations which are likely to have a major affect on the later assessment.

OBC: a full Stage 2 assessment should be included.

418. The Treasury model was completed on the basis of a hypothetical PFI project with a floor area of 10,000 m² (being one or several buildings). This reference project has an approx capital NPV of £22m.
419. The quantitative model produces a crude VfM of 7.85% for PFI/LIFT (at 15% pre-tax target IRR). The only significant factors which affect this result are the major costs, ie capex and unitary charge. Capital expenditure on the PC option would have to be 12% less, or the PFI unitary charge / LIFT LPA 10% higher for PFI to cease to show VfM.
420. The assumptions used in the inputs are as follows:

Contract period. 25 years taken to be the norm.

Initial capital expenditure period. Assume construction over years 1 and 2, with bulk in year 2. So enter '2' in model. No unusual payment profiles (eg bullet payments) are expected.

Year when OpEx is first incurred. Assume year following construction, ie year 3.

CapEx escalator. BICS General Building Cost Index of 4.3% used.

OpEx (non-employment) escalator. As indicated in guidance GDP deflator used. Assume contract signed in 2007-08, so figure for that year - 2.7% - used.

OpEx (employment) escalator. Used 3.5% as a reasonable estimate.

⁷² A copy of which can be obtained at www.hm-treasury.gov.uk

Unitary charge escalator. As projects are assumed as a base case to be 70% capital / 30% revenue, have used 30% as the % of the unitary charge to be inflated by OpEx. This is in line with the NPVs of other costs used in the model.

Initial capital expenditure (PSC). A base figure of £1,600 per m² has been assumed. This is in line with figures from earlier projects with locations which would seem reasonable to act as average for the country.

Initial capital expenditure (PFI). It is assumed that the costs will be 20% more than the CP figure, ie £1,920 per m². This is in line with pathfinders. The overall figure includes 10% efficiencies (a figure quoted in a number of OBCs), but with additional costs to cover cost and delay risks (as noted in A.84) counteracting that.

Lifecycle costs/intervals (PSC). It is recognised that expenditure of this nature has generally been inadequate in the past and less than would occur under PFI. Have assumed an average of 1% of the initial capital per annum, although the figure is largely an assumption. Data on conventional projects is not collected in ODPM. Many models show a peak in the costs occurring every 5 years, so the model shows 5% of the initial capital expenditure at 5 year intervals.

Lifecycle costs (PFI). The default value of 1.5% of the initial capital expenditure per annum (plus inflation) works out at 50% of the initial capital over the contract in cash terms, 24% in NPV terms. This seems about right, although past shadow PFI models have varied considerably in this respect. Whilst part of the variability may be due to design differences, variation between one large building and several small, a lot is also probably due to an inconsistent approach.

OpEx (non-employment) cost (PSC). Use PFI data as the starting point. Guidance suggests overall OpEx could be 10% lower than PFI. Assuming employment numbers stay the same, that will be achieved by making non-employment costs 20% lower.

OpEx (non-employment) cost (PFI). A base figure of £60 per m² p.a. has been assumed for total OpEx. This produces a capital/revenue split of about 70%/30% when the NPVs are calculated. No information on the split between employment and non-employment costs so assume a 50/50 split. This is assumed to include monitoring and SPV running costs, but does not include rates or utility costs. The figure does seem a little low compared to previous cases, but there are a large number of variables in previous models, so I would rather the model used this theoretical figure.

OpEx (employment) cost/numbers. Assume average wages as £20,000. Divide other half of above OpEx (see above) by £20,000 to get the number of staff.

Public sector transaction costs (PSC). Assume 3% of CapEx as suggested in guidance.

Public sector transaction costs (PFI). Assume £750,000. We expect the procurement pack is being developed to reduce costs, so the minimum has been used.

Pre-FBC optimism bias. 12 similar PFI projects showed an average increase of 12%, although the actual amount varied considerably (8 showed an increase, 3 none and 1 a decrease). A third of the reasons for the increases was to compensate for technical interest rate changes and this can be excluded for the purposes of this model, leaving an average of 8%. This is rounded to 10% for the model.

Post-FBC optimism bias - whole life costs. Previous PFI projects have calculated risk transfer in preparing PSC costs, sometimes explicitly equating this with optimism bias, sometimes not referring to optimism bias and sometimes adding it to risk transfer. Partly because of this there has, again, been considerable variation, from 15% to 30%. There is some evidence to suggest that the higher figure should apply when both explicit risk transfer and the more rigorous assessment of assets and services required are considered, so 30% used.

Post-FBC optimism bias - transaction costs (PSC). Assume that less scope for variation and that risk transfer is not an issue here, as with whole life costs. 10% assumed.

Third party income. Assume none. Even if there was some (eg café) it would be limited.

Unitary charge. Assume none of unitary charge is paid before the end of the construction phase. These projects are likely to either be single buildings or, if several, constructed at the same time.

Gearing, credit spread and bank margin. Default values used (inc 100% for bank margin, which is suggested in the model itself, even though 90% is suggested in the guidance).

Sterling swap rate. Figure of 5.5% used on the advice of the 4ps.

Flexibility. Default values again used at the mid-point. For JSCs flexibility is likely to be a major issue where a wide range of services and agencies are involved. However we would expect that to be built into the original design and not to involve major expenditure.

Tax. Assume costs of FM are about the same as capital value, that main continuing works are repairs and maintenance, that it is on revenue account (see guidance), and it is not risky. This results in an adjustment of 5%.

Indirect VfM factors. Nothing included. No differences between PFI and conventional procurement have been identified so far as externalities or non-market impacts are concerned

LIFT Projects

421. The PFI Value for Money Quantitative Assessment model can be obtained from the ODPM upon request.
422. There is currently insufficient data to properly distinguish between average PFI and LIFT costs. The Stage 1 assessment therefore assumes that they are the same, although noting some clear areas of difference:
 1. **OpEx** under LIFT will be partly covered by the hard FM included in the LPA. However soft FM, which might be expected in a PFI project, needs to be the subject of a separate contract under LIFT. That may be expected to increase OpEx costs somewhat.
 2. **Transaction costs** - both public and private sector - should be less than for a PFI project since that is one of the objectives of the LIFT process. There will be costs

for the separate soft FM contract, but we would still expect transaction costs to be less for LIFT overall, though the extent would vary depending on whether the project is in the first or subsequent waves (n.b., this is something which could not be shown in the model even if this difference could be quantified, since many of these assumptions are 'hard-wired').

3. Post FBC optimism bias depends on risk transfer and LIFT projects will be different to PFI in this respect. One clear example is residual value risk.
423. It is our expectation that the total quantitative difference between PFI and LIFT is likely to be small and certainly not significant enough to determine the overall VfM assessment.
424. Overall the ODPM's conclusions are:
1. An operable contract that can be achieved is possible under either PFI or LIFT, although that is based on the assumption of a fairly simple scope and may not apply if the project departs significantly from this pattern.
 2. The risk transfer advantages of either PFI or LIFT should outweigh the higher costs of capital.
 3. LIFT provides additional benefits over PFI where small projects are concerned.
 4. Joint working with health bodies is often a desired outcome of these projects and this is a major reason to use LIFT in areas where a LIFT Co exists.
 5. The quantitative assessment shows a 7-8% VfM advantage for PFI or LIFT which is within acceptable limits in terms of sensitivity (although see below for comments on the evidence base).
425. We therefore believe that PFI is a suitable procurement route for joint service centres. Where joint working with health bodies is important and the local authority is in a LIFT area, then LIFT will be the preferred option. If in a LIFT area but there are no health partners the choice between PFI and LIFT is likely to be based on local circumstances and probably for qualitative reasons.
426. It is recognised that the evidence base for these conclusions is very limited. The programme - some of which are projects which cross over with other programmes - currently includes just 3 endorsed PFI projects and 5 endorsed LIFT projects. A small number of other PFI projects of a similar nature (eg office accommodation) have also been used. The programme is small and, whilst the position will be somewhat better when the next Stage 1 assessment is carried out, we will also try to work more closely with other departments with analogous projects to increase the range of evidence.

Funding and affordability

The PFI Reference Project

- 426.1 PFI procurements are based on an output specification. However, modeling can only be done on the basis of an assumed solution. This is the "Reference Project" which is also used as a focus to evaluate bids later in the procurement process. It is not a specification

and is not shared with the market, rather it is one way to the required solution. Alternatives are likely, but will be "benchmarked" against the Reference Project.

- 426.2 The preferred project and procurement option identified from the options appraisal and value for money exercises will become the PFI Reference Project against which bids will subsequently be evaluated. Listed below are the key considerations for private sector bidders seeking to bid for projects and authorities should ensure they address all such factors within their analysis.

PFI credit requirement

- 426.3 The PFI credit figure should be based on an estimate of the capital expenditure to be incurred by the contractor. Authorities should set out the basis of their estimate and any assumptions made. The starting point for determining the capital element of the project should be to assume that it is 70% of the total unitary charge (ie use a 70/30 abatement split) as estimated in the PFI Reference Project. However that was designed to provide an approximate figure for a standard building contract and an authority may conclude that this is not appropriate to their contract. If that is the case the reasons for choosing an alternative must be set out. The use of an alternative needs the agreement of the relevant sponsoring department and this should be sought as soon as possible.
- 426.4 In the case of projects using NHS LIFT the appropriate methodology is set out in the ODPM note "PFI support for local authorities taking out a leaseplus agreement in an NHS building - version 2", available at www.local.odpm.gov.uk/pfi/liftv2.pdf.
- 426.5 Authorities are also expected to reduce the need for credits by use of capital receipts wherever possible and should demonstrate the extent to which this has been done.
- 426.6 Where a building is jointly occupied by partner agencies (including a health trust) on a permanent basis, the PFI credits sought should be reduced to exclude any floor area occupied by them. They would be expected to cover the capital costs of their part of the building in any lease which they pay.
- 426.7 The OBC should also set out the cost in terms of PFI credits per square metre floor area. This information will be used to benchmark the proposal against existing projects. Any issues which are likely to make project abnormal in terms of costs should be identified.

Affordability

- 426.8 It is essential that the Reference Project is affordable to the authority, and the assessment of the affordability of the project is an essential element of the OBC. A thorough analysis of the affordability of the Reference Project should be completed and shown in summary form within the OBC, with supporting financial models.
- 426.9 If the local authority is seeking central government financial support towards the costs of the project, the relevant departments and the PRG will be concerned to ensure that the local authority has completed a thorough analysis of the anticipated costs of the project and can afford the selected option. Revenue support options for authority Joint Service Centre projects to be funded through a mixture of the grant generated by PFI credits, and an authority's own revenue budget (usually coming from the operation cost of the facilities to be replaced), but other sources may also be relevant.
- 426.10 Other sources may include third party income or other grants available. Details of how the project would be delivered should this funding not be realised should be included, together with an assessment of the certainty of each and any possible difficulties in integrating them with the main sources of funding..

- 426.11 The assessment of affordability should be subject to sensitivity tests so that the local authority can give the necessary approvals for the project in full awareness of the future funding commitments associated with the chosen project and procurement route.

EoI: although outline proposals required at this first stage are designed to minimise the time and effort authorities spend on developing projects which do not ultimately receive support, one aspect which should be given more attention is the PFI credit requirement. Authorities should be realistic about the amount of PFI funding they intend to seek since there will be limited scope to fund any requests for future increases.

OBC: the full basis of the reference model, the use of this model to calculate the PFI credit requirement, and the affordability calculations should all be set out in full so that the methodology and assumptions are transparent.

Contract and Payment Mechanism

Contract

- 426.12 The OBC should set out how the Authority will develop the key terms and conditions of the contract. Local Authorities should use the Model PFI Project Agreement included in this Procurement Pack as a basis for the project (which is based on the Standardisation of PFI Contracts and the 4ps Local Government Supplement to SoPC). Any deviations from this standard contract should be highlighted and explained at each key stage of the process. Any such derogations must obtain prior approval from HM Treasury and will only succeed in getting such approval if they are exceptional.
- 426.13 The OBC should include an indication as to how the Authority expects to deal with the key contractual issues. This might include commentary on the following:
- The term or length of the proposed contract (this is typically 25 years or 30 years)
 - The treatment of the ground and building condition surveys, and the risks associated with the accuracy and completeness of this information
 - Warranty issues
 - How licences, leases and titles will be dealt with
 - Contractor and nature and extent of Authority obligations
 - Revenue sharing arrangements (including arrangements in relation to the deregulation of service connections and energy savings)
 - The approach for dealing with refinancing gains, and gains arising from changes in the tax treatment
 - Arrangements for ownership of assets at the end of the contract and the associated residual value issues
 - The treatment of changes in law
 - How the change mechanism and payment mechanism will deal with variations to the level of service provision and levels of dependency
 - Termination events, transfer of assets to the Authority, and compensation payable in the event of early termination.

Payment mechanism

- 426.14 The Authority will expect to pay the contractor for the delivery of the services identified within the Output Specification (or Tenants Requirements in NHS LIFT) and a payment mechanism is required for this purpose. The payment mechanism should be based on a unitary charge (or the Lease Plus Payments in NHS LIFT) for the availability of the facilities and the satisfactory delivery of the element of any additional service provision, with payments to the contractor varying if the services are not delivered to the agreed availability and performance standards.
- 426.15 At the OBC stage, the Authority will need to have given some preliminary thought to the components of the payment mechanism, and how the payment mechanism will interact with the requirements of the Output Specification. The OBC should include a summary of the key components of the payment mechanism and commentary on how the mechanism will be developed further.
- 426.16 The OBC should include the Authority's preliminary proposals for monitoring the contractor's performance in the delivery of services. Authorities should aim to incorporate self-monitoring by the contractor with the Authority having the right to audit the contractor's procedures and records. The OBC should set out how the Authority proposes to develop its approach to contract monitoring and the expected level of client-side involvement.
- 426.17 A payment mechanism to ensure that the Authority and its partners do not pay full price for a sub-standard service and premises should be a feature of all projects. It should be challenging without being punitive, and should be clear and easily understood by those who have to operate it. In Joint Service Centre projects one of the most difficult aspects of the payment mechanism is getting the performance criteria right, i.e. ensuring that the different services are properly monitored and the specification managed without the burden of monitoring being too time consuming, unrealistic and subjective.
- 426.18 Unlike accommodation only projects where the definition of "Availability" largely determines whether the contractor has achieved its obligations and is providing the necessary asset and facilities management services, where services are not directly asset related the performance standards are a great deal harder to define. Banks have a natural tendency to steer away from anything remotely subjective and clear thoughts as to what standards are important and how they are measured are therefore an important part of the payment mechanism and "selling it" to potential funders, if any.
- 426.19 The most effective forms of payment mechanism are based on the availability and the performance of the services, and have the following features:
- there should be a small number of performance indicators (between 15 and 20)
 - they should be easily measurable (e.g. to tasks completed/failed, cost to the Authority budget) rather than relying on a monitoring officer's individual assessment
 - they should be measured frequently (at least quarterly but no more than monthly). Deductions should not be made for historic defaults; at the same time a constant process of monitoring is to be avoided
 - they should relate to a significant proportion of the Unitary Charge (30-70%)
 - there should be a simple mechanism for resolving disputes.

- 426.20 Contained within this Procurement Pack is a Model PFI Payment Mechanism including suggested lists of performance criteria. There have been a number of such mechanisms devised and some are now in operation. However, setting the appropriate criteria for all Joint Service Centres is incredibly difficult given the potential mix of service provision. Some may relate to the impact on an Authority's resources whilst others may relate to the levels of satisfaction of service users. Clearly they need to be appropriate to the service and designed to ensure an optimum level of service with appropriate incentives for the contractor. In addition, they will need to be bankable. Contractors and funders (if any) may be cautious about mechanisms which could give rise to disproportionate deductions and those which rely on what they consider to be subjective assessments.
- 426.21 The payment mechanism may be the Authority's sole remedy against the contractor default. This is more problematic for Joint Service Centre projects where the service users affected by a failure are unlikely to be satisfied with an answer that if the contractor committed several such failures it may trigger a performance or availability deduction. The risk of a failure primarily affecting one service area, as well as having a consequential impact of other occupants of the facility must also be appraised and managed through the payment mechanism.
- 426.22 Therefore, Authorities often require an additional remedy – such as step in or self help at the contractor's expense for failures which jeopardise the provision of services within the Joint Service Centre. This needs careful consideration in terms of the level of powers and how this fits with the FRS 5 accounting opinion.

Benchmarking and Indexation

- 426.23 The OBC should set out the Authority's initial views on indexation, which will be included in the payment mechanism. It is likely that part of the unitary charge will be subject to an indexation arrangement based on the Retail Prices Index (RPI), and potentially the Average Earnings Index (AEI).
- 426.24 The indexation of the unitary charge is a source of considerable concern to bidders. A common approach is to include a mix of RPI (x) and AEI to proportions of the unitary payment roughly in line with the percentage relating to staff and non-staff costs.
- 426.25 Some bidders are seeking to take this one step further and specifically link the indexation to Authority pay and conditions settlements. This should be resisted as this does not achieve any real transfer of risk to the contractor. These issues will need to be considered throughout the development of the project.
- 426.26 The approach to indexation will have an effect on the OBC and the expected cost of the private sector provision and therefore how affordable it is. This will need to then be kept in mind when preparing the payment mechanism and the ITN documentation to ensure that the documentation reflects the Authority's preferred position, taking into account market conditions. OGC guidance suggests that periodic benchmarking may be the way to address this concern so that indexation can be limited to RPI and the Authority be exposed only to limited change in law risks⁷³.
- 426.27 The difficulty in the Joint Service Centre sector is that the number of suitable comparators is likely to be low if non-existent. Authorities have been concerned that benchmarking would lead to costly and time-consuming disputes on a regular basis. Benchmarking however may be more of an option within facilities developed under NHS LIFT but advice should be sought from Partnerships for Health if developing a JSC through this initiative.

⁷³ Guidance issued by the Office of Government Commerce is available at www.ogc.gov.uk

Insurance

- 426.28 Insurance is an often-overlooked subject that can cause delay at the end of the process. SoPC is very clear on the subject, but this guidance does not really address the circumstances where the Contractor is not a special purpose vehicle holding specific insurance. It is crucial to the management of risk that appropriate insurances are held by the correct parties and with insurance premia rising this is often a major negotiation factor. Authorities should ensure that they are well advised – by either an in house team (if it has PFI expenses) or, more likely, the Council's brokers.

Eol: at this stage all that is required is a commitment to follow standard contract documentation.

OBC: all of the issue above should be considered and covered as appropriate.

Risk allocation and accounting treatment

Risk register

427. The OBC should include a first draft of the risk register for the Reference Project, optimising risk between the public and private sectors. Standard risk registers for use on PFI and NHS LIFT projects can be found at Section 3 of this Part of the Procurement Pack.

Accounting treatment

428. A project must be considered a PFI contract under standard accounting requirements. FRS5 provides the basis for determining whether projects should be accounted for as a PFI contract directly within the FRS; or as akin to a lease - when Statement of Standard Accounting Practice (SSAP) 21 should be applied. The determination is based on whether or not there is an associated service element which is not independent of payments for the property.
429. Central Government sponsoring departments will have different budgetary considerations in considering whether they wish to support on or off balance sheet projects. Therefore, although projects may qualify for support whether or not they score on the authority's balance sheet, the OBC will need to include an "initial view" of the accounting treatment on seeking support, as set out in Section 2 of *Technical Note No. 1 (Revised) How to Account for PFI Transactions (June 1999)* available from the Treasury web site.
430. The OBC should also include comments from the authority's external auditor as to whether the process used to determine the initial view is reasonable; and a commitment to revisit the assessment at key project milestones through the procurement process.

Eol: an early indication is needed of whether the scheme is expected to be on or off balance sheet. A proper assessment needs not be done at this stage a views should be taken by comparison with other projects and any early views on risk transfer.

OBC: a full initial view and external auditor comments are needed.

Design quality

431. The PFI general criteria requires that all projects adopt an integrated approach to the social, environmental and economic well-being of the area, now and for future generations, in line with the OGC guidance note *Green Public Private Partnerships*. This covers the promotion of sustainable development in location, design, construction,

operation and maintenance. A *Code for Sustainable Buildings* is being developed in response to the recommendations in the report of the Sustainable Buildings Task Force *Better Buildings - Better Lives*.

432. Projects must also demonstrate how they contribute to the government's commitment to achieving "Better Public Buildings". Authorities are expected to take account of the guidance on design quality in PFI projects available from OGC (*How to achieve Design Quality in PFI Projects*), CABI (*Improving Standards of Design in the Procurement of Public Buildings*, October 2002) and 4ps (*Achieving Quality in Local Authority PFI Building Projects*). The design of facilities is not just about appearances- it is an expression of how well the facility operates and meets or exceeds the needs of clients and users. Good design is implemented through an effective procurement process, a well-managed construction phase, and continues through the operational period of the PFI contract as a cost-effective life-cycle approach. Generally, happy stakeholders are a symptom of good design.
433. The OBC should provide evidence that design quality has been approached adequately which could include:
- A track record of well-designed buildings.
 - The appointment of a Design Champion.
 - If the options appraisal considered more than one site, whether design issues influenced the choice; and whether the context influenced the approach to design (noting that a balance has to be found in the appraisal between the weighting attached to such issues, and that attached to other matters such as cost).
 - The involvement of stakeholders in deciding design issues. Design Quality Indicators (DQIs) are a valuable tool (available from Construction Industry Council) for measuring the reaction of a range of stakeholders to the design of the project.
 - Evidence of Egan objectives in the scope of the project (full details from Constructing Excellence at www.constructingexcellence.co.uk). Examples include:
 - o Cost reductions in construction as a result of smarter procurement processes (eg management of supply chain)
 - o Reduction in accidents on site
 - o Construction workforce improvements- "Respecting people" agenda
 - o Use of off-site construction for elements of project
 - o Has the Authority considered nominating the project as a Demonstration Project?
 - The use of external design advisers, eg CABI or appointed client-side firms.
 - The production of clearly stated design quality criteria which will be a key evaluation criterion for bidders.

Eol: an outline of the intended approach, including willingness to follow recommended guidance.

OBC: a worked up description of the approach with evidence as suggested above.

Councillor and partner commitment

Councillor commitment

434. If central Government support is to be sought for the project, it is vital that the necessary approvals from the relevant service Committee and/or Cabinet support the OBC, and that evidence of such approval is included in the OBC. This should not only include the date at which the conclusions of the OBC were approved, but also a recognition of the

corporate commitment and resources required to deliver the project, and the contribution the project will make in delivering the Authority's corporate strategy, LTP, CPA and Best Value Performance Plan.

Partner commitment

435. As has been noted local authorities are likely in a Joint Service Centre project to work with other public bodies, including NHS partners, namely PCTs or other local health bodies. The specific statutory constraints within which such bodies operate must be acknowledged by all partners and the sponsoring Government departments will be looking to ensure that there is commitment from all partners at the OBC stage. This will need to be evidenced clearly within the OBC.

Stakeholder commitment

436. Where the Authority has collected evidence of other stakeholder support for the project (for example, from the emergency services and community groups) this should be summarised within the OBC. Confirmation of a mechanism by which stakeholders are informed about and involved in procurement should be included.

Eol: written confirmation that the Council is supportive needs to be provided, including evidence of councillor commitment. It would also be useful if authorities could identify whether their local MPs are in support. The level of commitment by partner agencies needs to be indicated.

OBC: needs to update the information provided earlier in the Eol.

Project Management

Arrangements, methodology and team

437. Effective project management arrangements are critical to the successful delivery of Joint Service Centre projects. This section of the OBC should consider and document the Authority's approach to the development of the project management arrangements and structure if the project wins approval to go into procurement, and describe the arrangements that are to be put in place to ensure an efficient procurement.
438. Authorities will need to demonstrate senior level support and commitment to the proposal, including the commitment and availability of senior officers. The OBC should also describe what project management methodology the authority would expect to use.
439. Authorities should describe what skills and experience they would expect to bring to the project, including any external advice they anticipate might be required. The resources for the latter should be identified and a commitment to find these provided. A Project Director is expected to be in place with the skills and experience and empowerment to deliver the project. He should be supported by a robust project team with the necessary skills, and the OBC should include a description of this and what accreditation would be required of those involved.

Statutory and site issues

440. The OBC should identify any risks in the procurement process, eg planning permission or other statutory issues (public enquiry, playing fields, disposal of land below market value, listing, environmental issues, etc), and identify mitigation strategies for these risks.
441. Differing approaches have been advocated as to the extent to which authorities should seek to regularise the planning position at an early stage. It is usually a good idea for

the Authority to obtain outline consent at the earliest opportunity and before the issue of the ITN. This is particularly important when the site is currently being used for another purpose and permission for a change of use is required. This provides considerable comfort to the potential bidders, and will assist in ensuring that the Bidder then takes the full planning risk.

442. A number of authorities have faced difficulties in resolving site issues. These include the acquisition of all necessary interests in sites and the resolution of title problems.
443. It is essential that these are addressed at an early stage. The Authority, together with its partners, need to identify the sites on which new facilities are to be provided before the project is advertised. They should be confident that all problems relating to site access can be resolved and that the sites can be acquired and all title issues dealt with within a reasonably short timescale. These issues then need to be addressed promptly and an ITN should not be issued unless they have been resolved.
444. Connected with the above two issues is the question of the stage at which building contractors are chosen and invited to participate in the process. If there are site issues which have not been resolved or which require a degree of technical expertise for identification, then it may be helpful to have building contractors involved at an early stage in the process.

Relationships with Partners and Stakeholders

445. Many Joint Service Centre schemes involve joint working with other Authorities, NHS bodies, voluntary bodies or other public sector organisations. For such relationships to be successful, thought needs to be given to each party's requirements from a very early stage, and certainly prior to drafting the OBC.
446. If there is joint procurement (between a number of authorities), a decision will need to be made at a very early stage as to which partner will be the lead procuring Authority in relation to managing the OBC and engaging in the procurement and the contract. Arrangements for sharing any of the development costs may also be considered at this stage.
447. If the Authority is the lead commissioner for the project, they will need to consider how the relationship with its partnering health bodies will be arranged in terms of:
- back to back arrangements with Section 31 agreements; and/or
 - whether any nursing care elements will be included within the package, or if the health partners will provide these parts of the service as a 'top-up' to the Provider's provision.
448. Conclusions of discussion with stakeholders regarding future involvement in post-procurement contract management.

Timetable

449. The OBC should include a copy of the intended project or procurement timetable, with key milestones and approval processes. A timetable should be prepared covering all stages from submission of the initial proposal to start of service provision. In particular a realistic deadline should be proposed to reach financial close. This should be consistent with the model procurement timetables in this pack. The stages of the procurement process should be kept to a minimum consistent with achieving value for money.

450. Where the proposal is for an extended school the authority should outline its current position in BSF. Similarly, where the proposal is to take out a leaseplus agreement in a LIFT building, the wider context of the LIFT project should be described.

Decanting issues

451. When existing facilities are closed and occupants or other service users have to be moved, and services re-provided at new facilities, this throws up a number of potential challenging issues, including:
- consultation
 - handling the process of movement of occupants
 - transfer of staff
 - the opening and closing of facilities; and
 - the phasing in of services.
452. It is good practice for the project team to plan any transfers carefully in the interests of occupants and/or end users. An implementation plan including the decanting of staff and users needs to be in place 3 – 6 months prior to transfer.

Eol: An outline of the skills and experience of the team, and the proposed methodology will be sought. Senior level support and commitment, including commitment to resourcing will be needed. An outline timetable needs to be shown, including the time required to work up the OBC.

OBC: full details as set out.

Bankability and Market interest

Bankability

453. The assessment of the bankability of the project is an essential element of the OBC. A thorough analysis of the bankability of the Reference Project should be completed and shown in summary form within the OBC, with the financial models supporting the assessment. The financial analysis should be able to demonstrate that a contractor can make a competitive return on the project, whilst meeting its debt service obligations.
454. It is important that Local Authorities pay careful attention to the following issues, in order to ensure that sufficient interest in the project from private suppliers will be generated:
455. Size of the project – projects with a capital value of £20 million or less are unlikely to be attractive to the private market. This occurs for two main reasons: as bidders incur bid costs at their own risk during the bidding process and an overall project cost of less than £20million does not provide enough of a financial incentive. Secondly bidders may need to raise finance, typically through a bank, and deals lower than this figure find it difficult to attract investment interest.
456. Mix of services and users – accommodating different types of service provision may be more or less attractive to different suppliers. Some bidders may just be interested in pure accommodation Joint Service Centre projects whilst others may be interested in providing additional care services if any.

457. Risks – thought needs to be given as to which risks are particularly concerning to the industry and how these might be mitigated or shared without frustrating the FRS5 test. Projects involving the transfer of care services often affect large numbers of staff. Issues around the pay, conditions, recruitment and retention of these staff can often be seen as high risk by bidders. Preparation is key to minimise the lack of interest from bidders based on risk. By the time the ITN is issued, the Authority should have in place outline planning permission for the proposed sites; ground condition and/or building condition surveys on which the bidders can rely; and comprehensive information on the staff likely to transfer to the Provider.
458. Private sector financial incentive – Authorities should consider what “return” the private sector might be looking for when bidding for this work and factor this into the affordability assumptions. Bidders will be looking for an indication of the affordability envelope available, which can be a key factor in deciding whether it is of value for them to bid or not. Sufficient scope should be given for bidders to be innovative in proposing additional variant solutions which might include for example the generation of third party income, to help bridge any affordability gaps, as well as being capable of successfully meeting the overall aims of the Authority.

Market testing

459. In undertaking the appraisal of both project and procurement options, it is recommended that the Authority undertakes a soft market testing or deal testing exercise with potential contractors known to operate in the market to test the assumptions being used in the appraisal exercises. This can also be a useful way for the Authority to obtain an insight into how a contractor might approach the delivery of the relevant services to be provided within the Joint Service Centre and address local circumstances. Approaching the market will also enable the Authority to gain insight into the likely level of interest in the project and provide the opportunity to amend the assumptions or scope before committing to any required level of PFI credit support.
460. In carrying out a soft market testing exercise, one option may be for the Authority to approach those contractors with whom it is used to doing business to discuss its ideas about the scheme and to invite suggestions as to how it might be taken forward. Other companies and consortia active in the Joint Service Centre PFI market may also be approached. The Authority's advisors may also be able to facilitate informal approaches to the market. A common approach is to undertake a formal assessment by questionnaire, which can be documented within the OBC. It is worth noting, however, that a questionnaire alone often receives a low response rate, so it is helpful to consider supporting this with telephone enquiries.
461. It is important that any one potential bidder is not given a head start in the procurement process. The Authority must take legal advice before approaching the market to ensure that its actions do not prejudice the future procurement process. Such an exercise may best be undertaken with the issue of a Prior Information Notice (PIN), and a selection process used to select, say, three potential Providers with whom to discuss the proposed project.
462. Preliminary information about the project and the Authority may usefully be provided prior to the market sounding interviews. Authorities should ensure that in providing information, they do not give any potential bidders an unfair competitive advantage.
463. If responses from the market sounding exercise indicate that the proposed scheme is unfeasible, or that there is not likely to be much competition during the bidding process,

Authorities will need to consider carefully how to proceed further, and whether amendments can be made to establish a more feasible scheme.

Eol: although a soft market testing exercise is not expected to have been undertaken at this stage it is useful to include any early soundings which might indicate the likely extent of private sector interest in the scheme.

OBC: both bankability and market testing should be covered, including any lessons learnt from the latter and how that has influenced the development of the OBC.

Employee Issues

464. The re-provision of facilities or the transfer of existing services to new facilities provided by the private sector may give rise to transfers of staff under the Transfer of Undertakings Regulations. However, this will not always be straightforward. Whether TUPE applies depends on a range of factors. Essentially there is a requirement for an identifiable “economic entity”, i.e. a group of staff with a defined purpose, or a part of such an entity, which is transferred to another employer and retains its identity after such transfer. Thus an establishment which transfers as a “going concern” with the new Provider taking over responsibility of all the service users is very likely to give rise to a TUPE transfer. However, where establishments are closed and both client groups and staff move to a variety of new locations then it is unlikely that there is any longer an “economic entity” which could be the subject of a TUPE transfer.
465. The response of prospective bidders and the costs to them of undertaking a TUPE transfer will also need to be taken into account.
466. Authorities will need to ensure compliance with Government guidance on staff transfers. This guidance consists of Staff Transfers in the Public Sector (Cabinet Office 7 January 2000 www.cabinetoffice.gov.uk and the recent ODPM guidance contained in the Code of Practice on Workforce Matters in Local Authority Service Contracts – Annex D to ODPM Circular 03/2003 and Local Government Act 1999 Part 1 Best Value and Performance Improvement 13 March 2003 www.odpm.gov.uk. The Code requires Authorities to ensure that any new joiners to a contractor’s workforce will be offered terms and conditions which are, overall “no less favourable” than those of transferred employees.
467. Authorities should be geared up to provide accurate information that they are comfortable warranting. Sometimes the information comes from a third party (e.g. PCT, outgoing provider or another partner) in which case consideration needs to be given to how the contractor may rely on that third party information.
468. The OBC should provide a commentary on the Authority’s intended approach to the staffing implications of the project and the extent to which the TUPE regulations may apply, based on advice received. In particular the OBC should consider:
- The principles by which the process of any staff transfers would be conducted, including those from the existing contractors
 - The arrangements that are to be put in place for consulting with staff and the staff representatives during the procurement process and following financial close
 - How the good practice guidance on consultation matters, from the Cabinet Office, OGC, ODPM and the 4ps, will be applied

- The proposed arrangements for involving staff and staff representatives in the process for selecting a contractor, and appraisal of employment policies, industrial relations track record, training and development policies.
- Arrangements for dealing with pension issues.

469. It should be noted that any financial models should reflect the requirement that new staff will be offered terms and conditions that are overall no less favourable than those of the transferred employees.

Eol: no reference is necessary.

OBC: should include a summary of issues identified.

Vires

470. At an early stage in the development of the project it is essential that Local Authorities identify the legal powers on which they intend to rely for entering into a contractual commitment for the services to be provided. If relevant, the authorising powers for any partners working with the Local Authority in the development of the Joint Service Centre should also be identified.

Eol: no reference is necessary.

OBC: should include a summary of the powers identified.

Sharing of Information

471. It is a requirement of all local authorities that they must be ready to share experience and final contract documentation, at no cost, with other local authorities procuring similar projects, with Government departments and with the 4ps (this is on top of the requirement for an electronic copy of all contracts signed to be sent to the Treasury).

Eol: no reference is necessary.

OBC: should explicitly state that this is accepted. Any information of genuine commercial sensitivity may be withheld – but such material is normally expected to be minimal. Authorities should make clear to potential contractors that this information-sharing requirement is a formal condition imposed by the Government as a condition of support.

Section 3: Standard Risk Registers

A: PFI Risk Register

Activity	Description of risk	Risk borne by Contractor	Risk borne by Authority	Shared Risk
Demand	Inability of Authority to provide tenants		x	
Detailed Planning	Planning permission and/or Building Regulation approvals not granted	x		
	Planning permission and/or Building Regulation approvals delayed	x		
.Design	Design not complying with planning requirements and/or Building Regulation approvals	x		
	Structural and/or latent defects become apparent during refurbishment			x
	Discriminatory and specific changes in law		x	
	General changes of law			x
	Changes in Authority design requirements		x	
	Life expectancy	x		
Ground structure/ environmental contamination	Ground structure problems or environmental contamination problems arise which affect building structure, programmed works or availability of accommodation	x		
Construction/ Refurbishment Works Risk	Inadequate interpretation of output specification	x		
	Consequential works costs including damage or disruption to tenant decorations, fittings and fixtures e.g laminate flooring	x		
	Labour and materials costs	X		
	vehicle parking outside or in immediate vicinity of properties for loading and unloading	x		
	Site/buildings conditions/interference by adjoining owners	x		

Activity	Description of risk	Risk borne by Contractor	Risk borne by Authority	Shared Risk
	Access to Services	x		
	Site safety and security	x		
	CDM and all Health and Safety Requirements	x		
	Changes in Authority works requirements		x	
	Delayed hand over of accommodation to Authority		x	
	Industrial action			x
	Construction sub contractor default	X		
	Materials supply	X		
	Exceptionally adverse weather			X
	Vandalism/theft of materials	x		
	Industrial action by a supplier, transporter or manufacturer of materials	x		
	Discriminatory and Specific Changes in Law		x	
	General Changes in Law			x
	Damage to works	x		
	Decanting arrangements inadequate or unsuitable	X		
	Compensation for loss of services and amenity due to works	X		
Operational Services	Inadequate management	X		
	Disrepair litigation and statutory nuisance notices served/Court case lost	X		
	Repairs and maintenance service	X		
	Industrial action	X		
	Vandalism (damage to accommodation)	X		
	Changes in Authority service requirements		X	
	Cost overruns	X		
	Sub-contractor default	X		

Activity	Description of risk	Risk borne by Contractor	Risk borne by Authority	Shared Risk
	TUPE	X		
Planned Maintenance/ Cyclical Maintenance	Planned maintenance cost	X		
	Planned maintenance programme	X		
	Latent defects	X		
Utilities	Environmentally caused infections	X		
	Costs (increases in excess of general inflation)	X		
	Continuity of supply	X		
Incentives for under-performance	Performance below adequate standard	X		
Finance and Potential Changes in Costs of Finance	Cost of finance increases	X		
	Changes in taxation	X		
	Inflation	X		
	Cost increases in ongoing expenditure	X		

B: NHS LIFT Risk Register

1. Design Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTCo	Shared
1.1	Failure to design to brief	Failure to translate the requirements of the Tenant into the design.		✓	
1.2	Continuing development of design	The detail of the design should be developed within an agreed framework and timetable. A failure to do so may lead to additional design and construction costs.		✓	
1.3	Change in requirements of the Tenant	The Tenant may require changes to the design, leading to additional design and construction costs.	✓		
1.4	Change in design required by LIFTCo	This is the risk that LIFTCo will require changes to the design, leading to additional design costs.		✓	
1.5	Change in design required due to external influences specific to the provision of health and social care services.	There is a risk that the designs will need to change due to legislative or regulatory changes specific to the provision of health and social care services.			✓
1.6	Failure to build to design	Misinterpretation of design or failure to build to specification during construction may lead to additional design and construction costs.		✓	

2. Construction and Development Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTCo	Shared
2.1	Incorrect time estimate	The time taken to complete the construction phase may be different from the estimated time.		✓	
2.2	Unforeseen ground/site conditions	Unforeseen ground/site conditions may lead to variations in the estimated cost.		✓	
2.3	Delay in gaining access to the site, "Delay Events"	A delay in gaining access to the site may delay or impede the performance of the contract and cause additional expenses.	✓		
2.4	Responsibility for maintaining on-site security	Theft and/or damage to equipment and materials may lead to unforeseen costs in terms of replacing damaged items, and delay.		✓	

No.	Risk Heading	Definition	Allocation of Risk		
2.5	Responsibility for maintaining on-site safety	The Construction, Design and Management (CDM) regulations must be complied with.		✓	
2.6	Third party claims	This risk refers to the costs associated with third party claims due to loss of amenity and ground subsidence on adjacent properties.		✓	
2.7	Compensation Events	An event of this kind may delay or impede the performance of the contract and cause additional expense.	✓		
2.8	Force Majeure	In the event of Force Majeure additional costs will be incurred. Facilities may also be unavailable.			✓
2.9	Termination due to Force Majeure	There is a risk that an Event of Force Majeure will mean the parties are no longer able to perform the contract.			✓
2.10	Legislative/regulatory changes specifically relating to the provision of health and social care.	A change specifically relating to the provision of health and social care in regulations, leading to a change in the requirements and variations in costs.			✓
2.11	Legislative/regulatory change not specific to the provision of health and social care services.	A change in legislation/regulations not specific to the provision of health and social care services leading to a change in the requirements and variations in costs.		✓	
2.12	Changes in taxation	Changes in taxation may affect the cost of the project.		✓	
2.13	Changes in the rate of VAT	Changes in the rate of VAT may increase the costs of the project.		✓	
2.14	Other changes in VAT	Changes in VAT legislation other than changes in the rate of VAT payable.		✓	
2.15	Contractor default	In the case of contractor default, additional costs may be incurred in appointing a replacement, and may cause a delay.		✓	
2.16	Poor project management	There is a risk that poor project management will lead to additional costs. For example, if subcontractors are not well co-ordinated, one subcontractor could be delayed because the work of another is incomplete.		✓	
2.17	Contractor/subcontractor industrial action	Industrial action may cause the construction to be delayed, as well as incurring additional management costs.		✓	
2.18	Protestor action	Protestor action against the development may incur additional costs, such as security costs.			✓

No.	Risk Heading	Definition	Allocation of Risk		
2.19	Incorrect time and cost estimates for commissioning new buildings	The estimated cost of commissioning new buildings may be incorrect, there may also be delays leading to further costs.		✓	

3. Availability and Performance Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTC o	Share d
3.1	Latent defects in new buildings	Latent defects to the structure of the new builds, which require repair, may become patent.		✓	
3.2	Change in specification initiated by procuring entity	There is a chance that, during the operating phase of the project, the procuring entity of the services will require changes to the specification.	✓		
3.3	Performance of subcontractors	Poor management of subcontractors can lead to poor co-ordination and under-performance by the contractors. This may create additional costs in the provision of services.		✓	
3.4	Default by contractor or subcontractor	In the case of default by a contractor or subcontractor, there may be a need to make emergency provision. There may also be additional costs involved in finding a replacement.		✓	
3.5	Industrial action	Industrial action by the staff involved in providing facilities services would lead to higher costs and/or performance failures.		✓	
3.6	Failure to meet performance standards	There is a risk that facilities management (FM) will not provide the required quality of services. This may be costly to correct, and LIFTCo may incur financial penalties.		✓	
3.7	Availability of new facilities	There is a risk that some or all of the facility will not be available for the use to which it is intended. There may be costs involved in making the facility available.		✓	
3.8	Relief Events	An event of this kind may delay or impede the performance of the contract and cause additional expense.			✓
3.9	Force Majeure	In the event of Force Majeure additional costs will be incurred. Facilities may also be unavailable.			✓
3.10	Termination due to Force Majeure	There is a risk that an event of Force Majeure will mean the parties are no longer able to perform the contract.			✓

4. Operating Cost Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTC o	Share d
4.1	Incorrect estimated cost of providing specific services under the contract	The cost of providing these services may be different to those expected, because of unexpected changes in the cost of equipment, labour, utilities and other supplies.		✓	
4.2	Legislative/regulatory change having capital cost consequences specifically relating to the provision of health and social care.	Changes specifically relating to the provision of health and social care in legislation/regulations may lead to additional construction costs, and higher building, maintenance, equipment or labour costs.			✓
4.3	Legislative/regulatory change not specific to the provision of health and social care services.	Changes not specific to the provision of health and social care services in legislation/regulations may lead to additional construction costs, and higher maintenance, equipment or labour costs.		✓	
4.4	Changes in taxation	The scope and level of taxation will effect the cost of providing services.		✓	
4.5	Changes in VAT	This may increase the cost of the provision of services.		✓	
4.6	Incorrect estimated cost of providing clinical services	The cost of providing clinical services may be different to the expected. These costs include: staff, recruitment, training, equipment and supplies.	✓		
4.7	Incorrect estimated cost of maintenance	The cost of building and engineering maintenance may be different to the expected costs.		✓	
4.8	Incorrect estimated cost of energy used.	Failure to meet energy efficiency targets or to control energy costs.			✓

5. Variability of Revenue Risk

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTC o	Share d
5.1	Non-performance of services	Payment will only be made by the Tenant for services received.		✓	

5.2	Poor performance of services	The operator will incur deductions from the performance payment for the poor performance of services.		✓	
5.3	Changes in the size of the allocation of resources for the provision of health and social care	There is a risk that the resources allocated to the area are reduced or increased. If such changes do occur, there may be a need to re-scale the provision of services.	✓		
5.4	Changes in the volume of demand for customer services	There is a risk that the volume of demand for health and social care will change, because of changes in the size of the catchment area. This may occur because there is, for example: an unexpected increase in the size of the population, leading to an increase in demand; or the streamlining of provision may lead to an increase/reduction in demand.	✓		
5.5	Unexpected changes in technology	Unexpected changes in technology may lead to a need to re-scale or reconfigure the provision of services.	✓		
5.6	Unexpected changes in the demographics of the catchment area	Unexpected changes in the demographics of the catchment area may lead to a reconfiguration or re-scaling of the provision of services.	✓		
5.7	Unexpected sudden increase in demand.	There is a risk of large unexpected increases in demand (e.g. due to a major incident).			✓
5.8	Estimated income from income generating schemes is incorrect	There is a risk that income generating schemes, such as car parking, generate less or more income than expected.		✓	

6. Termination Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTC o	Share d
6.1	Termination due to default by the procuring entity	The risk that the procuring entity defaults leading to contract termination and compensation for the private sector.	✓		
6.2	Default by LIFTCo leading to step-in by financiers	The risk that LIFTCo or individual Contractors default and financier's step-in leading to higher costs than agreed in the contract.		✓	
6.3	Termination due to default by LIFTCo	The risk that LIFTCo defaults and step-in rights are exercised by financiers but that they are unsuccessful, leading to contract termination.		✓	

7. Technology and Obsolescence Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTCo	Shared
7.1	Technological change/building obsolescence	Buildings, plant and equipment may become obsolete during the contract.		✓	
7.2	Technological change/building obsolescence	Technical changes may cause the Tenant to revise its output specification.	✓		

8. Control Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTCo	Shared
8.1	Control of health and social care services	The Tenant retains control of health and social care services, which means that it retains significant control of the nature of the services provided by LIFTCo.	✓		
8.2	Control of services provided under the LIFT contract	LIFTCo should retain control of these subject to 8.1 above.		✓	

9. Residual Value Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTCo	Shared
9	Procuring entity no longer requires buildings at end of contract	The risk that the procuring entity will wish to vacate the building at the end of the contract period, and that LIFTCo may be faced with decommissioning costs.		✓	

10. Other Project Risks

No.	Risk Heading	Definition	Allocation of Risk		
			Tenant	LIFTCo	Shared
10.1	Incorrect cost estimates for planning approval	Estimated cost of receiving detailed planning permission is incorrect, including the cost of satisfying unforeseen planning requirements.		✓	
10.2	Delayed planning approval	A delay in receiving planning permission may have broader cost implications for the project, as well as the loss of potential savings.			✓

Section 4: Comparative Analysis of the Approach used in the PFI and NHS LIFT For Delivering JSCs

ISSUES	PFI	LIFT
1. What are the fundamental differences between each model?	The PFI model is the procurement of services with works based upon a project financing structure. The security for the funders of the project is the PFI contracts (principally the Project Agreement) and the cashflows deriving from those contracts (principally the Unitary Charge). No security is taken over the assets of the project which are the subject of the PFI contract which remain within the ownership of the Authority.	The NHS LIFT model, for the provision and/or the development of premises and services for health and social care purposes by a joint venture partner (LIFT Co), is principally based upon a property development financing structure. The primary purpose of LIFT Co will be to procure or provide services through the Lease Plus and the Strategic Partnering Agreement though the purchase, development, sale, lease from third parties and the establishment of subsidiaries (Fund Co) to deliver or enter into income generating arrangements with third parties. The security for the funders of the project are the assets of the project which are acquired by LIFT Co either from the participants and/or from third parties and developed and the cashflows deriving from those assets. Taking a Lease Plus only will involve only one project defined at the outset. However, subject to EU procurement rules (see question 6 below). LAs can take up occupation on a Lease Plus(es) basis in later developments. Alternatively, a LA may choose to take an under-lease from a PCT who has taken a Lease Plus from LIFT Co. In such an instance, the Tenant would be the PCT and the LA would only have the

		rights contained within a traditional occupancy lease. The LA would not be entitled to benefit from the terms of the Lease Plus, the SPA nor the Shareholders Agreement. If the LA enters into the SPA, the NHS LIFT model is a strategic partnering or joint venture arrangement enabling the ongoing provision of developed premises and services for health and social care purposes in accordance with pre-agreed strategic policy over 20 years, with an option to extend for an additional 5 years. The ongoing provision is subject to LIFT Co demonstrating value for money. LA representation on the Strategic Partnering Board (SPB) ensures that active involvement, occurs giving the LA the opportunity to: • approve the Strategic Service Delivery Plan (SSDP) • approve New Projects; • review the performance of LIFT; and • invoke SPA remedies. As well as bringing forward New Projects, the SPB monitors the performance of LIFT Co and is able to apply additional sanctions, over and above those available to individual tenants. Under the Fund Co structure, the SPA provides that initial properties are transferred by Participants to Fund Co and all other properties are transferred in accordance with LIFT Co's instructions to either the same or another Fund Co. This structure enables LIFT Co to use different Fund Cos for different tranches of development. The NHS LIFT model enables the Participants to become Shareholders in LIFT Co thereby having a stake (including a financial stake) in LIFT Co.

		As a Shareholder, a LA has the right to jointly nominate (with the other local and health authority Shareholders) a Director onto the LIFT Co Board, thereby establishing a level of influence over the activities of the company. Shareholders may also earn a return on the capital they invest in LIFT Co, whether as interest on subordinated-debt or as dividends on shares. In the long term, Shareholders may benefit from any re-financing gains made by LIFT Co. Re-financings usually take place following the construction phase, when the operations stage of the project can be financed more cheaply. The top slicing of profits (please see question 15.1) may also have an impact on any gains made through re-financings. The rent payable under a Lease Plus is the same regardless of the level at which an LA decides to participate.
2. Is the use of each model by LAs limited to certain functions?	Where PFI credits/subsidy are sought by the LA, then the approval of the relevant government department relates to the specific project. Where no PFI credits/subsidy are sought (i.e. the PFI project is self-financing), then the structure may be used for whatever functions the LA may determine.	In theory the LIFT model can be rolled out to cover most, if not all, LA functions. However, NHS LIFT is confined to "health related functions" (as defined in subordinate legislation under Section 3 Health Act 1999) and/or "joined up" or integrated service delivery between LAs and NHS bodies for several reasons. PFI credits/subsidy granted by ODPM and which may be used to fund rentals under a Lease Plus are currently limited to projects with "joined up" or service integration. As the Secretary of State for Health is an enabler and investor in NHS LIFT his powers for so doing are likely to be limited to health or health related functions (the NHS LIFT documentation limits use to health and social care services).
3 Are the funding sources for each model	PFI credits are potentially available from central government departments. However, it is unlikely that PCTs will be able to contribute significantly to LA-led JSC projects outside LIFT and PFI credits will not be available	There are potential limitations on the financing available to PCTs outside the LIFT model. Furthermore, where the PCT has granted exclusivity to LIFT Co it is unlikely to be able to procure further accommodation without the involvement of LIFT Co. However, the exclusivity provisions give rise only to a first right of refusal to

the same?	for the PCT element of the capital costs. There is an abatement to PFI credit/subsidy on costs on a capital:revenue basis at a ratio of 70:30.	undertake development proposals put forward by the PCT for defined reasons. So, if value for money is not demonstrated or other reasons are given for the LIFT Co not to undertake the supply, the New Projects can be procured by other means. In limited circumstances the PCT may be able to acquire a sub-lease as an end user under a LA led PFI but it is unlikely that the PCT would be in a position to do so financially. Sub-leases could also still be granted to other end users, e.g. GPs, dentists etc. PFI credits may be available to fund the capital element of Lease Plus obligations under LIFT (subject to the availability of central government funding and meeting the criteria set out in the ODPM Procurement Note "PFI Support for Local Authorities Taking Out a Lease Plus in an NHS LIFT Building"). The 70:30 abatement applicable to PFI will also apply to NHS LIFT. This may give rise to difficulties as there will be a high "capital" content. Only equipment in groups 1 and 2 (fixtures) are provided under NHS LIFT. The funding of the cost of LIFT Co's obligations under the Lease Plus will be a revenue cost for the LA and separate applications for PFI credits will have to be made for the capital element of each tranche of LIFT. Where the LA has an allocation of PFI credits/subsidy for project(s) they should include those projects in the first phase to ensure the PFI credits/subsidy remain available.
4. Who takes demand and recovery risk for the JSC premises?	Where a JSC is procured through the PFI the LA as owner will take demand risk for occupiers of the building (and also the risk of shortfalls in the funding of the unitary charge to the extent that occupational rights are granted which are shorter than the contract period for the PFI contract and/or where recovery is not possible from defaulting occupiers) e.g. voluntary bodies or other short term lets.	Under the NHS LIFT structure, the demand risk (and the risk of any funding shortfalls and recovery) will remain with LIFT Co. The LA will only take demand risk to the extent that the LA further sub-lets it's part of the premises held under the Lease Plus arrangements. Otherwise any demand risk lies with the Landlord of the premises but note, any shortfalls in anticipated payments from occupiers of the premises may have an impact on Shareholder returns.

5. How may the scope of procurement of JSCs differ?	The OJEC covers the procurement of a specific project (although LAs often retain flexibility in the OJEC to move facilities in and out of the project). A facility procured through the PFI can be extended by using the Variation Procedure as set out in OGC Standard Guidance on PFI Contracts. However, this does not avoid the need to comply with the procurement regulations and the LA specific internal procedural requirements. Therefore, there is scope within the Variation Procedure to extend the scheme without advertisement where the scope of the project remains within the original procurement (i.e. generally the project remains the "same" project notwithstanding the variation, which is a matter of fact and degree in each specific case). Any subsequent variation should not exceed 50% of the original capital value unless a further OJEC procurement occurs.	The original OJEC envisages long-term arrangements and later schemes ("New Projects") are contemplated by the original procurement. However, it may be more difficult for a LA to prove that the New Projects are part of the original procurement if a LA is only an end user and has not committed to the long-term arrangements in the SPA. It will be a matter of fact/law in each individual case as to whether a later procurement can be said to be part of the original procurement. Generally, it is considered that entry into a Lease Plus by a LA must be the subject of an advertisement under the EU procurement rules. However, practically this may be difficult given the length of time between the original OJEC, the extent of the LA's involvement in the SPA and the degree of exclusivity. The LA may not be permitted to rely on the original OJEC but a separate OJEC may not be realistic where the building is already owned by LIFT Co. In such circumstances the LA could become a sub-tenant of the PCT in future facilities without a separate procurement provided that the terms of the sublease are based on a "traditional" lease rather than a Lease Plus, since traditional leases are outside the EU procurement rules. The original OJEC envisages long-term arrangements and later schemes ("New Projects") are contemplated by the original procurement, but the services themselves being procured must be within the scope of that envisaged by the original procurement. The same issues may apply where the LA does not grant exclusivity (i.e. adopts Level 2) and it could be argued (as a matter of fact and degree depending upon the circumstances) that the later procurement is not within the original procurement.
6. Does any model impose future restrictions on LA	Generally, there is no exclusivity requirement, but given the implications of having separate LA contractors on one site, it is common to use the variation procedure to extend contracts. However, this is unlikely to extend beyond the sites within the original PFI (and therefore the original OJEU advert). Furthermore, the variation should not be sufficiently extensive to take the project outside of the	There is no exclusivity requirement for LAs in signing up to a Lease Plus as a Tenant. However, LAs may consider whether it may be in their commercial interest to grant or specify some limited rights of exclusivity to the LIFT Co to deliver certain types of accommodation e.g. where the LA has identified a need for a rolling programme of JSCs in an area. This may lead to better value for money bids. There is no requirement on LAs in their

activity?	original procurement (OJEU advert).	capacity as a Participant to grant exclusivity. . There may be advantages to LAs pursuing a degree of exclusivity but they must, under current standard LIFT documentation, expressly carve out those elements of their functions which they do not require to be part of the exclusivity arrangements. If there is no such carve out then those services (which are within the definition of (a) Partnering Services and (b) Lease Plus Services comprising FM Services (i.e. Hard FM) and Works under Lease Plus(es)) are within the exclusivity requirements. LAs should make their position on exclusivity clear at the commencement of the procurement and follow this through in the procurement documentation. Exclusivity extends to the whole LIFT region covering Partnering Services and Lease Plus Services (with certain exceptions). Exclusivity in the context of Lease Plus Services means a right of first refusal for LIFT Co to bid for New Projects (being new Major Capital Projects to provide primary and community based health and social care facilities with a capital value in excess of £20,000 or any other non-capital transaction for the provision of accommodation). If LIFT Co does not meet the requirements of clauses 9 (Exclusive Nature of this Agreement), 13 (Value for Money) and Schedule 4 (Approval Process for New Projects) of the SPA, the LA can offer the New Projects for general procurement. Exclusivity in the context of Partnering Services includes the following services (as defined in Schedule 17 of the SPA): • membership of the Strategic Partnering Board; • estate management; • service planning; • estate planning;

		• regeneration and community involvement; • property development; • supply chain management; and • long term value for money. There are various outcomes and performance requirements attached to each Partnering Service as set out in Schedule 17 of the SPA. However, the Partnering Services are defined from a Department of Health perspective. The PCT is unlikely to have the in-house capability of a LA. For example, it is not anticipated that LAs will transfer the management of their estates department. Therefore LAs must review this definition if they are to be Participants in the SPA and this definition could be amended on a local scheme specific basis to include only those Partnering Services, if any, to which they want to grant exclusivity. LAs should do the same in relation to FM Services and Works under Lease Plus(es), if any. For example, a LA may decide upon the provision of FM Services and Works in relation to premises provided for health related functions under a specific Section 31 Agreement. However, the OJEU should explain that the position has been agreed by the public sector participants.
7. To what extent is residual value risk transferred under each model?	Residual value risk is not transferred. The PFI contractor is granted a concession or service contract. Ownership of the project premises generally remains with the LA. At the end of the contract the LA is no longer required to use the PFI contractor for the provision of the services. There is no technical re-transfer of the properties since they have never been transferred. At the most, a lease from the LA may expire.	LIFT projects are structured such that LIFT Co takes residual value risk. The rents payable under the Lease Plus reflect the forecast residual value at the beginning of the contract. LIFT Co takes the risk of any difference (or the benefit). This is an important aspect for FRS 5. However, it does mean that the LA (and PCT) will not automatically recover possession of the premises at the end of the contract. There is a right to purchase in favour of the LA (and/or PCT) at a modified open market value and the LA as a business tenant under the Landlord and Tenant Act 1954 will have the opportunity

		to renew the Lease Plus. The LA will have received open market value (OMV) for any property transferred at the outset and/or LIFT Co will have acquired land for the premises at OMV. There are also overage provisions in the SPA (and profit share provisions in the Shareholders Agreement). If planning permission is granted within 10 years of the transfer, the overage payment is 50% of the enhanced value resulting from the planning permission on first disposal. The properties transferred will be mortgaged or charged to LIFT Co's funder. Any successor in title will take subject to the Lease Plus(es).
8 Does the LA pay for the facility in each model?	Yes, and the facility will revert to the LA at the end of the contract period for no charge. However, in facilities of this nature, stakeholders should consider whether they require the asset on expiry of the contract period – such facilities could have a residual value to the contractor which would result in a reduced unitary charge but no reversion on expiry. This is <u>not</u> a current requirement of OGC.	No, the rental payment incorporates a contribution to the capital element. Residual value risk is transferred to LIFT Co. LIFT Co owns any asset transferred into the NHS LIFT or purchased as part of the NHS LIFT. At the end of the Lease Plus, the LA if a main Tenant (it will need to be agreed at the outset which party is the main Tenant) of any facility has the option to purchase the asset from LIFT Co at the end of the lease period for open market value (see implications of increased value of facility at expiry below). Therefore, the LA has greater control over the destination of the Premises at the end of the Lease Plus if it is the main Tenant. Supplemental lease and under-lease arrangements have been put in place for parts of the Site or Premises not subject to Lease Plus(es) to enable the option to purchase to be validly exercised and to comply with the law on perpetuities. Alternatively, LAs can request that the Lease Plus be renewed, they can remain in occupation (as the Lease Plus is not excluded from the application of the Landlord and Tenant Act 1954) or they

		can walk away. Even if the LA is not a main Tenant any person (whether PCT or otherwise) purchasing the Premises will take the Premises subject to the LA's Lease Plus. If the first option above is not exercised, the asset reverts to LIFT Co on expiry but the rents are reduced over the contract period because LIFT Co assumes that the asset will have a value at expiry. If a LA asset is transferred into the scheme, it does so for the OMV of the asset at that time. <u>Worked example</u>: LA asset transferred for OMV 10. Rent paid during the contract period enables LIFT to amortise 8 of the asset cost. Residual value risk taken by the contractor is equivalent to 2. LIFT Co takes both the upside and the downside of residual value risk. For example, if planning has been obtained such that the facility could be used for redevelopment following expiry of the Leases, LIFT Co also takes the upside in the increased value of the asset. However, if any Tenant can remain in occupation following the expiry of the term, this may impact on the residual value of the facility. As a Shareholder, the LA will get a share of any residual value benefit.
9 Soft FM, benchmarking and employees?	Soft FM Services could be part (and usually are) of the main PFI project provided they are within the scope of the OJEU advert. TUPE should not apply to the transfer to the private sector in respect of stand alone new facilities. If the scheme is for the refurbishment of existing premises, it should be considered whether any employees will be subject to TUPE. However, other employee models are being tested such as	Neither the standard form SPA nor Lease Plus allows for the provision of Soft FM Services by LIFT Co as part of the FM or Lease Plus Services or the Partnering Services. Soft FM Services could be included within a LIFT scheme provided they were within the scope of the original OJEC advert. In cases where Soft FM Services do not fall within the original OJEC, they could be provided by one or other or both of the parties (LA or NHS Trust) or procured separately. Any consequential technical interface issues should not be

	secondment, or as in health, the retention of employment model. The two tier workforce provisions in ODPM Circular 2/03 will apply to newly advertised projects as will the workforce provisions in the Local Government Bill when enacted. Soft FM Services (as opposed to Hard FM Services) are benchmarked or market tested periodically (usually every 5 years) in accordance with OGC Standard Guidance on PFI Contracts. If excluded from the original OJEC, Soft FM Services could be procured separately, but this will require a further OJEC if the value of services exceeds the procurement regulations threshold. See "LIFT - as a Tenant" column for interface issues – these will be similar whether LIFT or PFI. The provision of Soft FM Services "in house" by the LA or NHS Trust would not fall within the EU procurement regime. Some Soft FM Services, e.g. catering services, have been provided on occasions by LAs (e.g. Kirklees) usually by providing those services to a separate special purpose company with prescribed body status under the Local Authorities (Goods and Services) Act 1970 (LAs may now find the well-being powers in Section 2 Local Government Act 2000 useful in this respect together with the extended Best Value powers under Section 16 Local Government Act 1999 when it comes into operation). However, such "self-provision" will necessarily raise similar interface and risk transfer issues as above.	insurmountable. Security and emergency services (e.g. alarm systems but not the provision of security staff) should be within the scope of each LIFT. This should be verified by each LA. Premises are to be repaired by LIFT Co, but not cleaned. TUPE will apply in the same way as in PFI. The SPA will need to cater for this where refurbishment is involved. The LPA states there should be no TUPE transfers in Phase 1 schemes. However, the provisions for TUPE in Schedule 16 of the Lease Plus specify they could apply to the transfer of employees pursuant to entering into the Lease Plus, commencing the provision of Works and Services or a change in the identity of the provision of the Works and Services. In Fund Co arrangements, Fund Co, acting as Landlord, will assume responsibility for employees. If Soft FM Services are provided, consideration will need to be given as to how these are benchmarked or market tested under the standard Lease Plus. The issue is replicated as New Projects are selected and approved. Partnering Services are not benchmarked or market tested under the SPA. However, LIFT Co must demonstrate value for money on New Projects in one of two ways:- • market testing its supply chain on each New Project; or • market testing its supply chain for the first New Project after a specified interval and periodically thereafter. For the avoidance of doubt once signed, Hard FM under a Lease Plus does not have to be market tested. Lease Payments are fixed after signature subject to RPI.

10. How does the degree of control over the project by an LA differ?	The LA will fully control the scope of the PFI. Compliance with availability and performance standards will be monitored and the PFI contractor is penalised through potential deductions.	It is envisaged that LAs may be part of the SPB as a Stakeholder Representative in accordance with clause 14.1.3 (but without any voting rights on the SPB) or as a PCT representative even if they do not participate in the SPA. However, it is for the PCT to determine its representatives. Tenants under Lease Pluses have some control over payments for unavailability and poor performance is monitored and controlled through the step up default mechanisms in the Shareholders Agreement. If the LA is a Participant it will have a direct input into the development of the scope of LIFT as the scheme evolves and it will have voting rights on the SPB.
11. How does the off balance sheet requirements compare?	Accounting treatment for the PFI contract will be assessed by reference to proper accounting practices applicable to local government but in order to obtain Government subsidiary the contract should be off balance sheet the local authority.	Similar arrangements will apply to an LA taking a Lease Plus as entering into a PFI contract (see ODPM Procedural Note: "PFI Support for Local Authorities Taking out a Lease Plus in an NHS LIFT Building"). This must however be assessed on a case by case basis and in a timely manner enabling the LIFT procurement to proceed unhindered. It is recommended that LAs take early advice as part of the preparatory work for the OBC and at key stages during the development of the project, as suggested in the ODPM Procedural Note and HMT Technical Note number one. If the LA is also a Shareholder it will be able to influence the policies of LIFT Co.
12. Which	Under the PFI structure the LA procures the works and	Only the taking of a Lease Plus will be similar to PFI in that the

model is more conducive to "joined up" service provision?	services on behalf of themselves and the NHS Trust (and indeed any other body within the joined up service provision arrangements). The "joined up" or integrated service provision arrangements (such as pooled budgets, employees etc) will need to be separately documented in an agreement under Section 31 of the Health Act 1989. This Agreement would also deal with the strategic development of the services but would necessarily be confined to the specific project (albeit that there may be a separate Section 31 Agreement relating to a geographically wider area for integrated service delivery).	tenants will have individual occupation of the building but without the ongoing strategic partnering arrangements. An agreement under Section 31 of the Health Act 1999 would be used to cover "shared/pooled" arrangements between the LA and the NHS Trust. Under the NHS LIFT structure a strategic partnering arrangement is established which will cover both the original and subsequent phases of Works and Services. The strategic partnering arrangement through the medium of the SPB (involving health and social care stakeholders) and the development of the SSDP will involve Participants in a more holistic strategic approach to integrated service delivery. However, an agreement under Section 31 of the Health Act 1999 is still likely to be required for "shared/pooled" arrangements between the LA and the NHS Trust.
13. Are all models consistent with LAs Best Value obligations?	The 4ps Standard Guidance on Local Authority PFI Contracts contains guidance on how to comply with LAs' Best Value duties within PFI contracts. It also contains a duty on the contractor to provide information, to comply with any other reasonable requirement in connection with LAs' Best Value duties under the Local Government Act 1999 and to assist LAs in undertaking best value reviews. Furthermore, the OGC Guidance contains benchmarking and market testing provisions which will assist LAs in satisfying the LAs' Best Value duty.	There would seem to be no substantive reason why the 4ps Guidance provisions should not be included in the Lease Plus to cater for the Best Value duty and any changes which may arise in connection with that duty. There are no benchmarking or market testing provisions in the Lease Plus, (but any New Project will have been benchmarked or market tested in advance, and once the rent is fixed, it can only be adjusted for RPI annually). There is a market-testing requirement which would satisfy the LA best value duty under the Local Government Act 1999 in relation to demonstrating value for money for New Projects (clause 13 of the SPA). Changes arising from Best Value considerations could also be worked into the New Projects.
14. Do LAs have to acquire shares in an SPV?	It is relatively unusual for LAs to acquire shares in a PFI special purpose company (although Kirklees MBC and Cornwall CC have done so in relation to their respective schools PFI projects). However, this is only likely to be an "investment" as it is unlikely that the private sector provider and funder will be comfortable with the potential conflict of the LA being the procurer of the services and an active member of the SPV board. As such there is little benefit to	The Shareholders Agreement contemplates LAs (and PCTs) being shareholders in LIFT Co whether or not they are Participants in the SPA. Any shareholding by an LA will be a minority shareholding and give rise to associate membership of the Board which has influence over the company's operations and plans for the future. However, LIFT Co will be controlled by the private sector. A shareholding may be acquired by the LA in return for assets

	the LA other than investment returns.	(see below 15.2) either in part or in whole depending upon the value of the assets when compared with the proposed shareholding. There are also overage provisions from which the LA may benefit (see question 8.1 above). As a Shareholder in LIFT Co the LA will be entitled to dividends payable by LIFT Co in accordance with the agreed dividend policy. However, there is a mechanism for the top slicing of profits when certain thresholds of profit in excess of the proposed IRR are reached (i.e. 15%, 30% and 50% to be reserved on excess over 20%, 25% and 30% of IRR respectively). The percentage of dividend is held in reserve to be distributed to stakeholders in the local health economy as determined by the SPB. The LA's shareholding will be at risk in the case of failure of the project (whether through the insolvency of LIFT Co or otherwise) or if the liquidated assets of LIFT Co are insufficient to meet the demands of creditors (secured and unsecured) and the repayment of share. All parties should work towards and create a shadow LIFT Co from preferred bidder to operate up until financial close. Membership of the shadow LIFT Co should resemble membership of the LIFT Co Board as specified below. The Shareholders Agreement also makes provision for a Shareholders' Forum. The purpose of this Forum is to give Shareholders the opportunity to make representations to the Board of LIFT Co, and each other, on LIFT Co's and each others' performance in respect of their respective obligations under the Shareholders Agreement and the SPA. The Forum is required to meet four times a year with the Board and should be comprised of representatives of each Shareholder. The Directors are required to carefully consider the conclusions of the Forum in formulating their plans. e capital
15. Do LAs	The powers to enter into PFI transactions largely derive	LAs can enter into property transactions, although any disposals

have adequate powers to enter into each model?	from a number of sources including Section 1 Local Government (Contracts) Act 1997, Section 2 Local Government Act 2000 and Section 111 Local Government Act 1972.	must be for the best consideration reasonably (unless the LA receives consent for the disposal from the Secretary of State) obtainable. The LA must establish the powers available to them to acquire shares in LIFT Co. The "well-being" powers contained in Section 2 Local Government Act 2000 and the new best value powers to be enacted in an Order made under Section 16 Local Government Act 1999 together with incidental powers in Section 111 Local Government Act 1972 will be the likely powers used. LIFT Co cannot carry on any activity which would result in the holding of shares by a Founder Shareholder becoming unlawful. Where such unlawfulness results from a proposed change in law, Founder Shareholders must take such steps as are reasonably necessary to allow them to continue lawfully holding the shares. LAs may transfer land in consideration for the acquisition of shares (instead of a capital receipt or in addition to a capital receipt). This will be reflected in dividends payable. Another route may be a reduction in rent under the Lease Plus. However, without the benefit of a ministerial consent, the transfer must, in accordance with Section 123 Local Government Act 1972, be for the best consideration reasonably obtainable. This means that the value of the shares must represent the value of the land. For example, the LA cannot take a 19% interest in LIFT Co where the value of the land transferred represents 25% of the value of the company. This is unlikely to arise but something for LAs to bear in mind (in any event there may be technical ways of dealing with any "mismatch" by the use of loan stock or preference shares for example). The capital finance issues relating to non-monetary consideration are no longer relevant (save in relation to joint service centres land which is unlikely to be relevant here). However, under the current system set aside arises in relation to capital receipts following the sale of certain types of shares. It is not known whether this will still be the case under the prudential regime, but it is thought to be

		unlikely.
16. How are the LAs' interests protected within each model?	The Project Agreement regulates the arrangements between the LA and the contractor as well as sets out their respective obligations and protections. The LA is largely protected through its ability to withdraw payment of the unitary charge until the contractor performs the contract to the standards specified.	LAs as Tenants have the protections afforded to usual business tenants under the Landlord and Tenant Act 1954 as well as the terms of the Lease Plus. If they have become signatories to the SPA, they are also protected through their ability (through the SPB) to influence and monitor the conduct and performance of LIFT Co. The Shareholders Agreement at clause 10 contains a list of 21 matters for which unanimity of all Shareholders is required. This includes technical company law matters to avoid any shift in the balance of shareholder arrangements, but also includes certain commercial matters such as the devolution of management control, increase in the indebtedness of the company, the company commencing a new and unrelated business, changes to the Business Plan, participating in any activity which is detrimental to or incompatible with health and social care, changes to the dividend policy and approval of the market testing methodology and selection criteria for supply chain agreements where the supply chain member is an associate of a Shareholder. Only Fund Co or other equivalent subsidiaries are able to issue loan stock and any action relating to such loan stock is subject to Shareholder consent Each Shareholder is required to vote in favour of any proposal to: (1) increase the share capital of LIFT Co and enable a scheme with Stage II Approval to proceed; (2) allow LIFT Co to allot such shares to the extent required to enable a scheme with Stage II Approval to proceed; (3) re-register LIFT Co into a public limited company; and

		(4) any matter required to give effect to the above. Whilst all transfers of shares are subject to the pre-emption rights in the Articles, there is provision for Shareholders to irrevocably waive their pre-emption rights in relation to the transfer of shares to a specified party(ies). This enables PCTs etc to subscribe for shares at financial close confident in the knowledge that the Founding Shareholders will not renege on their obligations. However, it should also be remembered that the Shareholders Agreement only deals with the relationship between PfH, LA(s), PCT(s) and PSP as Shareholders in LIFT Co. The arrangements for procuring projects are dealt with by the SPA. The PSP is required to procure that none of its shareholder will transfer or dispose of any interest in their shares in the PSP during the 3 years from the date of the SHA.

Section 5: Comparison of the Approach used in NHS LIFT & BSF

Process and documentation	NHS LIFT	BSF
OJEU and negotiated procedure	Yes – for long term partner not a single project	Yes – for long term partner not a single project
Scope of OJEU – Contracting partners	Limited to health and ‘associated’ facilities unless standard LIFT OJEU modified by local schemes PCTs, LAs and other interested stakeholders in the local primary health care market	The new build, refurbishment and/or management of secondary schools and associated facilities, as well as the provision of ICT services. Authorities may include primary schools and other educational facilities within the procurement but central government funding is only available for the development of secondary schools. LEAs and other local education stakeholders.
National procurement body	Partnerships for Health = joint venture company (Department of Health and Partnerships UK) Limited 4ps involvement during initial development but greater support available to participating local authorities through the 4ps NHS LIFT Extranet	Partnerships for Schools = non departmental public body aligned to Department for Education and Skills and Partnerships UK 4ps involvement during the initiation and development of the programme.
Standardised documentation	Standard Strategic Partnering Agreement, Lease Plus Agreement, Shareholders Agreement, as well as template procurement documents. Single delivery mechanism through a Lease Plus Agreement or sub-leases.	Standard Strategic Partnering Agreement, PFI Project Agreement, Design and Build Contract, ICT Services Contract and Managed Services Contract, together with template procurement documents. Range of delivery mechanisms to choose from.
Creation of PPP joint venture company	LIFT Co	Local Education Partnership (LEP) or the adaptation of existing arrangements, provided authorities can show the use of such existing arrangements will provide a value for money solution.
Local Government (Contracts) Act 1997 certification required?	Funders and Bidders have requested and in many instances been awarded certificates in respect of the Strategic Partnering Agreement; individual Lease Plus Agreements and Funders' Direct Agreements	Counsel's opinion obtained indicating certification is appropriate for the Strategic Partnering Agreement, PFI Project Agreement, Design and Build Contract but not the Shareholders Agreement.

Commercial and legal structure		
Strategic partnership	Participants (PCTs must and authorities may) sign Strategic Partnering Agreement and take part in the strategic partnering arrangements. If authorities do not become Participants they may become Stakeholder Representatives, who do not have a vote on any matters being discussed by the Strategic Partnering Board, subject to Participant approval.	Local education authorities must sign the Strategic Partnering Agreement
Strategic Partnering Board	All Participants, LIFTCo plus other Stakeholder Representatives subject to Participant approvals.	Local education authorities and LEP
Strategic business case	Strategic Service Delivery Plan	Strategic Business Case
Exclusivity	Must be granted by PCTS but authorities have the option. Duration of exclusivity 20/25 years	Must be granted by local education authorities Duration of exclusivity 10/15 years
Benchmarking and market testing of supply chain	Applicable	Applicable
New project approval process	Two stage procedure based on LIFT Co proposal	Two stage procedure based on LEP proposal
Parties to the SPA	Single or multiple PCTs, primary health care bodies with single/multiple authorities and others	Single or multiple local education authorities
Shareholding in JV	Mandatory for PCTs; optional for authorities Other public (health) bodies Partnerships for Health and private sector partner	Mandatory for local education authorities Partnerships for Schools and private sector partner
Envisaged group structure	LIFT Co and Fundco or LIFTCo ; Holdco and Fundco	LEP; Holdco; SPC
Future funding	Separate funding for each tranche of projects if value for money	Separate funding for each tranche of projects if value for money

Percentage shareholding in JV Co	PSP 60% PfH 20% Local public sector 20%	PSP 80% PfS 10% LA 10%
Minority shareholder protection	Based on classes of shares but public sector voting rights exercised through one class of shares	Based on classes of shares and no split of voting rights
Lock-in period	3 years for PSP	3 years for PSP
Super-profits protection	Rebate to local health and social care economy	Rebate to local education purposes
Operational structure		
Operational agreement	Lease Plus Agreement – traditional lease with hard FM services	Range of delivery mechanisms:- PFI Project Agreement DB Contract ICT Managed Service Agreement Managed Services Agreement
Soft FM	Not included in scope of partnership	Included
Effect on industrial relations	Workforce issues and soft facilities management provision negotiated amongst tenants	Potential industrial relations issues especially from creeping transfer of staff
Residual value	No automatic reversion at expiry or termination but option for main public sector tenant to purchase at open market value	Depends on delivery mechanism but generally site remains with the public sector
Control over operations	Fundcos are landlords and borrow finance Fundcos 100% owned by LIFTCo	LEP SPVs receive asset & borrow finance LEP may not have controlling interest in shares
Funding Structure	Objective property finance with security over assets (properties). In essence hybrid of property and project finance	Project finance with security over contracts (PFI). Public finance (DBFO) (Potential in model for construction finance)

		Public finance (ICT)

DEVELOPING JOINT SERVICE CENTRES

PART B1

PFI – Project Delivery

Contents

Section 1: Project Management

Section 2: Procurement Timetable

Section 3: Appointment and management of Advisers

Section 4: Working with Other Stakeholders

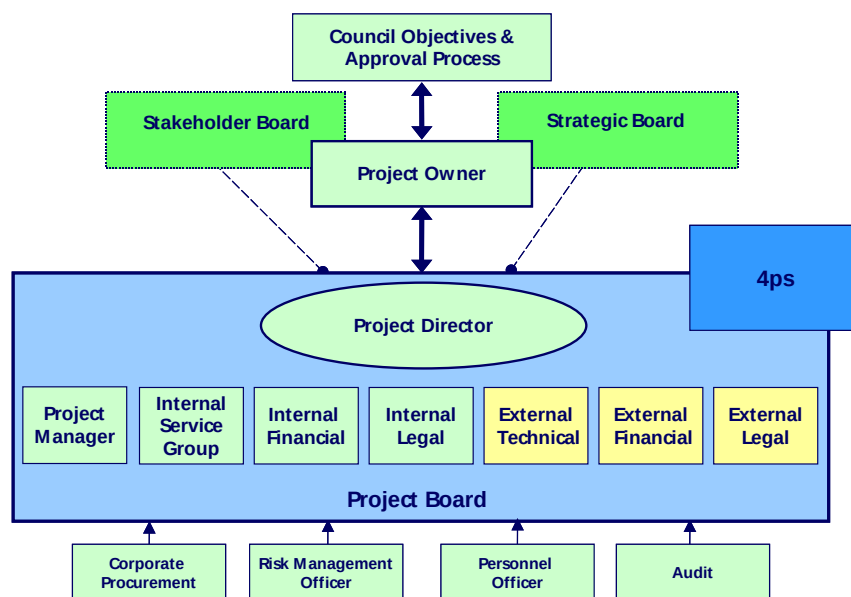
Section1 Project Management

472. This Part of the Joint Service Centre Procurement Pack provides guidance on developing the project management arrangements to deliver the project. Some preliminary thought will need to be given to the project management arrangements as part of developing the OBC.
473. Once members of the Local Authority and the PRG (where the Local Authority is seeking central government support towards the costs of the project) have approved the OBC, the formal procurement process can start. The first step in that process should be to refine the project management arrangements developed for the OBC, in particular establishing the project board and finalising the procurement timetable.

Overall Arrangements for Project Management

474. The arrangements put in place for project management should reflect the specific needs of the Local Authority and its Stakeholder, as well as the size and complexity of the scheme. The arrangements should also be developed to fit with the existing decision-making structures of the Local Authority and its Stakeholder.
475. Good project management is key to the success of any major procurement, and experience suggests that a project management approach should incorporate the following principles:
- Roles and responsibilities are defined and agreed so that everyone involved knows what they have to do and by when
 - The stages of the procurement process are set out with clear milestones and expectations of what is to be done at each stage in the process
 - People with appropriate skills and experience are assigned to project roles
 - Resources and timescales are determined at the outset
 - Risks are properly identified and managed
 - Stakeholders are engaged and kept informed.
476. Whilst it will be up to individual Local Authorities (and their key Stakeholders) to determine the most appropriate structure for the procurement of the project, this guidance aims to highlight the key issues on which Local Authorities should give thought in developing their own procurement arrangements. Figure 3.1.1 summarises the typical structure for project delivery.

Figure 15 – Project Delivery Arrangements



Project Director

477. This is arguably the most important appointment, and it is important that the project director is given the delegated authority or is 'empowered to do the deal'. The level of seniority of the officer should therefore depend on the Local Authority's ability to delegate responsibility and authority to the project director to 'do the deal', and this will reflect the size, complexity, risk and profile of the scheme, and the Local Authority's decision-making structures.
478. The project director will be responsible for directing, leading and managing the project team, and must have sufficient time to deliver the project, recognising the complexities and time consuming nature of many aspects of a procurement through the PFI or a PPP.
479. As many PPP and PFI projects involve staff from a range of disciplines, it is important to note that the project director will be directing staff for whom they do not have day to day management responsibility, and it is important that the appointed project director is given adequate support from the chief officers from these other disciplines.

Project Team

480. A team that has the relevant skills and experience to deliver the project should support the project director. It is normal for the team to include project management, technical, financial and legal officers. For many projects (and probably all PFI/PPP schemes) it is likely that the Local Authority will require external support to complement the skills and experience of the in-house staff. The extent of the external support will depend on the type and size and complexity of the project, the skills and experience of the in-house staff, and the internal resources available.
481. Local Authorities should not under-estimate the level of resource required for Joint Service Centre projects, and the project director should ensure that the project team has the skills and experience to match the skills of the likely bidders and their advisors. If necessary, training should be arranged for in-house staff at an early stage

in the procurement process and Local Authorities may wish to discuss options for such training with the 4ps skills development team.

- 482. For PPP/PFI projects it is likely that external support will be necessary on areas like financial modelling, development of the Output Specification and payment mechanism, development of the Project Agreement and for the evaluation and negotiation of complex financing and contractual issues. Local Authorities may wish to talk to the 4ps project support team about the likely budget requirements for such external assistance.
- 483. Care should be taken to appoint external advisors with the skills and experience to complement the capability of the in-house team, and with the necessary resources to meet the project requirements. A formal procurement process is likely to be needed for all external advisors, and Local Authorities may wish to discuss the arrangements for the appointment and role of the external advisors with the 4ps project support team.
- 484. If the costs of the external advisors are expected to exceed the EU procurement thresholds, the Local Authority must ensure that the appropriate procedure is followed in the procurement and appointment of those advisors.
- 485. Local Authorities should also consider including the Local Authority's procurement officer and risk management officer as members of the project team.
- 486. A 4ps project support executive has been a member of the project team on a number of Local Authority projects, actively involved in all aspects of the procurement of the project, and Local Authorities may wish to discuss the opportunities for this with the 4ps project support team.
- 487. Ideally, the aim should be to keep the project team to about eight to ten individuals to ensure that the whole procurement process can be kept manageable, although some projects may require more input, particularly at various times of the procurement. Similarly, if there are two Local Authorities involved in the project, it is likely that both Local Authorities will want a finance and legal representative on the project board. The same is true if the project involves other key Stakeholders e.g. a PCT.
- 488. Once the project team has been assembled, roles should be clarified and responsibilities allocated.
- 489. The key negotiating team for the project should be the project team, although it is likely that some aspects of the deal will have been substantially negotiated prior to the final negotiations with a Preferred Bidder, and therefore not all members of the project team may be necessary throughout. For example, it is quite often the case that the 'technical' solution has been substantially negotiated and agreed prior to selection of a Preferred Bidder leaving primarily commercial and contractual issues for negotiation. This may mean that the technical input can be reduced at this stage.

Project Owner

- 490. Each project should have a project owner – ideally this should be the Director or Assistant Director with overall responsibility for Joint Service Centres or the services to be provided within them. Local Authorities procuring the larger and higher risk projects might consider appointing the Chief Executive or Executive Member as the project owner.
- 491. The project owner will have overall responsibility for a successful outcome, and should be someone that can broker relationships with external stakeholders, and have a good understanding of the business issues associated with the project. The project

owner will need to be in a position to be able to take decisions on key issues as they arise, and should be able to access resources outside of the control of the project team.

492. The project owner should generally support the project director, be involved in key negotiation meetings, and generally be responsible for promoting the project with members, stakeholders and other external bodies. Local Authorities should make clear to Bidders the respective roles of the project director and project owner.

Approval and Governance Arrangements

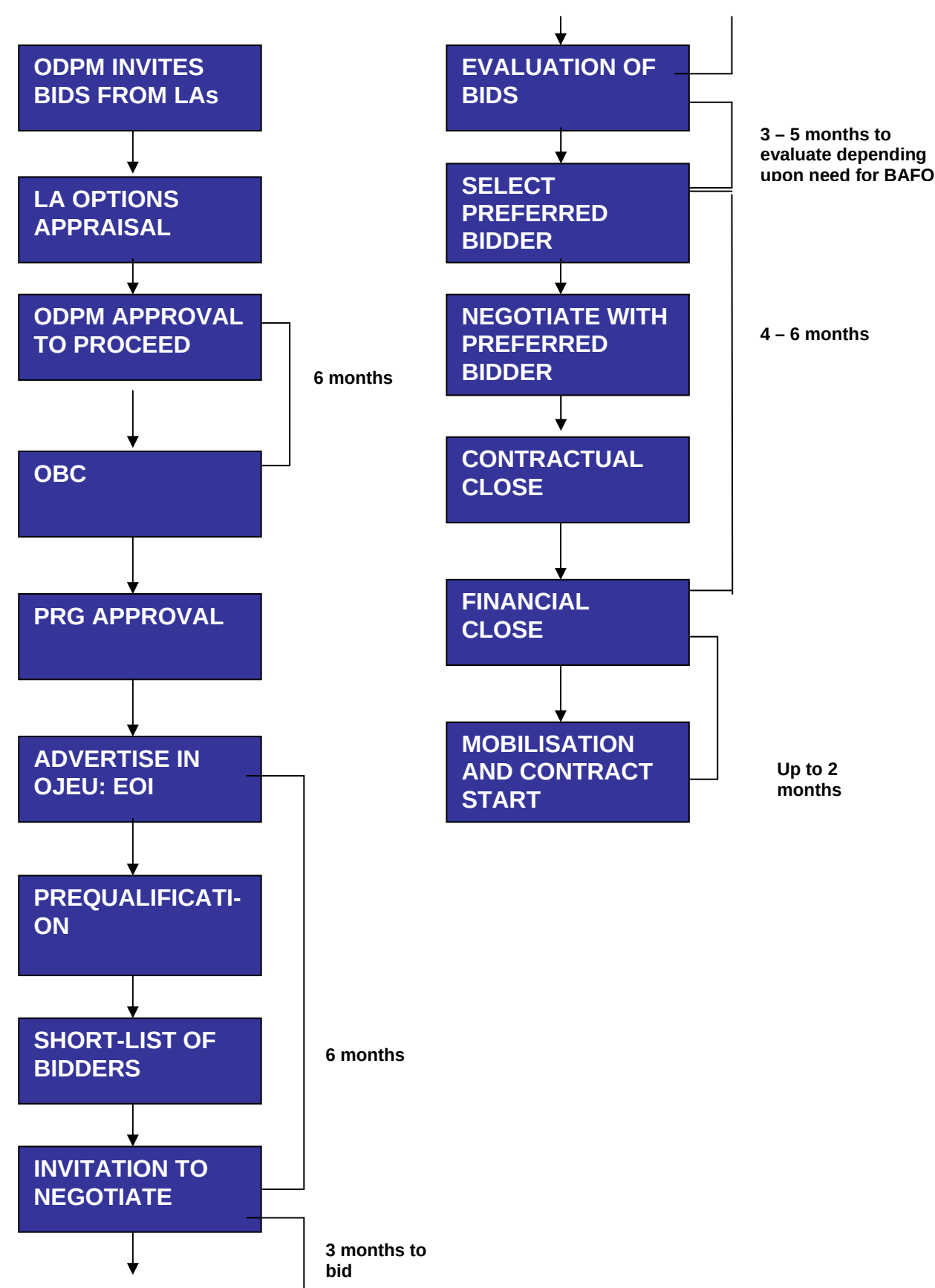
493. For the more complex projects or those involving a range of stakeholders, such as those projects involving more than one Local Authority or those with agency arrangements, a stakeholder board should also be put in place. The role of the stakeholder board is to manage stakeholder engagement and 'buy-in' to the project, and ensure that the service being specified meets the needs and requirements of the key stakeholders. The project owner should chair the stakeholder board and the project director should provide the link to the delivery vehicle - the project team.
494. Local Authorities should look carefully at the need for a stakeholder board for joint Local Authority projects, it is important that the stakeholder board clarifies the roles and responsibilities of each of the participating Local Authorities or indeed other key Stakeholders, and that it is made clear who is to do what and when, and who is to pay for what and when.
495. The strategic project board should be used as a means of seeking ratification from members, chief officers and stakeholders (as appropriate) of decisions taken by the project team, to generally provide support for the project in the wider strategic context, to review and approve the key project documentation, and to sign off key stages of the project; such as selection of the short-list, selection of the preferred Bidder and approval of the Final Business Case.

Section 2 – Procurement Timetable

Procurement Timetable

496. Once assembled, an initial task of the project team should be to refine the procurement timetable for the procurement of the project, with all members of the project team (and other stakeholders where appropriate) signed up to the delivery of the project to the timetable agreed.
497. In developing the procurement timetable, the project manager and project team will need to determine how a range of key tasks will be dealt with. Importantly this will include the consultation to be carried out at key stages in the procurement process.. The list of key tasks can be substantial.
498. Thorough preparation for the procurement will pay dividends. It will minimise the scope for misunderstandings in the procurement process and should cut down the number of issues to be negotiated between the Authority and Bidders. It is important therefore, that sufficient attention is given to the development (or refinement) of the procurement timetable at this stage to ensure that key tasks are identified and sufficient time allowed for those tasks to be completed. This might include setting time aside in the diaries of key decision makers for key meetings, and the need to allow for enough time for detailed planning permission to be obtained including judicial review if this is expected.
499. A model procurement timetable giving indicative time periods for the stages of a typical procurement is set out below. This timetable is considered to be tight but achievable and is therefore a realistic starting point to aid Local Authorities in developing their own timetables to reflect their individual projects. Strong project management, which is an essential element of an Authority's approach, should ensure that this timetable is achieved. It is important to note that the timetables are indicative and will need to be adjusted to reflect the particular needs of the project. Account may also need to be taken of the fact that the Central Government approvals process is outside the control of the Authority and may be hard to predict. It is suggested that the Authority liaises with the relevant Department to firm up on this item. Authorities must develop a timetable based on this to fit the in-house skills and experience, the relevant decision-making structures and the experience and role expected of the external advisers.
500. It is considered that a comprehensive step-by-step timetable with key tasks and responsibilities allocated is the most suitable approach. However, Local Authorities may wish to use Gantt charts or other project management software (such as PRINCE2) to facilitate delivery of the project.

Figure 16 Model Timetable



Section 3 – Appointment and Management of Advisers

501. 4ps have developed separate guidance and model documentation on appointing and managing advisers. Local Authorities are advised to refer to such guidance (available at www.4ps.gov.uk) when appointing external advisers.

Section 4: Working with other Stakeholders

502. There are a significant number of important “players” who represent aspects of the client organisation in a Joint Service Centre project. These may be characterised as stakeholders, and it is a key role of the project manager and members of the team to manage them effectively, and ensure that they feel sufficiently included in the process to avoid any potential conflicts. Such stakeholders include the various internal Authority departments whose services will be provided from the Joint Service Centre, any partners who are jointly procuring the Joint Service Centre (eg PCTs, other health trusts, police or other Local Authorities) as well as other organisations (public, private or voluntary) who will be given the opportunity to occupy space within the facility. All such parties, together with others (as appropriate) must be involved in the development of the facility from the outset to ensure the final product accords with requirements.

Elected Members

503. Members have a responsibility to take decisions that are in the interests of the Authority and the community, and although Joint Service Centre projects may not be among the highest value contracts that an Authority will enter into, they will certainly be significant in terms of delivering better services to constituents. The establishment of a proper process for engaging with members is therefore essential. This should happen at the outset, preferably with an identified member panel or Cabinet-led group keeping a watching brief throughout the procurement process. There may be times when it is necessary for a wider group of members, and possibly full Council, to agree on a key stage of the project. This is often the case with inception, where a debate as to whether to proceed with a bid for project funding, and subsequent resource allocation, needs to be resolved with a decision. Some Authorities have produced a quarterly project newsletter covering progress on important issues, which has been greatly valued by members.

Trades Unions

504. A process of regular consultation with the relevant trades unions is an essential part of good procurement. There may be issues regarding the transfer of staff, pension entitlements and other terms and conditions of employment that need to be discussed openly and at the appropriate time. A regular flow of information is a helpful way of minimising any conflict that might occur.

Circular 3/2003

505. It is also necessary to take into consideration the ODPM Circular 03/2003 relating to the Code of Practice on Workforce Matters in Local Authority Service Contracts. The Code refers to the treatment of transferees and makes it clear that TUPE must apply in all situations unless there are genuine exceptions. Pensions of the transferees must be protected either through admitted body status or broadly comparable pensions. The Code also stipulates that new joiners who work alongside transferred staff should be employed on terms and conditions which are “fair and reasonable and overall no less favourable than those of transferred employees”.

Planners

506. For a Joint Service Centre project involving new build, planning approval will need to be obtained at outline stage by the Authority, normally before the tender process begins. Although the statutory function of the Planning Authority is distinct from the

role of the Authority as contracting party, it is nevertheless helpful if planners are prepared to join with project team members in preparing or at least discussing initial proposals. This will avoid wasted time whilst “difficult” projects are considered, and will assist in the feasibility stage in identifying issues that need to be overcome.

Departments

507. There are several Central Government Departments that have an interest in the project, namely the ODPM, DCMS, DH, DfES and HM Treasury. It is sensible to keep in regular contact with individuals in the appropriate Department with any material change or potential risks to a project being discussed and flagged at an early stage. Some Authorities tend to avoid regular contact, but our view is that this is unhelpful.

DEVELOPING JOINT SERVICE CENTRES

PART B2

PFI – Prequalification & Shortlisting

Contents

Section 1: Pre-Qualification and Shortlisting Process

Section 2: Advertising the Project

Section 3: Information Pack and Bidders' Open Day

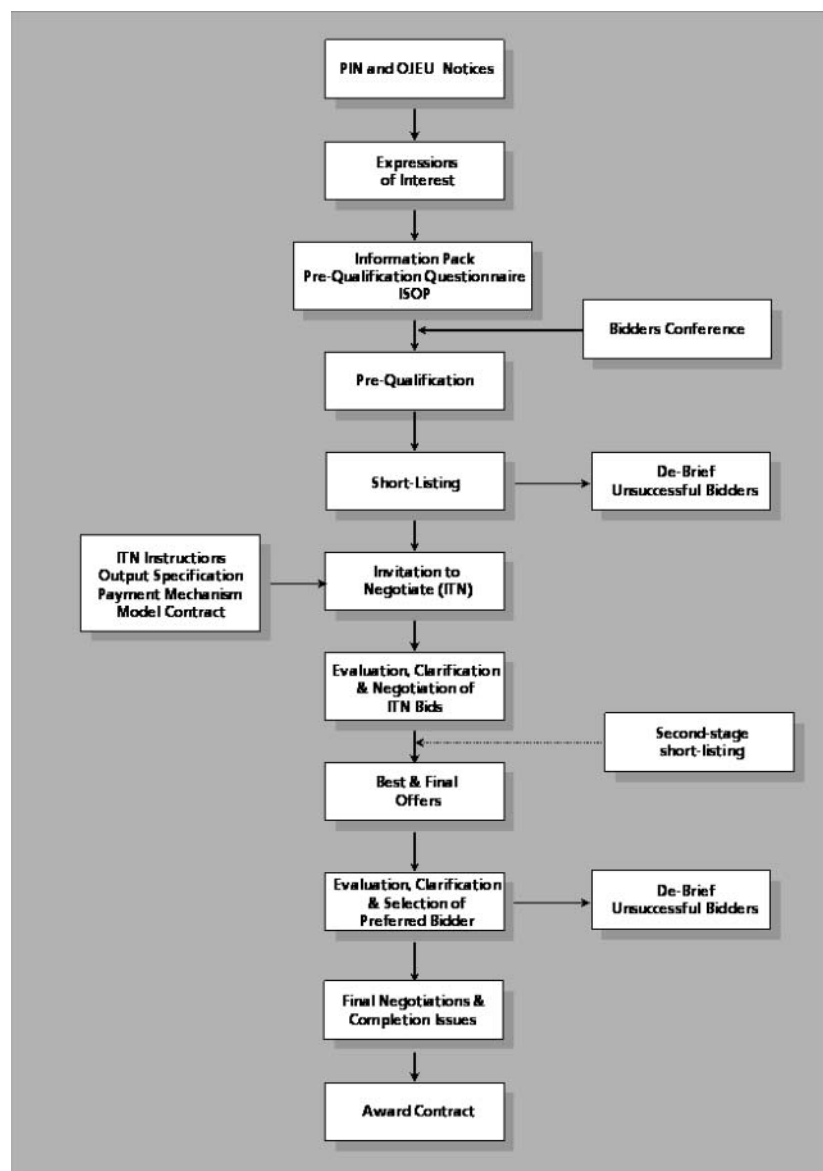
Section 4: Pre-Qualification

Section 5: Shortlisting

Section 1: The Pre-Qualification and Shortlisting Process

508. Once Members and the Project Review Group (where appropriate) have approved the OBC, the formal procurement process can start. It is however good practice to commence work on all project documentation as early as possible to ensure a seamless transition between stages.
509. An overview of a typical procurement process for a Joint Service Centre project from advertising the scheme through selecting Bidders and to award of the Contract is set out below in Figure 37.

Figure 17 Overview of the Procurement Process



510. This Part of the Procurement Pack includes guidance on the initial stages of the procurement process for a Joint Service Centre project, from advertising the project through to selecting the initial short-list of Bidders.

Getting Started

511. Whilst it is possible to commence the procurement process immediately following approval of a scheme, it is important that Authorities ensure the following key tasks have been completed before the procurement process is commenced.

- The project management arrangements are in place for delivering the project, including importantly, the appointment of any external advisors deemed necessary to support the in-house team.
 - A project timetable has been prepared and agreed by the project board, project sponsor and, where relevant, the strategic or stakeholder board.
 - Key aspects of the project documentation, such as first drafts of the Information Pack, Pre-Qualification Questionnaire, Invitation to Submit Outline Proposals , Output Specification, Payment Mechanism and Model Contract (Project Agreement), are in place, or substantially developed.
 - A detailed condition survey of the [property/land/assets] relevant to the project, a comprehensive inventory of items to be included in the project and relating to all services to be provided at the Joint Service Centre an internal communications strategy to keep project stakeholders informed about the progress of the project.
512. Guidance on project management and developing the project timetable is included in Part B2 of this Procurement Pack.
513. One of the key reasons for having draft documentation in place, is that it is important that the nature of the project advertised in the OJEU reflects that which is being developed in the project specification. There are examples of Authorities having to re-advertise projects simply because of not having thought through in sufficient detail what was required before the project was advertised.
514. It is important, therefore, that advertisement of the project is not rushed, but that time is spent on developing drafts of the key documentation in advance of the advertisement being published. Good practice assumes that such draft documentation will be in place before procurement commences.
515. Delaying advertising the project whilst the documentation is drafted will also mean that the Authority can avoid a lengthy period between completion of the short-listing process and issue of the Invitation to Negotiate (ITN). In early Local Authority PFI schemes, some Local Authorities completed the short-listing process prior to commencing development of the project documentation (such as Output Specification and Model Contract) and consequently had lengthy periods between these two stages, in a few instances losing a short-listed Bidder in the process.
516. The aim should be to have a short period between selection of the short-list and issue of the ITN. This will allow a clarification meeting to be held with each short-listed Bidder to explain the subsequent stages of the procurement process and the structure of the ITN and bidding process. It will also enable the Local Authority to incorporate into the ITN key issues identified from the pre-qualification and short-listing stages (within the confines of the Procurement Regulations).

Section 2: Advertising the project

517. The formal procurement process begins with the publication of a Contract notice in the Official Journal of the European Union (OJEU Notice). Key issues for consideration at this stage include the:
- Is it necessary to issue a Prior Information Notice (PIN);
 - The procurement route and procedure to be used; and
 - Drafting and placing the contract notice in the OJEU.

Prior Information Notice

518. A Local Authority must determine if it is necessary to issue a Prior information Notice (PIN) for the project. A PIN informs the market that such a project is being developed and is likely to be formally advertised by way of an OJEU Notice in due course.
519. Where a project involves a relevant works contract, the awarding Local Authority is required to publish a PIN in the Official Journal 'as soon as possible after the decision approving the planning of the works contract'.
520. For schemes advertised under the Public Services Contracts Regulations 1993, it is not mandatory to place a PIN that is specific to the scheme. However, service PINs are required in respect of service categories on an annual basis and should have been placed at or around the start of the financial year.
521. A PIN which is specific to a particular scheme may still be placed on a voluntary basis, using the standard format and providing detailed information in the 'other information section' in order to gauge the level of market interest and give advance notification of the scheme.
522. Where the Local Authority has issued a PIN as a way of commencing a soft market testing exercise the Local Authority should determine if it is necessary to issue a further scheme-specific PIN. Where a Local Authority has not previously issued a scheme-specific PIN, it may be opportune to consider the issue of a PIN immediately following member and PRG (where central government support is being sought) approval for the project. The PIN could usefully give an indication as to when the formal procurement process is likely to commence.
523. If a Local Authority is intending to issue a PIN for its Joint Service Centre Scheme, it should be noted that there is a mandatory form of PIN. The standard forms are available from the Office for Official Publications of the European Union in Luxembourg (Standard Form 2 – EN 1/9 available from <http://simpa.eu>) and can be completed on-line using the standard template available. The format of any PIN issued must follow that required by the Procurement Regulations and legal advice should be sought on the drafting of a PIN.

OJEU Notice

524. A Contract notice must be placed in OJEU for schemes that have a value above the thresholds set out in the Procurement Regulations. The form of the OJEU Notice will depend on which Regulations apply and which contract award procedure is to be used.

525. The UK Procurement Regulations which may be relevant to Local Authorities involved in a Joint Service Centre PFI project are currently:
- Public Works Contracts Regulations 1991 (SI 1991/2680)
 - Public Services Contracts Regulations 1993 (SI 1993/3228)
 - Public Supply Contracts Regulations 1995 (SI 1995/201)
 - Public Contracts (Works Services and Supply (Amendment) Regulations 2000)
 - Public Contracts (Works, Services or Supply) and Utilities (Amendment) Regulations 2003 (SI 2003/46)
526. These Regulations enact EU directives as part of UK law. However, for the procurement of Local Authority Joint Service Area projects, it is expected that Local Authorities will only need to refer to the EU directives if there is uncertainty over the interpretation of the UK Procurement Regulations.

Works, Services or Supplies

527. Joint Service Centre projects are likely to encompass a combination of works, services and supplies and, therefore, it may not be immediately obvious which regulations should govern the procurement of a Joint Service Centre project. However, it is unlikely that this kind of project would be categorised as a 'supply' contract, especially since the normal approach for supplies which become built-in 'immovable' property, is for them to be considered part of a 'works' contract. In general PFI and PPP projects are unlikely to be classified as supplies contracts even though services or works contracts may include supplies as an incidental aspect.
528. Consequently, a Local Authority must decide whether to advertise its Joint Service Centre scheme under the Public Works Contracts Regulations 1991 as a 'works' contract, or under the Public Services Contracts Regulations 1993 as a 'services' contract.
529. Where a Contract involves both works and services, it is necessary to consider the main objective of the overall Contract. On the one hand a Joint Service Centre project might involve a component of refurbishment work to the Local Authority's Joint Service Centre infrastructure, which if left as a stand-alone contract might be considered to be 'works'. On the other hand, these works are likely to take place during only a relatively small period forming part of the PFI Contract. The dominant part of the contract (both in terms of its purpose, and the value involved) might be the provision of facilities management or other services. This is a matter on which the Local Authority must make a judgement in the context of its own scheme.
530. The European Union has now adopted a new procurement directive which consolidates and simplifies the separate Directives covering Works, Services and Supplies. The new directive 2004/18/EU is to be implemented in the UK by new regulations. Until then, the three separate Directives will continue to govern the procurement process chosen depending upon the Regulations which are determined to be applicable. The choice is not normally critical, but the following should be noted:
- The financial thresholds are different for works than for services or supplies.
 - The use of the negotiated procedure is only available in 'exceptional' circumstances set out in 'derogations'. Such derogations differ between works and services contracts.
531. It is important that Local Authorities take their own legal advice on the route most appropriate to their particular scheme to avoid any potential breach of the

Procurement Regulations. The guidance that follows assumes that the scheme can take the 'services' route.

Contract award procedures

532. The three procedures that are available for the award of works, services and supplies contracts under the Procurement Regulations are the open, restricted and negotiated procedures. For completeness, the main characteristics of the three award procedures are set out in Figure 38.

Figure 18 Contract Award Procedures

Open – This procedure allows any bidder responding to the OJEU Notice to make an offer to enter into the advertised contract. The procedure does not allow pre-qualification so it can attract an unwieldy number of potential bidders. The open procedure is recommended only for simple contracts and therefore tends to be unsuitable for PFI projects. It is not likely to be suitable for a Joint Service Centre PFI scheme.

Restricted – This procedure allows Local Authorities to select a limited number of bidders from all of those that respond to the OJEU Notice. However, the ability to hold discussions with bidders is limited to issues of clarification. There is, therefore, only limited scope for meaningful discussions.

Negotiated – Under this procedure, Local Authorities are permitted to pre-qualify those that respond to the initial OJEU Notice and to select a number of bidders with whom to negotiate the Contract. Use of the negotiated procedure is not an automatic right of the Local Authority; it can only be used in certain exceptional circumstances specified in the Procurement Regulations and Local Authorities should note that they are legally obliged to justify their selection of the negotiated procedure. With this in mind, it is vital that legal advice on this is sought as part of the preparation of the OJEU Notice.

533. PFI schemes have typically been advertised under the negotiated procedure, despite its exceptional nature, as this procedure allows detailed discussions and negotiations with Bidders as part of the procurement process. It is currently expected therefore that Joint Service Centre PFI schemes will be advertised using the negotiated procedure, although the issue of whether or not to have recourse to the negotiated procedure is a question of fact and degree to be decided on a scheme-by-scheme basis, and Local Authorities must always take legal advice on this issue.
534. It should be noted that the use of a standardised form of OJEU Notice became mandatory from May 2002. The standard forms are available from the Office for Official Publications of the European Union in Luxembourg (Standard Form 1 – EN 1/9 available from <http://simpa.eu>).
535. It is important that attention is paid to the detailed drafting of the OJEU Notice. The OJEU Notice sets the parameters for the whole project and should include sufficient explanation of the project to attract Bidders. The OJEU Notice should give details of the scheme as envisaged and indicate the volume and scope of the services required, and/or expected monetary values of the project. If collaborative working is envisaged with another Local Authority, thought needs to be given to how the contracting authority is described in the OJEU Notice.
536. If the scope of the project alters, it may be necessary to re-advertise the scheme and start the whole process again. If the OJEU Notice is drafted with sufficient flexibility, it may be possible to cater for subsequent change, although a balance must of course be struck with the need to provide potential Bidders with an adequate description of the Local Authority's requirements and avoid discrimination.
537. The OJEU Notice should include details of the conditions for participation as regards the criteria that will be used to assess Bidders' economic and financial standing and technical capacity and ability.

538. The OJEU Notice should set out the award criteria for the Contract. Local Authorities have a choice of award criteria, either lowest price or the most economically advantageous tender. Local Authorities have typically used the 'most economically advantageous tender' award criteria for PFI schemes. The Regulations leave it to the Local Authority to determine the criteria for most economically advantageous tender, although the Regulations do include a non-exhaustive list of factors that the Local Authority can use for this purpose. The duty to specify the criteria in advance is a strict one, and the Local Authority is not entitled to take into account any criteria which it fails to mention in either the OJEU Notice or in the Contract documents.
539. The advertisement should indicate where the procurement falls within the EU framework of procurement law and the procurement procedure that is to be used.
540. The OJEU Notice should emphasise that the project is a PFI scheme and that this will mean the Contractor will be expected to bear a significant proportion of the risks associated with delivery of the project. The Contract notice should state that variant bids are acceptable, although where there are core mandatory requirements these should be mentioned, or referred to, so that Bidders do not inadvertently deliver non-compliant Bids believing them to be Variant Bids.
541. Local Authorities are advised to bring the TUPE and workforce matters obligations to the attention of Bidders at an early stage in the procurement process. There is a section in the OJEU Notice for other information and Local Authorities may wish to consider making reference to the *Code of Practice on Workforce Matters in Local Authority Service Contracts*, and to use the following drafting in the OJEU Notice:
- 'The Local Authority will include obligations within the Contract documentation relating to workforce matters. These obligations will require the Contractor to protect the terms and conditions (including pensions) of transferring staff and to employ new joiners on terms and conditions that are, overall, not less favourable than those of transferred employees and to give them reasonable pension arrangements. The Contractor will be required to take account of these obligations in preparing their Bid and negotiating the Contract.'
542. Further guidance on advertising PFI projects, and sample drafting on specific elements of the OJEU Notice for a PFI scheme, is available in the Office of Government Commerce (OGC) guidance *How to follow EC Procurement Procedure and Advertise in the OJEU*.

Placing the Advert

543. Once drafted, Contract notices should be sent by post, fax or e-mail to the Office for Official Publications of the European Union in Luxembourg for publication. There is no charge for the inclusion of a notice in the Official Journal, and notices will normally be published within 12 days of the Contract Notice being received.
544. If the Local Authority also plans to place other advertisements, for example in the specialist or trade press or the national media, these adverts must not appear before the OJEU version has been despatched, and must not contain any additional information to that contained in the OJEU notice. Any such adverts should refer to the date of the despatch of the OJEU advertisement. It is considered good practice to send a copy of the advert to appropriate trade associations.
545. If the Local Authority is using the negotiated procedure, a minimum of 37 days must be allowed from the date of despatch of the OJEU Notice to the last day that is allowed for requests to be received. In the event that this 37-day period ends on a Saturday, Sunday or public holiday (in the EU), it should be extended to expire on the nearest working day.

546. Under certain circumstances, the minimum periods can be reduced. In the case of the negotiated procedure, the 37-day period may be reduced to not less than 15 days. This procedure must only be used when it can be fully justified on grounds of urgency and it is not considered likely that Local Authorities will face such circumstances in relation to the procurement of a project.

Potential Changes in the Procedure Used for PFI Schemes

547. The EC has adopted a new Directive which consolidates and modernises the public procurement regime in general. This new Directive is due to be implemented in the UK and other member states by the end of January 2006. One of its key features is the introduction a new procedure, called 'competitive dialogue', the use of which will give extra scope for the development of a solution (from a technical point of view, especially) during the course of the procurement. It is not yet clear whether the competitive dialogue procedure will be commonly used for PFI procurements. The negotiated procedure will continue to be available, and it could be that it's relatively familiarity will mean that it remains the typical choice for Local Authorities. Even so, Local Authorities must be able to demonstrate, if challenged, the need for doing so, and bearing in mind the exceptional nature of this procedure. In the event of doubt as to which procurement route to follow authorities should consult the 4ps and obtain legal advice if appropriate and necessary.

Section 3: The Information Pack and Bidders' Conference

548. The number of responses to the Contract notice placed in the OJEU which are received will normally be greater than is demanded by the procurement process. However, not all those that respond should, or will, want ultimately to bid for the project. Potential Bidders will base their decision about whether they want to be involved further largely on the next piece of information that they will obtain from the Authority - the Information Pack (sometimes referred to as the Information Memorandum, Memorandum of Information or Market Brief).
549. The Authority should be ready to issue the Information Pack (and a Pre-Qualification Questionnaire and an Invitation to Submit Outline Proposals) to everyone who responds to the OJEU Notice. These documents will therefore need to be substantially prepared in advance of the project being advertised.
550. The overriding objective of the Information Pack is to provide further details about the:
- Authority;
 - Proposed project;
 - Project timetable for the next key stages - pre-qualification, ISOP and short listing; and
 - Process to be used for pre-qualification, ISOP and short-listing.
551. It should be possible to extract much of the basic information for the Information Pack from the OBC and other drafts of the project documentation (such as the Output Specification). However, it is advisable to present the Information Pack as attractively as possible and in a user-friendly style. The Information Pack is an important element in the Authority's efforts to "sell" the project and thereby attract the best quality Bidders.
552. Authorities are also advised to look at a number of Information Packs that have been prepared by Authorities developing PPP/PFI projects to assist in the development of a high quality Information Pack.

Bidders' Open Day

553. Once the Information Pack (and Pre-Qualification Questionnaire and ISOP) have been issued an Authority may wish to arrange a Bidders' Conference. This day allows the Authority to provide more comprehensive information to potential Bidders about the scheme and for the potential Bidders to seek answers to issues on which they are unclear. The day will also serve to inform bidders on the scope of the scheme and enable them to confirm their interest or otherwise.
554. An alternative approach is for Authorities to rely on the Information Pack and on Bidders seeking written clarification on any issues of uncertainty. However, the use of a Bidders' Conference is often seen by both the Authority, and potential Bidders, as a useful way to expand on the project details.
555. Authorities that are intending to hold a Bidders Conference may wish to consider the following approaches that have been used to date:
- Presentations by the Leader of the Authority, the project sponsor, project director and lead technical, financial and legal members of the project board.

- The use of a video presentation to outline the key aspects of the project to potential Bidders rather than involve numerous speakers.
 - Individual “one-to-one” sessions with each Bidder expressing an interest for a more detailed discussion of the project, either as a separate exercise or in conjunction with formal presentations. However, one to one sessions must not result in unequal treatment of bidders or the provision of additional information to one bidder which is not provided to others.
556. It is important that the Authority achieves the right balance between presentations and the provision of detailed information, including site visits which can be the most useful part of the day for Bidders.
557. Whatever approach is adopted, it is important to remember that the overriding purpose of the Bidders Conference is to “sell” the project and to demonstrate to potential Bidders that the Authority has the skills and expertise in place to deliver the project. It is important therefore that the Bidders Conference is considered at an early stage in the process to determine how it will fit with other arrangements. Details of the Bidders Conference should be included in the OJEU Notice and Information Pack.

Section 4: Pre-Qualification

558. Bidders expressing an interest in the project advertised in the OJEU are issued with a Pre-Qualification Questionnaire (and the ISOP) at the same time as the Information Pack. The aim of the Pre-Qualification Questionnaire is to:
- Obtain information that will establish whether potential Bidders have the technical capacity and ability, and have the economic and financial standing to deliver the project. (PFI/PPP contracts are complex and expensive to deliver and Authorities must ensure that only those Bidders with the appropriate resources and skill-base are pre-qualified).
 - Enable the Authority to determine whether there are any grounds pursuant to which a Bidder may be rejected under Regulation 14 of the Public Services Contracts Regulations or Regulation 14 of the Public Works Contracts Regulations.

The Pre-Qualification Questionnaire (PQQ)

559. The PQQ should set out questions that each Bidder will be required to answer. The extent of the information that can be requested from each Bidder is, however, limited by the Procurement Regulations. These describe the categories of information that it is legitimate to request at this stage, namely information as to economic and financial standing, ability and technical capacity. These are currently addressed in Regulations 15 and 16 of the Public Services Contracts Regulations 1993. Regulation 14 of the Public Services Contracts Regulations 1993 sets out a number of grounds on which candidates may be automatically excluded.
560. Authorities should ensure that their final PQQ is in accordance with these regulations, in particular over which parties are evaluated, and legal advice should be sought.

Economic and Financial Standing

561. Regulation 15(i) of the Public Sector Services Regulations 1993 sets out the information that an Authority may request from an Applicant/Relevant Organisation (hereafter referred to as the Bidder). These include:
- A statement of accounts relating to the Bidder's business, or extracts from such accounts;
 - A statement of the turnover of the Bidder's business as a whole, in the previous three financial years;
 - A statement of the Bidder's turnover in its previous three financial years in the area of the contract concerned; and
 - For services contracts only, evidence of relevant professional risk indemnity insurance.
562. Whilst "economic and financial standing" is not expressly defined, its meaning is important to decide on those grounds which are authorised to be considered under Regulation 15 of the Public Services Contracts Regulations 1993. It is clear that Regulation 15 only authorises measures genuinely directed at assessing economic and financial standing in relation to the relevant contracts.

Technical Capacity and Ability

563. Regulation 16 of the Public Services Contracts Regulations 1993 sets out the nature of the information that can be requested in relation to Public Services Contracts. This includes the following:
- Where the Bidder is an individual, his professional qualifications and in all cases the qualifications of the Bidder's managerial staff and the person(s) responsible for providing the services.
 - The principal services provided in the past three years, which are of "a similar type" to the services to be provided under the Contract.
 - The technicians or technical bodies who would be involved in the service provision, particularly those responsible for quality control - including where they are independent of the Bidder.
 - The Bidder's average annual manpower and the number of managerial staff employed over the previous three years.
 - Any proportion of the Contract which the Bidder intends to sub-contract to another party.
564. There is provision for actual checks in certain cases on the Bidder, in relation to the services to be provided, and in relation to study and research facilities and quality control measures.
565. As with economic and financial standing above, "technical capacity" and "ability" are not defined in the Procurement Regulations. Legal advice needs to be sought on the provisions it is acceptable to include in the PQQ.
566. The Authority may require a Bidder to provide information supplementing that supplied in accordance with Regulations 14 to 16 of the Public Services Contracts Regulations 1993, or to clarify that information to the extent that the information required relates to the matter specified in the same Regulations.
567. The time allowed for the Bidders to respond to the PQQ will vary within the information asked for by the Authority, but a period of up to four and six weeks from the date the OJEU Notice closes will normally be long enough for Bidders to collate their pre-qualification process.
568. Given the confines that govern the pre-qualification stage, it is important that Authorities take proper legal advice on the development of the PQQ.

Other Issues

569. Local Authorities can, in accordance with normal business practice, ask Bidders to provide details of referees in respect of relevant projects that they have undertaken. It may be convenient to ask for such details as part of the PQQ, although they may be sought, subsequently, at ITN stage. Local Authorities must ensure that, whatever stage of the procurement process referees are contacted, the information sought and the use of that information is consistent with what is allowed under the Procurement Regulations for that stage.
570. The PQQ should aim to obtain the relevant information from each member of the proposed Bidding consortium. The onus should be on the Bidder to demonstrate that it has the resources to see the bid through to completion. Caution should be

exercised where a leading consortium intends to tender aspects of the project to as yet unidentified third parties. In such circumstances, Bidders should be asked to demonstrate that they would be able to recruit the necessary additional companies within the framework of the deal that is envisaged prior to the selection of Preferred Bidder.

571. The time allowed for the Bidders to respond to the PQQ will vary with the amount of information requested by the Local Authority, but a period of four weeks from the date the OJEU Notice closes will normally be long enough for Bidders to collate their pre-qualification responses.
572. A model PQQ for a Joint Service Centre PFI scheme is included in this Procurement Pack. Given the confines that govern the pre-qualification stage, it is important that Local Authorities take their own legal advice on the development of the PQQ.

Evaluation of Pre-Qualification Responses

573. The Local Authority should identify the tests and criteria that will be used to assess the general technical and financial strength of the Bidders. A Local Authority is left with considerable discretion to decide upon the precise details of how it conducts the pre-qualification evaluation and appears to be given the right to set minimum standards of financial and economic standing/technical capacity and ability.
574. The Local Authority may decide to use a detailed scoring system, possibly with different weightings being given to different factors. Again, legal advice must be taken on developing the pre-qualification evaluation framework.
575. Where Local Authorities receive PQQ responses indicating different levels of consortium membership, care should be taken to treat all consortia on an equal basis during the pre-qualification evaluation.
576. A model of an evaluation methodology used at the pre-qualification stage is included in this Procurement Pack. This evaluation model follows the structure of the model PQQ included in this Procurement Pack.
577. The key stages involved in a typical pre-qualification evaluation are as follows:

Stage One – Preliminary Evaluation and Compliance

578. A preliminary evaluation should be carried out to de-select any applicants that would clearly fail to satisfy any criterion. Factors to take into consideration in this preliminary evaluation stage might include:
- Information requirements - to confirm that all the requested information has been supplied.
 - Eligibility - to assess whether there is reason for excluding any Bidder or bidding consortium from further analysis.
 - Preliminary financial evaluation – to assess whether the Bidder (or bidding consortium) meets the minimum financial thresholds (such as turnover level relative to a multiplier of the scheme's estimated capital or services value).
579. In cases where the submission is unclear, the Local Authority may ask for more information for clarification. Such requests must be very specific and kept to a minimum.

580. The circumstances in which a Bidder may be excluded from further participation in the procurement process include the following:
- Bankruptcy, insolvency and winding-up - the circumstances of such are defined in the Procurement Regulations.
 - Where the Bidder has been convicted of a criminal offence relating to the conduct of its business or profession.
 - Where the Bidder has committed an act of grave misconduct during the course of its business or profession.
 - Where the Bidder has not fulfilled obligations relating to the payment of taxes or social security contributions.
 - Where the Bidder is guilty of serious misrepresentation in providing any information required of it under Regulations 14 to 17 inclusive.
 - Where the Bidder is not properly licensed under the laws of the state in which it is established.
581. Bidders should be asked to confirm in their response to the PQQ that none of the grounds set out in Regulation 14 applies to any member of the bidding consortium. Bidders should also be required to inform the Local Authority during the bid process if any of these grounds apply subsequently.
582. The purpose of the preliminary evaluation is to assess whether the Bidder has the ability to undertake the project. These financial thresholds are partly designed to ensure that the project does not overly dominate the relevant companies' existing business. They should also be set such that they are not overly onerous and, as such, they should only exclude Bidders who are not considered to have a realistic chance of undertaking the project.
583. The possibility also exists of a credible Bidder who does not have the skills to undertake the whole Contract, submitting a pre-qualification submission where the other potential relevant companies forming a consortium, which could provide these skills, have not yet been identified. In these circumstances, assessment should be made as to whether the Bidder is a leading player in its field, and whether, in the opinion of the project team, it could attract other parties to form a consortium capable of undertaking the project.

Stage Two – Technical Capacity and Ability

584. The submissions which are considered compliant and which have achieved the pass/fail criteria thresholds should be evaluated to determine technical capability on a qualitative basis. If the Bidder is deemed to have only marginally passed the preliminary stage, the Local Authority may decide to take them to the next stage of determining their technical capacity. Scores will be assigned to the responses to each of the questions, which are likely to be weighted. The Local Authority will need to determine a pass score for the technical evaluation.

Stage Three – Economic and Financial Standing

585. The financial evaluation can be assessed in two ways:
- Solvency and financial strength - this should be assessed for each member of the bidding consortium through analysis of their financial accounts and other

information requested as part of the PQQ. Text-line information (search of newspaper, trade press and other databases for the last six months) and credit ratings (such as Dunn and Bradstreet) should also be used as part of this evaluation.

- Fund-raising capability - this should be assessed by analysing the fund-raising capability of the members of the bidding consortium and for the Bidder as a whole. Fund-raising experience and ability should be assessed by reference to the number of times the relevant Bidder or consortium member has raised finance for similar projects, considering both equity and debt forms of capital and the amounts raised for these projects. The ability to raise and/or contribute equity capital should be considered with respect to the relevant companies' net worth and the cash resources. Other information to consider includes the financing structure the Bidder envisages for the project and how bidding costs of the project are to be borne and financed.

Pre-Qualification Report

586. The pre-qualification will allow a list of 'pre-qualified' Bidders to be selected on the basis of technical capacity and ability and the requisite economic and financial standing to be taken forward to ISOP stage. A report setting out the results and conclusions of the pre-qualification evaluation should be produced to provide a clear audit trail for the process and of the reasoning behind the final assessment.
587. To maintain the integrity of the process, once these pre-qualification tests have been passed they should not be re-visited. The Authority should not need to re-evaluate competence unless new information emerges which gives reason to doubt the original assessment.

De-briefing of unsuccessful candidates

588. Bidders that do not satisfy the pre-qualification criteria should be informed as soon as possible. Such Bidders should also be offered the opportunity for a de-briefing on where their PQQ was judged to be deficient.
589. Where an unsuccessful Bidder requests a de-briefing from the Authority as to the reasons for not satisfying the pre-qualification criteria the Authority should provide reasons for such within 15 days of receipt of the request. This can be done either in writing or as part of a formal discussion with the Bidder.

Section 5: Shortlisting: The Invitation to Submit Outline Proposals

590. Following the submission and evaluation of the PQQ, the Authority should use a second stage, the ISOP stage, to select a short list of Bidders that they wish to take forward to the next stage of the procurement process (the Invitation to Negotiate (ITN)) by evaluating their ability and commitment to offer a viable bid for the project.
591. Whereas pre-qualification is a test of general competency to undertake the proposed project, evaluation to a short-list of Bidders must be on the grounds of ability and commitment to offer a viable bid for the project. The number of Bidders that are short-listed and go through to the next stage will be determined by how strict the Authority's standards are. Because of the constraints in terms of the time, money and physical resources required to work up a full Bid for the project, the short-list should be limited to the minimum number of Bidders needed to ensure genuine competition. Ultimately the Authority, when proceeding to the ITN stage, will probably only wish to deal with three or four short-listed Bidders. As a result, a pragmatic approach needs to be taken to reduce the list of pre-qualified Bidders to the required number.
592. The Procurement Regulations do not specify how the Authority must arrive at this short-list. What is clear, though, is that care does need to be taken with the short-listing process and legal advice sought as necessary. Whether a short-listing stage is permissible is a grey area, although in practice there are many examples of schemes across the public sector that have followed this approach successfully and without challenge. The Procurement Regulations neither expressly allow for, nor prohibit, the conduct of the procurement process in these two stages. There is clearly a need to proceed with caution and Authorities must be careful to maintain a level playing field and avoid any suggestion of discrimination or lack of transparency.
593. To date, two alternative routes have been used in local authority PFI/PPP schemes generally which could also be adopted for Joint Service Centre schemes to arrive at a short-list of Bidders:
- Bidders expressing an interest in the project are sent an Information Pack, PQQ and Preliminary Invitation to Negotiate. Both the PQQ and PITN response are to be returned to the Authority at the same time, but in separate envelopes (and in compliance with the Authority's procedures on bid return). The PITN response is only opened if the Bidder successfully satisfies the pre-qualification criteria determined for the project, with the PITN responses for Bidders failing to satisfy the pre-qualification criteria being returned unopened. This approach has become known as the 'one-stage' approach.
 - Bidders who pre-qualify are long-listed and are issued with a PITN only after the pre-qualification evaluation has been completed. This has become known as the 'two-stage' approach.
594. The one-stage approach has the advantage of being quicker, since an Authority should be able to complete the pre-qualification and short-listing processes in a period of between four and six weeks. This approach also allows Bidders to make an earlier assessment of their chances of being short-listed and should, therefore, avoid unnecessary work by the Authority at the pre-qualification stage.
595. The advantage of the 'two-stage' approach is that it allows more time for the procurement process, and the Authority may feel that a 'slower' approach is more appropriate, perhaps to allow longer for the development of the project documentation.

596. Authorities will need to determine which of the two approaches will be most appropriate given the circumstances, decision-making structures and/or procurement arrangements of each project. This assessment must be done in consultation with the legal advisors to the project. However, Authorities should aim to use the one-stage approach to keep costs and time to a minimum.

The Invitation to Submit Outline Proposals

597. It is legitimate for the ISOP to request in some detail the approach that the Bidders propose to take to the project, their willingness or appetite for taking on the risks associated with the project and how they propose to structure and organise delivery of the project. The ISOP is a means of extracting further, more detailed, information from the Bidders, by way of a series of specific questions, about their proposed approaches to the project. This allows the Authority to ask more searching questions about the Bidder's proposed approach on a range of key issues that are not permissible as part of the pre-qualification stage.
598. Authorities will need to include within their ISOP questions which are appropriate to their local circumstances. It is suggested the number of questions used as part of the PITN is kept to a sensible level.
599. It is not recommended to ask the Bidder at this stage for an indicative price as they will not have seen the Output Specification, Payment Mechanism or Contract terms for the Project and therefore the Authority should continue, at this stage to rely on the price it determined when preparing the PFI Reference Project.

Evaluation of ISOP Responses

600. As with the evaluation of the PQQ, a framework will need to be developed for the evaluation of the ISOP responses from Bidders. As part of this process, Authorities will need to determine the weighting that will apply to each of the ISOP questions. The arrangements for the evaluation of ISOP responses must be in place prior to launch of the short-listing stage and the criteria for selection of the short-listed must accord with EU procurement legislation and be as objective as possible.
601. Authorities are also likely to need to develop detailed worksheets to support the evaluation of each of the ISOP questions. This may include a series of key issues that the Authority expects the candidate to address as part of the ISOP response, or a series of further detailed evaluation criteria and weightings for each ISOP question.

Interviews

602. It is possible that the evaluation of ISOP responses will produce a list of Bidders that is longer than the three or four that the Authority would prefer to take forward to the next stage of the procurement process, the Invitation to Negotiate. In this event, the further clarification of Bidders responses' required by the Authority to make the final short-list selection can be obtained through interviews with some, or all, of the Bidders that have submitted outline proposals.
603. If this is the case, the Authority may decide, probably in collaboration with the evaluation of ISOP responses, to hold interviews with some, or all, of the Bidders. Interviews can be a useful way of seeking clarification on key aspects of the Bidders' responses at the ISOP stage and as a final way of differentiating between Bidders in order to arrive at the short-list for ITN.

Short listing of Bidders

- 604. Following the results of the PQQ and the ISOP, the evaluation should provide the Authority with a list of Bidders that can be included into a short list that will move on to the next stage of the procurement process.
- 605. In view of the constraints in terms of time, money and physical resources the short-list should be limited to the least number of Bidders needed to ensure genuine competition, usually three or four Bidders.
- 606. The procurement regulations do not specify how the Authority should arrive at the short-list. The procurement rules neither expressly allow for, nor prohibit, the conduct of the procurement process after the pre-qualification stage and there is clearly a need to proceed with caution and where necessary, seek legal advice. However, it is recommended that Authorities must be careful to maintain a level playing field and avoid any suggestion of unfair discrimination.

Three or Four Bidders

- 607. As noted earlier, the short-list should be limited to the least number of Bidders needed to ensure genuine competition. In general this should be three, or at the most, four Bidders. Some Authorities and advisors believe that the advantage of three Bidders is that an Authority is more likely to get better quality Bids at the ITN stage, since Bidders will determine that they have a better chance of proceeding from a one in three chance rather than a one in four chance. Consideration should also be given to the timetable effect of four bidders rather than three in that it significantly increases the workload for the Authority, including the attention that can be given to each bidder.

Short-Listing Report

- 608. As with the pre-qualification evaluation, a report should be produced summarising the conclusions of the ISOP short-listing process and providing a clear audit trail of the process adopted and short-list selected. In compiling the report, it is important that the integrity of the short-listing process is safeguarded; there should be no leakage of ideas from one Bidder's proposal to another. Authorities will need to allow for the decision to be formally approved at the appropriate level (e.g. Cabinet), depending on the Authority's constitution, before proceeding to the next stage.
- 609. Arrangements should have been incorporated in to the project timetable for agreeing the short-list with the staff representatives. Ideally this should be done before the short-list is finalised. Some Authorities have used the consultation at this stage in the process to discuss with the staff representatives the comments made by the Bidders as part of their ISOP response on staffing issues.

De-briefing of unsuccessful candidates

- 610. Bidders that are not to be taken forward to the ITN stage should be informed as soon as possible. Bidders should also be offered the opportunity for a de-briefing on where their proposals were judged to be deficient. Where an unsuccessful candidate requests a de-briefing from the Authority as to the reasons for not being short-listed, the Authority should provide reasons for such within 15 days of receipt of a request. This can be done either in writing or as part of a formal discussion with the Bidder.

**JOINT SERVICE CENTRE
PPP PROCUREMENT
PACK**

PART B3

PFI - Output Specification

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Section 1: Purpose of the Output Specification

What is an Output Specification?

- 611. The Output Specification is arguably the most important document in the procurement of a PFI/PPP project. The Output Specification is the basis through which the Authority and its Stakeholders define the services and outputs that they require from the Contractor for the duration of the Joint Service Centre Contract. The Output Specification should aim to detail what needs to be achieved not how it is to be achieved.
- 612. Such generally framed outputs cannot in themselves guarantee that the appropriate services will be delivered. Later on in this Procurement Pack, it can be seen that such a purist approach may not be appropriate in all instances as this could have left Bidders second-guessing what is wanted, the result of which may not meet set expectations of an Authority which could have been clearly expressed in a more input form. This comes from defining appropriate performance standards and performance targets for each of the outputs or outcomes required.

Why an Output Specification?

- 613. A well-drafted Output Specification is fundamental to developing a robust Contract and the successful delivery of long-term services. It is part of a process that is radically different to traditional procurement, in that the emphasis is on affordable service outcomes and outputs, explicit allocation of risks, and the integration of design and build with the operation of the services.
- 614. In comparison, conventional procurement methodology is often an iterative process in which an outline of the capital project is drawn up and costed. Further iterations and costing revisions normally occur before a final scheme is agreed and the contract for development is let. Using this process, the risks of cost increases and failure due to inappropriate design, planning etc, tend to fall on the client. As a result, the completion of the project can be delayed, it can cost more than originally anticipated, or can fail to meet all of the initial objectives. Additionally, little account is taken of ongoing running costs in terms of building life-cycle maintenance, the ongoing provision of services, and the efficiency of facilities.
- 615. Developing a specification in terms of outputs is likely to encourage a focus on strategic needs rather than the history and detail of current provision. A well produced Output Specification should allow new ideas about the design, refurbishment/construction and operation of a Joint Service Centre scheme to flourish. Most critically, because the approach encourages Service Contractors to develop the means to deliver the outputs within the context of a fixed, performance-related pricing mechanism, it focuses much more attention on project risks. This should lead to a better-designed and operated Joint Service Centre scheme in the longer term.

PFI and long-term partnerships

- 616. A major advantage of the PFI is that the provision of the service, its operation and maintenance should become a more integrated and seamless activity. With the PFI/PPP procurement process, operational issues are considered from the outset as part of the investment decision, which should contribute to the long-term success of the project.
- 617. Under existing arrangements these services are provided by the Authority. With PFI, many of the functions that underpin the delivery of the service become the responsibility of a single Service Contractor/Consortium, which is contracted to

delivering the service to agreed standards and subject to a performance-related payment mechanism.

Stimulating Innovation and Service Integration

618. The emphasis placed by the PFI/PPP process places on outputs should encourage innovation in design, refurbishment and operational methods. The PFI/PPP process itself also offers scope for innovation. New forms of teamwork may well develop amongst bidding consortia, with the potentially creative synergy between designers, construction and/or refurbishment contractors and operators kick-starting innovative ideas. In addition, the approach adopted in PFI/PPP should encourage Service Contractors to focus more sharply on ideas and solutions that will optimise the whole life-cost of the project.
619. The negotiation process that leads up to financial close can remove anything innovative that has a high chance of failure. This does not necessarily rule out imaginative proposals and schemes with flair, but a reliance on experience - what Contractors know will work remains at the heart of the best projects, and that body of experience still has to develop fully within the Joint Service Centre market.
620. PFI/PPP present a challenge to the private sector to deliver facilities and services to Authorities which will genuinely enhance service standards, both by the positive contribution that standards make to the experience of service users, and by the removal of unwanted problems. This challenge can only be met effectively if the Authority and other stakeholders are clear about their requirements, and communicate these in a way that allows the private sector to develop the optimal solution. Hence, Bidders need to be able to work to a well-written Output Specification from the outset of the process.

Figure 19

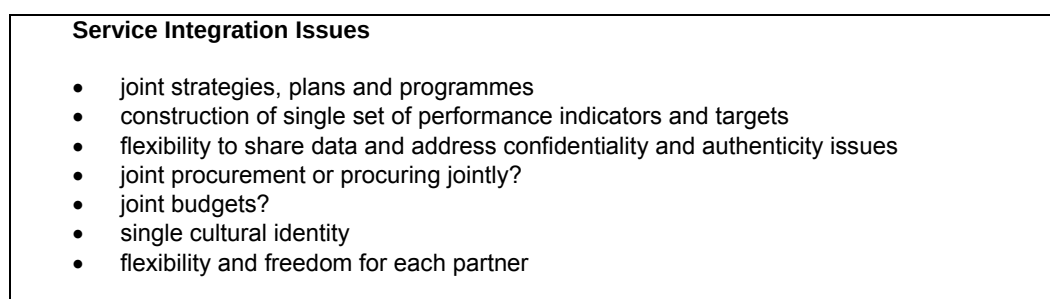


Figure 20



Section 2: Key features of the Output Specification

Potential scope of the Output Specification

621. The range of high-level outputs required in a Joint Service Centre PFI project will typically cover some or all of the following:
- The provision of newly built accommodation
 - Refurbishment or alterations to existing facilities
 - Property and estate maintenance
 - Caretaking, grounds maintenance, security, waste disposal, pest control and reception facilities
 - Information and communications technology

What constitutes a good Output Specification?

622. Producing an effective Output Specification involves the art of defining the end without specifying the means. Outputs should clearly and comprehensively state what is required, and the standards to be achieved. In summary, a good Output Specification must:
- Reflect the Authority's corporate and service specific policy objectives
 - Reflect the actual requirements of stakeholders
 - Be clear, concise and unambiguous
 - Give the potential Contractors sufficient information to decide and cost the facilities and services they will offer
 - Take account of the need for compliance with legal or other statutory requirements and policies, and compatibility requirements - for example, with IT systems
 - Specify any constraints which are essential to defining a deliverable project - e.g. planning requirements, access times, full service commencement date. These should distinguish between mandatory and other constraints
 - Permit projects to be evaluated in the procurement process against defined criteria
 - Identify those service areas which are critical to the availability and performance of the Joint Service Centre scheme and which therefore will be given most weight in the payment structure and performance monitoring
 - Only contain requirements that can be afforded by the client and are deliverable.
623. In essence, a good Output Specification must communicate what is expected from Bidders, leaving them room to produce innovative, cost-effective solutions to the clearly specified needs and requirements of the Authority and other Stakeholders.

Risk transfer

624. The Output Specification, by defining outputs, necessarily defines many of the risks that the Bidders are being asked to take on. It is for the Bidders to assemble the optimum means of delivering the results required, and they do this at their own risk of failure. If the property management or services fail in some way, the Authority cannot be blamed if it has had no responsibility for how those standards and services are to be provided, and has effective recourse through the payment mechanism.
625. This does not mean to say that the Authority should not be entitled to comment on how Bidders propose to deliver the standards and the services, since the Authority needs to be reasonably satisfied that Bidders have attempted to take on board all their requirements. However, the Authority must stress to Bidders that no approval by them, signing-off of drawings, or agreement as to details, absolves the Service Contractor from its contractual responsibility.

Performance standards

626. The Output Specification should clearly define the performance standards to be achieved.
627. Without clear standards and targets, the Output Specification will be open to wide misinterpretation in terms of the required provision, service levels, and therefore cost. Responses from Bidders are more likely to be less consistent, making a fair evaluation difficult. Hence, the need to provide more input details to some aspects of the Output Specification, despite this appearing a contradiction with the global intent to specify outputs.
628. A lack of clarity in the Output Specification will also make it harder to build up the public sector comparator (PSC) and Reference Project properly, making 'Value for Money' (VFM) more difficult to establish. Both the PSC and Reference Project must be consistent with the Output Specification so that the comparison is on a like-for-like basis.

Managing the risks of changing standards

629. The Output Specification needs to be drafted so that the emphasis is on the Service Contractor keeping pace with changing standards. How the risks and rewards of such changes are reflected in the Unitary Charge should be part of the negotiation process. The approach may well vary according to the nature of the risk. For example, some of these risks will fall within the generic definitions of general/specific legislative and regulatory risks, whilst others will have to be separately identified and catered for.
630. In determining how such risks should be managed, a balance needs to be struck between providing incentives to the Contractor to continue providing the same service levels, and Value For Money. Sufficient incentives should be developed to encourage the absorption of any additional costs arising from changing standards, without transferring so much risk that the Contractor will try to recover the possible costs indirectly, whether or not they occur.
631. In some instances, it may be better Value for Money to share the risks of changing standards. This may be done in a number of different ways, which include one or more of the following:
- A formula (e.g. fixed percentages of cost allocated to each party);
 - Capping the costs of change to both the Authority and the Contractor;

- Negotiation at the time of the occurrence of the change within a pre-agreed framework;
- Both the Authority and the Contractor bearing the risks at different points in the Contract.

Compliance with standards

632. The Output Specification must dovetail with the Authority's Payment Mechanism. The Contractor will be expected to bear the risk of non-compliance with the agreed performance standards and targets. If lower standards or targets are achieved, deductions may be made to the Unitary Charge. Clearly, there also needs to be a mechanism so that if the service falls below certain given levels, further consequences follow, including for example, termination of the Contract.
633. A practical form of performance monitoring needs to be agreed which minimises disputes and is not expensive or excessively time-consuming for the Authority or the Contractor.
634. As part of the Contractor's response to the ITN, Authorities should seek details of the Contractor's proposals for performance monitoring and quality management in order to demonstrate how the delivery and continuity of services is expected to be achieved over the life of the Contract. The onus should be on the Contractor to develop a self-monitoring system, with the Authority requirement being for exceptional reporting and the audit and inspection of such arrangements.
635. As part of developing the ITN, the Authority will need to make sure that the Output Specification, monitoring arrangements and Payment Mechanism will interact with each other.
636. The key 'client' will normally be Authority officers (together with key stakeholders) and designated representatives. In measuring customer satisfaction, however, views of constituents should be taken into account as well, where practical.
637. Views on customer surveys are divided, but they should be promoted. The overall perception of service delivery will undoubtedly influence the relationship between the service user and the Contractor, either favourably or detrimentally, and hence will affect the way in which the Contract is enforced. Customer surveys are therefore a valuable tool for the purposes of informing a debate between the Authority and a Contractor as to the effectiveness of service delivery.

Bidders responses to the Output Specification

638. Authorities will need to determine, as part of developing the Output Specification and ITN, what information will be required from Contractors as part of the ITN Bid submission. It is likely that such information will fall in to two categories:
639. Information that will be used for both bid evaluation and will also become contractual (i.e. will be inserted as schedules to the Contract)
640. This can be achieved by requesting contractual Contractor's Proposals (or Works and Service Delivery Plans) that will become a schedule to the Project Agreement, and requesting Method Statements on other aspects of the service that may form an important part of the technical evaluation process and become contractual but with scope for change by the Contractor with the Authority's consent.
641. Authorities should aim to seek Service Delivery Plans that demonstrate how the services are to be provided and delivered at the required standards, and it is

important that the ITN makes clear the level of detail required. In order to cost bids properly, Bidders will need to develop a high degree of detail in terms of their Proposals for the manner in which they intend to provide and deliver the Services. The technical evaluation and due diligence process will need to appraise the Bidders responses, and the Authority will need to assess the deliverability of the solutions proposed.

642. There will undoubtedly be aspects of the Output Specification that need clarification. Clarification meetings with the Bidders between the issue of the ITN and the date for bid return are therefore vital to avoid any misinterpretation. The clarification meetings are a useful way of ensuring that Bidders address those Output Specification related aspects of the Invitation to Negotiate in the right level of detail, and in a way that allows a robust technical evaluation and financial appraisal.
643. For evaluation purposes, Authorities should request the following from Bidders responding to the Output Specification:
- A set of Contractor's Proposals documents that will comprise in part the following:
 - Where applicable scale drawings showing the whole new build scheme;
 - Specifications for all elements of proposed works, identifying materials, manufacturers and quality as appropriate;
 - A comprehensive programme of works, graphically demonstrated, including critical path analysis, with particular emphasis on any required approvals, and highlighting any likely disruption to residents;
 - Supporting details describing the management and communications protocols of the processes on site from commencement of contract to final commissioning and handover;
 - Service Delivery Plans for the proposed FM delivery methods for the support service provisions;
644. Supplementary Method Statement details such as the following:
- A written commentary on the design and/or refurbishment approach;
 - Health and safety method statement;
 - An elemental cost breakdown, cross-referenced to the specifications, produced in spreadsheet format; life-cycle cost analysis in spreadsheet format;
 - Details of life-cycle maintenance and replacement programmes for all major materials, elements, equipment etc.;
 - Method statements on integration of design disciplines and FM expertise, on planning and management of the design process, and on delivery of FM services.
645. In order to cost bids properly, Bidders will need to develop a high degree of detail in terms of their proposals and service delivery plans for the manner in which they intend to provide the works and deliver the services. An Output Specification on its own is not enough for costing purposes.

646. The Bidder's proposals should demonstrate realistically how the works are to be provided and services delivered at the required standards. The ITN should make it clear to Bidders that they do not have to be hidebound by the Output Specification in that they could, for example, offer a better service within the affordability envelope, and may also highlight areas for discussion where:
- The standards appear *prima facie* undeliverable and/or unaffordable;
 - Risk management needs to be considered further;
 - The outputs require clarification.
647. There will undoubtedly be aspects of the Output Specification that need clarification. Milestone meetings with the Bidders between the issue of the ITN and the date for first responses are therefore vital to avoid 'blind alleys'. There may be reluctance on the part of Bidders, particularly in the more competitive bid phase, to spend very much time addressing production of Contractor's Proposals and Service Delivery Plan documentation. The milestone meetings are a useful way of ensuring that they address those Output Specification-related aspects of the ITN in the right level of detail, and in a way that allows robust evaluation and financial appraisal.

The impact of the Best Value legislation

648. Following the introduction of Best Value obligations on local authorities, requiring authorities to strive for continuous service improvement, Local Authorities should carefully consider how such requirements may in turn be captured within the scope of their individual PFI/PPP projects. Such inclusion would ensure Local Authority Best Value targets for Council services are matched in the services provided under the PFI/PPP Contract.
649. The Authority might be in a position to express some of their current Best Value requirements within the Output Specification that can be deemed to be applicable to the construction, refurbishment and service provisions offered by the Contractor that mirror requirements of the Authority through Best Value. The Authority should note that such requirements should meet the following two requirements:
- The Best Value requirements need to be appropriate to a PFI/PPP Contract.
 - The Best Value targets should be measurable.
650. The Authority should be mindful of the fact that their Best Value targets are likely to change during a PFI/PPP project's concession period and therefore there should be scope to include changes by agreement between parties during this period.
651. It is suggested that Bidders should be requested to identify how they will achieve ongoing service improvements in line with the ethos of the Best Value legislation, and that they should be advised that Best Value will be taken into consideration in the evaluation of bids.
652. Furthermore, the Authority should include an express statement regarding the Contractor needing to acknowledge that the Authority is subject to a Best Value Duty and will endeavour to seek continuous improvements during the operational phase having regard to economics, efficiency and effectiveness.

Relationship with other contract documents

653. The Output Specification is produced as a separate volume in the ITN documents. It remains, however, inseparable from other key documents. In particular, the Output Specification needs to be cross-referenced appropriately to:

- The Contract (or Project Agreement);
- The payment mechanism and the performance monitoring regime;
- The risk matrix which sets out proposals for risk allocation;
- Instructions and guidance to bidders.

Section 3: Developing the Output Specification

Who produces the Output Specification?

654. In developing the Output Specification, Authorities should be able to draw upon their experience of standard setting in other tendering exercises (such as management contracts and competitive compulsory tendering) but technical advisors may need to be recruited to assist if appropriate in-house resources are not available.
655. The production of the Output Specification should involve all members of the project board, including any technical advisors and other relevant stakeholders. Involvement and discussion are likely to result in wider ownership of the end product, and thus contribute to a better partnership.
656. Those who may need to be consulted include:
- Stakeholders who will jointly occupy the Joint Service Centre with the Authority;
 - Authority's property/capital/architectural advisers;
 - Lawyers;
 - Procurement experts;
 - Union representatives;
 - Authority's Planning Department (where relevant).

How to prepare the Output Specification

657. Authorities are adopting a number of approaches to developing the Output Specification:
- The most obvious solution for a Joint Service Centre scheme is to use, at least as a starting point, the model Output Specification included in this Procurement Pack
 - Workshops or brainstorming sessions, involving the project board and other relevant stakeholders, provide a vehicle for engendering shared ownership of the end product and for achieving consensus on realistic, affordable outputs. It can be helpful to use an external facilitator (with the appropriate skills and experience) for these sessions.
658. An informed and experienced facilitator may encourage more lateral thinking, can provide the necessary focus, and act as broker to reconcile any differences. When running a workshop, Authorities may choose not to do any preparatory work but to start from a blank piece of paper. Alternatively, they may use some initially drafted thoughts (such as the model included in this Procurement Pack) as a basis for the discussion.
659. Another approach, but one that is compatible with the use of workshops, is to start off with the existing service specification. At the outset it may be easier for many of the stakeholders to think in terms of inputs and this may therefore be a suitable way of kick-starting the Output Specification process. Care must be taken, however, to ensure that whilst there may be a need for some fixed inputs where the Authority will

have some fixed views to guide Bidders the end product does not retain unnecessary or unsuitable inputs.

660. The recommended approach is to use the model Output Specification included in this Procurement Pack as a starting point and to 'workshop' the refinement/development of the Output Specification to ensure that it meets circumstances, service delivery arrangements and the Authority's own particular needs.
661. Production of the Output Specification invariably takes longer than expected, so it may be helpful to build in some contingency time to the initial stages of the procurement process.

Inputs versus outputs

662. Care should be taken to avoid a totally purist approach to drafting the Output Specification which could leave Bidders second-guessing what is wanted. Such an approach may leave to chance (and therefore error) more detailed aspects which are seen as absolutely non-negotiable by the Authority, but which have been deliberately omitted because they may be seen as inputs.
663. Pragmatic compromises can be made as to the balance between the inputs, intermediate and final outputs, and the parameters and standards specified. In moving away from outputs, the Authority needs to consider whether the change in emphasis materially compromises risk transfer; stifles creative thinking; limits future changes; or potentially affects Value for Money.
664. For example, it would be acceptable to state that smoke alarms are required as they are a pre-requisite to meet health and safety requirements. It is not appropriate to require that the smoke alarms be replaced on a monthly basis, as it is the responsibility of the Contractor to determine the quality and replacement cycles for such items.
665. In this example, it is better to take the 'input' approach for smoke alarms at the Output Specification stage rather than have to include them later. It is not an issue that will significantly affect risk transfer and can therefore be included.

Determining and defining outputs

666. The following questions provide a useful framework for determining and defining outputs:
- What are the objectives of the standards and services to be provided?
 - In the light of these objectives, what is definitely not wanted?
 - What is negotiable (e.g. is IT one of the services provided or not)?
 - What is the level and standard of property management and service that must be delivered?
 - What is desirable over that level and standard, if affordable?
 - What service parameters are immutable/discretionary?
 - How do services and outputs rank in terms of functional criticality (i.e. where are the main risks)?

- What is likely to change over the life of the Contract and what are the potential drivers? How can such changes be allowed for in the specification, where necessary?
- Is it possible to translate the specified standards into performance measures within the payment mechanism?

Phasing and timing of developing the Output Specification

667. The development of the Output Specification can be phased to reflect the various stages of the procurement process. A draft Output Specification should be produced at the OBC stage to:
- Set out the objectives and requirements of the project;
 - To inform the financial modelling of options; and
 - Reflect the outcome of any market-soundings.
668. It can then be further developed once Member approval for the project had been conformed which, in most instances, will be tied in with approval for the project through the PRG.
669. An outline of the Output Specification should be incorporated in the Information Pack, for issue as part of the pre-qualification stage of the procurement process. This gives confidence to the Contractor that the Authority is committed and knows what it is doing. The Output Specification should then be refined following the short-listing stage, taking into account ideas generated during the short-listing process, and incorporated into the ITN.
670. It is acceptable to refine the Output Specification following issue of the ITN documents, under the influence of views received from Bidding Contractors. The overall form and approach, however, must not change significantly because of the need to comply with public procurement rules in terms of fair and transparent competition.

Section 4: Achieving Design Quality

671. Ensuring the design of a facility is suitable for its intended purposes as well as sustainable and therefore capable of meeting future anticipated needs is a key requirement for all accommodation schemes. Its importance to the success of JSC schemes is more profound given the complexity of such facilities since any design should be developed in a manner so as to enhance service integration between the variety of Contractors occupying the facility, many of whom may change over the term of the arrangement. For this reason authorities together with their partners must ensure their specification contains designs which comply with guidance concerning sustainability, durability, energy efficiency as well as permit flexibility so that such facilities are capable of adapting to meet future needs.

Better Public Buildings

672. The government has placed increasing emphasis on design and quality as evidenced through its commitment to achieve better public buildings. Reference to the following guidance should be made by authorities and their partners embark upon the development of the output specification to ensure the facilities they are seeking to procure are sustainable:
- ODPM/CABE document *By Design: Urban Design in the Planning System Towards Better Practice* aims to guide Local Authorities and their partners in delivering better design.
 - OGC How to achieve Design Quality in PFI Projects;
 - CABE Local Authority Design Champions
 - CABE *Improving Standards of Design in the Procurement of Public Buildings*, October 2002,
 - NAO *Getting value for money from construction projects through design: How auditors can help*
 - 4ps *Achieving Quality in Local Authority PFI Building Projects*.
673. It is particularly important that every member of the project team is aware of and supports the key role that good design plays in the successful realisation of development. Key design objectives include the provision of safe, secure and attractive public spaces, adopting appropriate and integrated strategies for dealing with traffic, servicing and parking, successful connection with the existing social and urban fabric, working with the landscape, providing a rich and sustainable mixture of uses, tenures and densities, managing economic investment so that long-term financial aspirations are achieved, and creating flexible and adaptable buildings that are energy and resource efficient.
674. The PFI general criteria also require that all projects adopt an integrated approach to the sustainable development of the social, environmental and economic well-being of the area, now and for future generations, in line with the OGC guidance note *Green Public Private Partnerships*. A *Code for Sustainable Buildings* is being developed in response to the recommendations in the report of the Sustainable Buildings Task Force *Better Buildings - Better Lives*.

What is Design Quality?

675. The design of facilities is not just about appearances- it is an expression of how well the facility operates and meets or exceeds the needs of clients and users. Good design is implemented through an effective procurement process, a well-managed construction phase, and continues through the operational period of the PFI contract as a cost-effective life-cycle approach. Generally, happy stakeholders are a symptom of good design.
676. A well-designed building is likely to exhibit “commodity, firmness and delight”. In other words: user satisfaction on the practical level of “does it work?” ; safety, soundness and skilled specification and construction ; and last but not least a degree of pleasure imparted to users through the use of imagination or innovation. It is not unreasonable for Departments to expect that Authorities and their projects will strive to deliver these qualities in public buildings of all types.
677. Good design implies the achievement of results that exceed the expectations of the client. Many projects do not achieve this as regularly as they should. Criticisms fall into several categories:
- Failure of dialogue between the parties to explore the brief thoroughly, for example, stakeholders thought they wanted one thing but discovered that this was at the expense of something else
 - Failure by the client to specify clearly and by the Contractor to clarify requirements, for example, a hard instead of soft landscaped area
 - Subjective assessments by individuals, for example, inappropriate colour schemes
 - Failure by Contractors to apply suitable expertise or imagination to solution of problems, for example, uninspiring internal spaces or external appearance
 - Failures by the Contractor to meet the stated Output Specification, for example, inadequate natural lighting levels
 - A decision by the Contractor to reduce the level of investment, for example, furniture with limited life
678. The guidance in this Procurement Pack is therefore intended to apply the lessons of this experience to the procurement process for PPP and PFI building projects.

Critical design factors

679. Design quality is determined by the combination of factors and is not confined solely to the input of the architect. The Local Authority has a significant ability to influence design quality by the manner in which it manages and documents the procurement process. A consistent commitment to design quality should inform the whole project from the outset.
680. Critical factors in this include:
- The experience of the project team
 - The quality of external advice

- The aspirational and practical briefs
- Statutory parameters
- Third-party and shared use
- The reference design
- Design quality indicators and evaluation criteria
- Physical characteristics of the site
- Planning parameters
- Time available
- Cost limitations
- Management of the process.

The project team

681. The strength and experience of the client project team will play a significant part in determining the outcome in terms of design quality and functionality. A commitment to achieving design quality should be a factor in the selection of the technical advisors.
682. The Local Authority should consider identifying a design champion at a senior level. Where a Local Authority has an established Cultural Strategy there will be opportunities for integrating the project into its overall objectives.

External advice

683. External advice may be available from CABE (the Commission on Architecture and the Built Environment). Where a Local Authority has limited resources or experience it may be prudent to consider appointing a design advisor to assist with the preparation of the brief.
684. An Architect should be employed to carry out feasibility studies to inform development of the PSC, Reference Project and OBC. The Architect should be selected on the basis of his/her ability to deliver quality design, preferably with a track-record in the sector. The RIBA Client Advisory Service can assist in identifying a short-list of suitably experienced practices.
685. The Local Authority should consider consulting other Local Authorities that have carried out similar projects. In addition, it is suggested that the project team visits other completed projects at an early stage in the developmental process to learn from their experience.

The Aspirational brief

686. Creation of a 'vision' for the project is an iterative process that will continue into the preparation of the Output Specification. Nevertheless the essential elements of the

vision should be in place at the business planning stage, and be supported by all of the project stakeholders. However, in developing the vision, care must be taken to ensure that the Local Authority is not responding to stakeholders and unintentionally planning to specify a higher quality of design than is currently being delivered in similar projects, and can ultimately be afforded.

687. Some sponsoring departments maintain details of previous PPP and PFI projects that are examples of good practice and that will assist Local Authorities in this process. 4ps may also be able to assist identifying appropriate examples.

The Practical Brief

688. It is essential that the requirements of the Output Specification meet the requirements of the prospective users and the Local Authority, and are achievable within the constraints of any Departmental standards. If the Output Specification does not match the assumptions made in the OBC, Bidders will look to achieve savings elsewhere, often at the expense of design quality.
689. Where it is assumed that existing buildings are to be retained, consideration should be given to the 'fit' of the existing spaces and the brief in order that any current deficiencies are reflected in the OBC. Professional advice will be required to establish the likely costs and benefits of renovation or demolition.

Third-Party and Shared Use

690. Where the Local Authority is seeking funding for additional facilities, the availability of funding should be confirmed at an early stage. Subsequent removal of these elements at a later stage in the project may have a serious impact on the design.

The Reference Project

691. The scope of the reference design will depend on the particular circumstances of the project. As a minimum it should be sufficient to establish the viability of the brief on the site selected and provide a basis for the PSC and Reference Project. Its scope may extend to Outline Proposals to RIBA Stage C, in which case it will have received the in-principle agreement of all major stakeholders. A minimum Reference Project will serve the purpose of ensuring a realistic budget and compliance with any Departmental requirements.
692. An expanded Reference Project will provide a benchmark for functionality and design quality against which subsequent bids can be measured. The Reference Project can be used as a basis for initial discussions with the Planning Authority and obtaining outline planning consent.

Design Quality Indicators and Evaluation Criteria

693. Consideration should be given to the individual components of design quality from the outset. The Construction Industry Council (CIC) has established Design Quality Indicators (DQI). These are structured in a manner that lends them to development during the briefing process. Although they need not be complete until the issue of the Output Specification, the quality framework provided by the DQI could usefully be incorporated in the OBC.
694. The DQI could also be considered as criteria for the subsequent evaluation of Bidders' submissions.

Physical Characteristics of the Site

695. The project vision should include an appreciation of the essential physical characteristics of the site and its surroundings, including aspect, orientation, topography, microclimate and natural setting. Bidders should be made aware that their proposals will be expected to respond to these physical characteristics of the site. 'Abnormal' costs arising from site conditions should be identified within the Reference Project.

Planning Parameters

696. Early consultation with the Planning Authority is essential to determine the viability of the proposals. Issues such as location of buildings, access, and height, parking requirements or choice of materials may all have a major effect on the design and cost. Where appropriate, a planning brief should be obtained at this stage in order to inform the subsequent bid process.
697. Traffic management measures may be required in connection with new buildings. Initially the Local Authority's highway department will give advice. The cost of these may be substantial. Unless identified at OBC stage, subsequent cost savings could impact on the design quality.
698. Ideally an outline planning consent should be in place before commencing the procurement process in order to avoid potentially abortive costs and delays.

Time

699. Time for design is an essential factor in achieving quality. Adequate allowance should be made in the programme at the OBC stage, not only for design during the ITN stage, but also between Preferred Bidder Stage and Financial Close when the detailed design work will be carried out. The time allowed in the OBC for developing the design at these stages will have a significant effect on the overall quality. For the majority of schemes, a minimum bid period will be four months; this generally allows the design teams three months for design and consultation before bids are priced.

Cost

700. Good design should add value; it does not necessarily have to cost more. However, an inadequate budget will adversely affect design quality. The thoroughness with which preparatory work is carried out at OBC stage will directly affect the design quality of the finished project.

Managing the process

701. In an active PPP/PFI market those Bidders most likely to achieve quality will be seeking projects that are professionally managed, with respected advisors, a robust OBC, adequate funding and a well structured Output Specification. Bidders will look for a clear vision for the project with realistic and achievable quality objectives. Similarly the efficiency with which documentation, consultations and queries are managed by the Local Authority will assist the Bidders and their consultants in managing the design process.

Checklist

702. The following checklists identifies questions which central government departments will be asking when they receive Outline or Full Business Cases to ensure proposals adequately address issues concerning design quality, energy efficiency and sustainable development:-
703. Does the authority have a track record of well-designed buildings? Has the Authority appointed an overall local authority Design Champion?
704. Where more than one site is available, have design/sustainability issues influenced the choice of site, and has the context influenced the approach to design?
705. Are stakeholders involved in deciding on design/sustainability issues? (have sustainable development indicators been included in the specification?)
706. Is there evidence of adherence to the Egan objectives in the scope of the project? For example:
- Cost reductions in construction as a result of smarter procurement processes (eg management of supply chain)
 - Reduction in accidents on site
 - Construction workforce improvements- "Respecting people" `agenda
 - Use of off-site construction for elements of project
 - Has the authority considered nominating the project as a Demonstration Project?
707. Are external design advisers (eg CABA or appointed client-side firms) being used?
708. Has the Authority produced clearly stated design quality and sustainability criteria which are in the OBC, and will be sent to bidders in an Information Memorandum?
709. Is the intended quality affordable? Does the reference scheme adequately reflect the standards required in the PFI scheme? This will generally be a matter of judgement, but comes down to the question has the Authority underestimated the cost of achieving the standards they require?
710. Has adequate time been allowed in the Authority's procurement programme for quality responses to be produced by bidders, especially for grouped projects?
711. Have any potential environmental risks - and possible ways to manage these - been identified in the risk register?
712. Has an environmental impact assessment been carried out? eg using BREEAM (Building Research Establishment Environmental Assessment Method)

Section 5: Key Points for a Joint Service Centre Scheme

- 713. The Output Specification should aim to detail what needs to be achieved, not how it is to be achieved.
- 714. The Output Specification must fit with other parts of the ITN and be consistent with other documentation, in particular the payment mechanism and proposals for monitoring.
- 715. The Output Specification should not be too ambitious but should take proper account of what the Local Authority is prepared to fund, and of overall affordability.
- 716. Whilst it is important to specify that services must be capable of improvement and modification in the future (such as following a Comprehensive Performance Assessment or Best Value Review), Local Authorities should take account of the fact that complete flexibility is likely to be very expensive and counter-productive.
- 717. Input-driven requirements should be the exception rather than the rule, and only included after careful consideration of the consequences for value for money and risk transfer. A wholly purist approach to outputs, however, may be as problematical for Bidders as over-prescription.
- 718. What is **not** wanted should also be specified. This will ensure that all areas have been covered.
- 719. An Output Specification has to be well drafted and fully owned by the project team and other relevant stakeholders if it is to lead to successful long-term delivery of the services. Successful drafting can only be achieved if sufficient time and expertise are devoted to the task, as well as appropriate consultation undertaken.
- 720. Stakeholders need plenty of time to develop their understanding of PFI and PPP and to work on their contributions to key documents such as the Output Specification. Local Authorities should not underestimate the amount of time that is required for these purposes.
- 721. Strategic aims and objectives for the project should be clearly stated and used throughout the procurement process in order to test Bidders' proposals.
- 722. Information should not be drip-fed to Bidders in such a way that it makes it difficult to respond effectively. Bidders need to know, from the outset of the procurement process, how the Output Specification will be developed / refined at each stage of the process. The Output Specification should be completed for issue as part of the ITN.
- 723. Background information about existing facilities and services should be provided in a Data Room, but care should be taken not to warrant this information. Sufficient background data on the Local Authority's relevant policies and strategies should be included in the Data Room to allow Bidders to place the project in context, and to stimulate innovation.
- 724. Surveys of the condition of existing [insert details] are often made available to Bidders, but care needs to be taken over their status. Pre-existing survey data may not match the scope of the Output Specification, and Bidders are unlikely to accept newly commissioned surveys if they are expected to take latent defect risk in [insert details].
- 725. Design work carried out by the Local Authority in preparation for a joint service centre PFI/PPP project should be kept to a minimum. Problems can arise from the raised

expectations of a particular design solution and from separation of the design process from Bidders' consideration of life-cycle costs. Local Authorities should have available good technical advice to help in the evaluation of responses to the Output Specification.

- 726. The Local Authority should retain the right to audit the monitoring and quality management system adopted by the Contractor, and to inspect documents, and the work being undertaken on and off site. Audit and inspection procedures should be established with the Contractor.
- 727. Statutory requirements may differ according to whether they apply to existing or new services. Care should be taken to ensure that Bidders are clear on these issues, and that over, or under-specification, does not unwittingly occur.

DEVELOPING JOINT SERVICE CENTRES

PART B4

PFI – Payment Mechanism

Contents

Section 1: Objectives of the Payment Mechanism

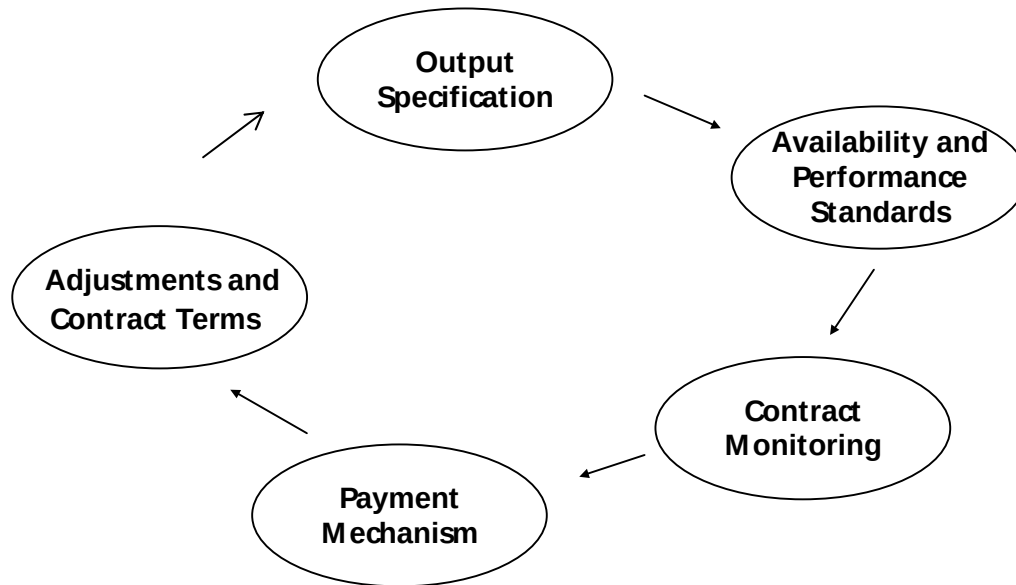
Section 2: Key Features of the Payment Mechanism

Section 3: Developing the Payment Mechanism

Section 1: Objectives of the Payment Mechanism

728. The Payment Mechanism for a Joint Service Centre PFI project will need to be tailored and structured to reflect the particular needs of the Authority and the relevant stakeholders, as well as the nature of the deal. For those involved in developing the Payment Mechanism, it is vitally important to see the 'fit' between the service requirements set out in the Output Specification, the Payment Mechanism, and the Contract monitoring regime, and to understand the different roles that the Authority and individual stakeholders will play in them.
729. The general objectives of the Payment Mechanism should be to:
- Provide a framework of realistic, challenging, but achievable performance standards for the Contractor to meet in order to secure the full unitary charge.
 - Provide an incentive to meet the standards set out in the Output Specification by placing payment of the unitary charge at risk if performance falls below the agreed standards.
 - Match payments to the outcomes and outputs that the Authority wishes to see delivered from the project.
 - Provide an incentive for the Contractor to rectify problems by escalating penalties for worsening performance, or failure to act promptly on items failing to meet agreed performance standards and targets.
 - Provide an incentive for the Contractor to innovate and secure efficiency gains and deliver Best Value throughout the period of the Contract.
730. Since the essence of a PFI arrangement is the procurement of a service, sub-standard performance in delivery of that service by the Contractor should result in reduced payment by the Authority or, in certain circumstances, no payment. The Payment Mechanism will, therefore, be fundamental to the PFI Contract, as it puts into financial effect the allocation of risk and responsibility between the Authority and the Contractor.
731. As the Payment Mechanism is there to ensure that the Authority's objectives for the project are being delivered, it should be linked to the outcomes and outputs for the project set out in the Output Specification. The Payment Mechanism should include appropriate incentives for the Contractor to deliver the service in a manner that provides Best Value, and promotes partnership working. The key to a successful Payment Mechanism will be its relationship to and integration with the Output Specification. It is important, therefore, that the Output Specification and the Payment Mechanism are developed in conjunction. The linkage between outputs, standards and the Payment Mechanism is set out below at Figure 41.

Figure 21 The Payment Mechanism and the Output Specification



732. The Payment Mechanism will determine whether and how much the contractor is paid at the end of every payment period designated in the Contract. In determining the appropriate service standards to be included in the Payment Mechanism, regard will need to be given to the measurement of the standards and the ability of the Contractor to influence and control the delivery of the service within those parameters.

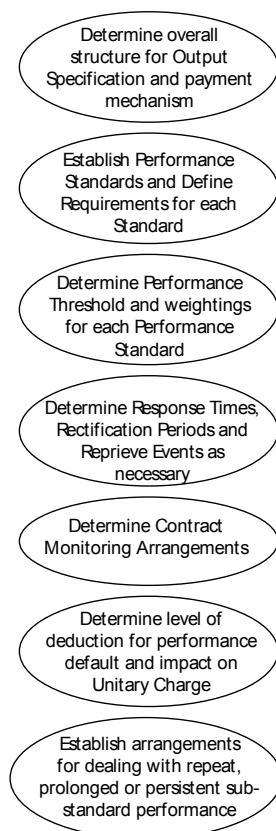
Section 2: Key Features of the Payment Mechanism

733. The Local Authority should make no payments to the Contractor until the service is available.
734. Payment should be made only to the extent that the service is meeting the performance standards set out in the Output Specification, and agreed in the Contract negotiations.
735. The payment mechanism should provide for deductions to be made for sub-standard performance so that the Contractor is worse off than if the required service had been delivered. Deductions should reflect the severity of failure, i.e. 'no service' should lead to 'no payment', but a minor failure should only cause at most a minor deduction, except in the case of prolonged and/or persistent failure, where a ratchet mechanism should be used to increase the level of deduction.
736. The key features of the Payment Mechanism can be summarised as follows:
737. The Payment Mechanism will need to reflect the obligations of the Contractor. This will be to bring up to and maintain the Joint Service Centre at an availability standard and provide a suite of associated services to all occupants.
738. Since the basis of the PFI is the procurement of a source the unitary charge should not be made up of sub-elements, which relate to the direct delivery of inputs, for example: the cost of materials and labour. The Payment Mechanism should never contain a fixed element that the Contractor always receives, irrespective of performance, such as a fixed payment that covers the Contractor 's service obligations.
739. The Payment Mechanism should flow directly from the availability and service performance requirements, as defined in the Output Specification. The Authority will pay the Contractor as services commence (i.e. the provision of service triggers commencement of payment) reflecting the extent of the Centre availability and services performance. Any transitional arrangements during the build period should be factored into this mechanism.
740. When drawing up the Output Specification and developing availability and service standards , it is important to ensure that:
- Service delivery itself must be capable of measurement.
 - The Payment Mechanism should be objective, transparent, and easy to operate.
 - Both quantity and quality of service are important, and both need to be capable of measurement.
 - Availability and service standards must be measurable, recordable, and reflect commercial reality.
741. There is also an important relationship between the Payment Mechanism and risk. The structure of the Payment Mechanism drives the allocation of risk between the Authority and the Contractor, and as such must deliver value for money.

Section 3: Developing the Payment Mechanism

742. It is important that appropriate consideration is given to the Payment Mechanism at an early stage in the development of a PFI project, and that payment parameters are developed that reflect commercial reality. As well as being an incentive for the Contractor to deliver the outcomes and outputs that the Authority considers are important, the Payment Mechanism must also be fair, and support the long-term partnership.
743. A preliminary view on the Payment Mechanism should be developed as part of the business planning process, ideally supported by soft market sounding of the initial proposals for the Payment Mechanism. At an early stage the Authority will also need to assess the likelihood of certain events arising, and from that determine a range of performance targets that are acceptable to both the Authority and potential bidders.
744. The initial approach developed as part of the business planning work will need to be refined for the ITN. An approach now being used by many Authorities is to develop a 'Payment Mechanism Paper' for inclusion in the 'Instructions and Guidance to Bidders' section of the ITN that sets out the Authority's proposals for the short-listed bidders in a clear and succinct way. The Payment Mechanism Paper should support the detailed proposals in the Output Specification and the Payment Mechanism schedule in the draft Project Agreement issued as part of the ITN documents. The bids received in response to the ITN should comment on the full effect of the Payment Mechanism in the Project Agreement.
745. The Payment Mechanism should be based on a unitary charge for the delivery of the whole service, it should not be broken down into separate elements for capital investment, operations and maintenance. Payments for availability that are completely separable from payments for the ongoing services do not sit comfortably with the aim of getting best value for money, as the inter-relationship between the availability of the assets and the provision of associated services is lost. Separating the components in this way is also likely to make it more difficult for the transaction to satisfy the risk transfer requirements.
746. There are a number of different ways in which to develop the payment mechanism for a Local Authority Joint Service Centre PFI project. Local Authorities are encouraged to consider the models in this Procurement Pack and adapt these to reflect the aims and objectives of the Local Authority and other stakeholders in the PFI project.
747. Joint Service Centre projects have typically focused on a series of performance standards that effectively merge the availability and performance components. These performance standards have typically been developed alongside the Output Specification for the project to ensure a clear linkage between the Output Specification, performance standards and the payment mechanism.
748. An overview of the approach used to develop the payment mechanism for a Joint Service Centre project is shown in Figure 42.

Figure 22 Overview of the Payment Mechanism for a Joint Service Centre Project



Performance Standards

749. Payment of the maximum possible level of the unitary charge should be conditional upon the satisfactory performance of the Contractor. The Output Specification and payment mechanism should, therefore, set out:
- The level or target of performance required.
 - The means by which the Local Authority is able to monitor the Contractor's performance against the required target.
 - The consequences for the Contractor of a failure to meet the required level or target.

Setting the Performance Targets

750. In setting the Service Performance Standards for the Output Specification and Payment Mechanism, the Authority should focus on the level of performance expected against each service strand.
751. In producing suitable performance targets, the Authority should assess how realistic the achievement of the performance target would be to a Contractor who will be taking the risk of poor performance deductions. This will be a key determinant in the assessment of optimum risk transfer, affordability and value for money.

752. Full payment will depend on the level of performance being met and consequently the Contractor, its sub-contractors, its equity providers and senior lender will wish to ensure that the targets set are specific, objective, measurable and reasonable. These criteria will help to ensure that the Payment Mechanism provides a fair and transparent means for making both payments and deductions.
753. In consideration of what constitutes reasonable performance, the Authority should assess what would be the optimum performance target. In doing this it should take account of whether it would be realistic and cost effective for a Contractor to deliver its performance at this target over the life of the project, for example setting the performance for full payment at 100% performance is likely to be unrealistic and costly. In determining the relevant performance targets, a balance needs to be struck between value for money and the standards required.

Prioritising Service Performance Standards

754. The Authority should allocate different weightings to different performance standards in accordance with the importance of that standard in the delivery of the overall service. Failure to perform an aspect of the service will result in a payment deduction that is commensurate with the relevant weighting. Repeated sub-standard performance will lead to increased deductions through a ratchet mechanism. The financial consequences of sub-standard performance should depend on the criticality level, as some will be more critical to the provision of the overall service than others.
755. The Local Authority and other stakeholders in the project will need to determine which aspects of the service are most important and allocate them a higher weighting, and therefore make a greater deduction from the unitary charge if there is sub-standard performance. The financial consequences of sub-standard performance of an aspect of service should depend on its criticality level, as some will be more critical to the provision of the total service than others.
756. The effect of weighting can also be achieved through - or, exceptionally in conjunction with - other means, for example, by allowing shorter rectification periods for key aspects before the Contractor suffers deductions.

Rectification Periods

757. Any number of specified events could give rise to the sub-standard performance of a particular aspect of the service. For certain performance standards the Contractor may be given a rectification period in which to resolve the problem, dependent on the event. If the problem is left unresolved at the end of the rectification period, that particular aspect of the service will be deemed to not meet the performance standard, and payment should be reduced accordingly.
758. How long the rectification period should be (for example, one hour or twelve hours) will depend on the criticality of the aspect of the service. The Local Authority should consider carefully any requirement for rectification periods, taking into account tolerances already built into the performance targets, and considering those events which lead to immediate sub-standard performance and those which do not, but which provide an opportunity for rectification prior to failing to meet the performance standards.
759. For those performance standards that include a rectification period, the Local Authority will need to identify the potential events and allocate to each a rectification period or priority weighting.

760. Where an aspect of the service is not meeting the required performance standards, both parties should use all reasonable endeavours to minimise the inconvenience caused to the users of the service.
761. If the Contractor rectifies the failure within the relevant rectification period, the performance target should be deemed to have been met and no deductions should be made. If the Contractor fails to rectify the failure within the relevant rectification period, deductions should be made from the unitary charge.
762. In certain instances a fault may take time to permanently rectify. If the Contractor has actioned an effective temporary repair and placed an order within the rectification period with a date for permanently rectifying the fault, no deduction should be made. However, if the fault is not permanently rectified by the agreed date, deductions should be made from this date.

Service Commencement

763. A fundamental principle of PFI is that payment of the unitary charge should not be made until the Contractor commences services.
764. Both charges levied by the Contractor and payment made by the Authority will be commensurate with the level of service provided, e.g. a Centre that meets the full performance standards will yield a higher charge as it represents the costs to the Contractor of achieving the full standard.
765. The Authority will not be obliged to pay the full unitary charge on part of the Joint Service Centre which has not met the relevant performance standards. Similarly the Contractor will also be required to protect the Authority from the Contractor achieving the full standard quicker than anticipated within the financial model, as this may create affordability issues for the Authority.

When does Unavailability and sub-standard performance commence?

766. The Payment Mechanism and Output Specification should set out exactly at what point unavailability and sub-standard performance commence which, depending on the tolerances within the performance targets, will lead to the deduction of payments made to the contractor.
767. For breaches of performance standards, unavailability will commence from the first point of notification of the breach (i.e. Contractor self-notification or notification through the helpdesk) up until the day of rectification. The reason unavailability is measured from the date of notification rather than the end of the rectification period is that the rectification period is not a deduction holiday but rather the allowance of a reasonable period to the Contractor to remedy the breach. If the breach is not remedied by the end of the rectification period, the entire period since notification should be considered in the calculation.
768. The amount deducted will be based on the number of days the Centre or the relevant part of it was deemed to be unavailable. Depending on the length of unavailability the payment deduction will increase through the use of a ratchet mechanism.
769. There may however be a number of excusing events that the Payment Mechanism will include that would mean no deductions are levied against the Contractor. This may arise where, for example, the Contractor is denied access to the Centre or where an Authority is in breach of its obligations.
770. Where sub-standard service performance has been recorded, payment deductions will only occur where the severity of the sub-standard performance has meant that the

target performance is no longer met. The level of the deductions will be commensurate with how far the sub-standard performance has deviated from the target performance. The payment deductions will also be determined by the level at which the target performance has been set and the level of tolerance that the contractor is allowed before deductions are made.

- 771. The Payment Mechanism should also provide for consistent sub-standard service performance by including a ratchet mechanism on deductions where the Contractor has consistently failed to achieve the target performance.
- 772. Deductions by the Local Authority for sub-standard performance should be excused if it is caused by Local Authority step-in, for example to deal with a serious risk to the health and safety of persons or property (unless caused by the Contractor). The partnering arrangements and dispute resolution procedure should contain a mechanism to ensure a quick resolution of any disagreements.

Restoration of Performance

- 773. The Contract must include a mechanism for assessing when performance has been restored. This can be done by technology, and there should be an agreed procedure for both parties to be notified, particularly so that the Local Authority can, where necessary, confirm restoration.

Planned Maintenance

- 774. Regular maintenance will be necessary if the Contractor is to meet the performance standards set out in the Output Specification over the life of the Contract. The Output Specification should specify the periods when the service is to be delivered to the agreed performance standards. Any programme of planned maintenance should be agreed as part of the Contract negotiations so that it is clear which aspects of the service will be affected, and when the maintenance will take place.

Contract Monitoring

- 775. There must be a mechanism set out within the Project Agreement that enables the Authority to easily and effectively monitor the Contractor's performance so that the Payment Mechanism can operate in an effective manner.
- 776. A key aspect of the bidder submissions at ITN and BAFO will be to outline within the method statements how the performance of the Contractor will be monitored. The methodology should include a substantial element of self-monitoring by the Contractor, subject to the Authority having the ability to conduct compliance audits and inspection. The Authority should however have the right to undertake monitoring where the Authority has identified any breach of performance standards or sub-standard performance not reported by the Contractor.
- 777. Contract monitoring will involve the collection and evaluation of data that should be objective, relevant and quantifiable and agreed with the Contractor. There should be transparency between the information collected by the Contractor and the financial deductions made to the unitary charge. The Payment Mechanism should include provisions for financial deductions on the Contractor for making deliberate or careless mistakes in the reporting of monitoring and payment deductions.

Commencement of Contract Monitoring

- 778. The Project Agreement will need to state how the monitoring of the service provided will be carried out. Due to the complex nature and range of the services to be provided, there may be a requirement for a settling-in period or grace period for a time

post financial close. A settling-in period would still require the Contractor to monitor its performance against the Output Specification but would be set at a lower level for this settling in period.

779. The Authority should therefore make an assessment of whether a "settling in" period is required, how long it should be and how any breaches of the Output Specification should be dealt with.

Who does the Monitoring?

780. A key issue that needs to be determined is who will do the contract monitoring – the Authority, the Contractor, a partnership between the two or a third party? In Joint Service Centre projects the monitoring should occur at three levels:
- Systematic contract monitoring by the Contractor through the use of a quality management system or automated monitoring process.
 - A review by the Authority of the quality management systems used by the contractor with certain planned and random spot checks (with an ability to increase monitoring for repeated poor performance or unavailability).
 - A system that enables users of the service to report instances of unavailability and sub-standard performance.
781. The optimum monitoring solution will require the co-operation of both the Authority and the Contractor. Where the Contractor is providing the information, the Authority should obtain a right of audit and inspection to confirm the information.
782. The Authority should also ensure that it has sufficient resources with people who have the relevant experience to manage and monitor the Project Agreement. Authorities will also need to bear in mind their CPA and Best Value obligations, and ensure that the Contractor is willing to assist the Authority to meet these wider strategic objectives, including assistance with any audit and inspection of the contracted services.

Who pays for the monitoring?

783. Monitoring arrangements impose obligations on the Contractor which may cause concern about any exposure to onerous obligations. It is therefore sensible for each party to bear its own costs of monitoring and this should reassure the Contractor that the Authority does not subject the Contractor to any unnecessary inspections and avoid any conflict of interest.

Addressing Qualitative Factors

784. Due to the level of service that is typical of Joint Service Centre projects, there will be a number of areas in which qualitative aspects of the service will be difficult to apply through the Payment Mechanism on an objective basis but which are still important to the stakeholders of the service.
785. The qualitative aspects of the service are usually measured through the use of customer satisfaction surveys. This approach would need to complement the objective criteria used for service performance standards and not replace them.
786. Any financial deductions that are made as a result of customer satisfaction surveys will need to be a minor element of the unitary charge. This is because the performance and deduction regime should already be taking account of sub-standard performance.

Reporting the results of Contract Monitoring

787. The Project Agreement will need to specify the method in which information regarding the results of the monitoring is reported to the Authority. The key aspects of reporting will include the following:
- How timely are the reports, for whom they are agreed and in what format are the reports required?
 - How soon after the monitoring period should the report be presented to the Authority and/or other stakeholders?
 - Is there to be a standard monitoring form or IT capable format to present the results?
 - Is external assessment required of any performance monitoring arrangements?
 - How often are partnering and review meetings required between the Authority and the Contractor?
 - Is there a requirement for an annual service report to meet the obligations of the Authority with due regard to Best Value, CPA or contribute to the production of the annual Best Value Performance Plan or Customer Service Strategy?

Consequences of Sub-Standard Performance

788. The Contract must set out clearly the financial consequences of any failure by the Contractor to perform to the performance standards set out in the Output Specification. If the Contractor fails to perform to the agreed targets, there can be both direct and indirect incentives to remedy the failure:
- The direct approach involves immediate deductions from the unitary charge, reflecting failure against a performance standard. The Contract should contain sufficient incentives for the Contractor to rectify the fault, but sub-standard performance for a prolonged period could trigger a termination event.
 - The indirect approach involves sub-standard performance being addressed by the award of service or performance points, which will vary according to the severity and regularity of the breach. When the Contractor accumulates a certain level of service points, the consequence is a deduction from the unitary charge. Once performance deteriorates below a certain level, or a certain number of service points are accumulated, then a range of other incentives can be imposed, from formal warnings to, in extreme cases, termination for breach of Contract.
789. The Local Authority may use a combination of direct and indirect deductions to address failure. Care should be taken, however, to avoid unintended double counting of deductions in respect of the same failure. If a proportion of the project funding is being met from third-party revenues (such as from [insert details]), care will similarly be needed to ensure that there is no double deduction in respect of performance failures.
790. There should be a clear link between the seriousness of the failure and the potential financial impact on the Contractor. Local Authorities should avoid imposing arbitrary and punitive financial deductions that do not reflect the cost of rectification or are unlikely to offer Best Value.

Ratchet Mechanisms

791. In Joint Service Centre projects, it will be appropriate to have a ratchet mechanism to encourage the Contractor to improve performance if it is consistently below the agreed standard in relation to a particular part of the service, or if a specific failure is not rectified. This can be useful where the financial deductions that accrue are insufficient to provide an appropriate incentive on the Contractor to rectify the fault. Too complicated a regime can, however, be difficult to manage, and including onerous measures in the payment mechanism can lead to poor value for money. A key advantage of a ratchet mechanism, however, is that poor performance that continues for a significant period will be more difficult for others interested in the Contract (for example, the financiers) to ignore, encouraging early action by the Contractor.
792. A simple ratchet mechanism will work by increasing the level of deduction for a particular failure in the service that recurs too often within a specified period. For example, if x percentage is awarded for a failure to achieve a particular output then (x+3) percentage may be awarded for each failure over and above a specified maximum number of failures within a pre-defined period. It is of vital importance to tailor the ratchet mechanism to a particular project in a way that produces Best Value.
793. In establishing a suitable ratchet mechanism, the Local Authority will have to be aware of the effects a particular system has on the investment programme offered by a Bidder. A bid solution that is capital intensive up front, with reduced consequential life cycle costs, will have one optimum approach, whereas one with lower up-front capital costs but with higher life cycle costs will have a different optimum approach (i.e. they impact at different points in the respective financing plans). It is crucial for the Local Authority to understand what level of commercial 'pain' best will achieve the result desired by the Local Authority. An over-rigid approach during negotiations will reduce the scope for innovation by the Bidders, and reduce the potential for Best Value to be achieved. Care should, therefore, be taken to set the ratchet at a sensible level, and the Local Authority will need to decide whether to use a straight-line ratchet or an exponential ratchet.
794. It should not be possible for the Contractor to 'earn back' performance deductions retrospectively by performing above the standard required in subsequent periods. The required performance standard should be set at a level that is considered reasonable and achievable. If the Contractor is capable of performing at a consistently higher level, then the standard set will either be too low (for example, if the higher level does not offer any additional benefit to the Local Authority) or the Contractor may simply be performing very well and delivering a standard of service at a much higher level than the Local Authority expected. If the higher level of performance is of additional benefit to the Local Authority, then it may be appropriate for the Contractor to receive additional consideration over and above the usual unitary charge (if this is affordable and agreed).
795. Similarly, the Contractor should not be able to earn additional payment or additional service points for use to offset against performance failures in any given payment period. The Local Authority should not be prepared to pay more for improved performance on certain components or elements of the service at the same time that other elements of the service are not being delivered in accordance with the Output Specification and performance standards negotiated.
796. However, if a service points mechanism is used it should, after a certain time, disregard points accrued in circumstances where the relevant thresholds for warnings and deductions have not been reached or, if reached, have been dealt with in

accordance with the payment mechanism and Contract. This is often achieved through the use of a 'rolling points' methodology.

Dealing with Persistent Breach

797. There are various ways of dealing with the persistent occurrence of minor defaults but the recommended approach is to impose service points in respect of all types of minor defaults. This is a particularly effective means of incentivising the Contractor when coupled with a right to terminate the Contract if the total number of service points accrued exceeds a certain level.
798. It may not be feasible in every case to negotiate an all-encompassing service point's regime. This could leave the Local Authority exposed to a situation in which minor breaches are occurring persistently or being left un-remedied, but as they have no effect on the unitary charge, the Local Authority will have little ability to influence the Contractor to perform. It may in fact happen that it is cheaper for the Contractor not to perform, and suffer the deductions. If such circumstances are likely to exist, the Local Authority should retain a right to terminate the Contract for persistent breach rather than trigger termination following accrual of a certain number of service points. The Contractor and its financiers will be anxious to avoid a 'hair trigger' default, and will wish to ensure the mechanics relating to this default are as objective as possible.
799. Where such a process is necessary, the Contract should include a warning procedure through which the Contractor is served a formal preliminary notice that a certain type of breach has been persistently occurring during the service period (the Contractor should in any case be aware of such breaches already). If such breach continues to occur persistently in, say, 12 months following such notice (allowing a short rectification period), a final notice is served warning the Contractor that any further single occurrence of such breach in, say, the following six months, will entitle the Local Authority to terminate the Contract. This then gives the Contractor a final opportunity to remedy. Once a termination notice is served for a persistent breach, the Contractor should not be entitled to any further rectification period, although the provisions of the direct agreement will still apply.

Testing the Proposals for the Payment Mechanism

800. The Local Authority will need to have, at the ITN stage, firm ideas of the arrangements to be used for the payment mechanism. In developing the Payment Mechanism and Contract drafting (ideally using the models included in this Procurement Pack), Local Authorities will need to test the proposals as they are developed, including the use of market sounding or deal testing at the OBC stage, sensitivity modelling, and to assess the bankability of the proposed solution. This testing should be done before the ITN is issued to Bidders.

Market Sounding or Deal Testing

801. It is important that some informal market soundings or deal testing be undertaken as part of the business planning process (within the confines of the Procurement Regulations) to determine the appropriateness of the payment mechanism proposals. This market sounding or deal testing should ideally be undertaken as part of the wider discussion of the proposed project, covering issues such as scope, objectives, options appraisal, costs, use of BVPIs and LPIs and procurement arrangements. Authorities may wish to issue a Prior Information Notice (PIN) to commence a market sounding exercise.

Sensitivity Modelling

802. It will also be necessary to model the effect of combining selected performance parameters in different proportions to see what combinations meet the Local Authority's objectives, and the relevant PFI criteria requirements such as the off balance sheet test in FRS5. This can be a complex modelling process that can only feasibly be undertaken for a small number of possible payment parameter combinations. However, it may be possible to reduce the scope of the modelling work by relying on the experience and conclusion of work already carried out on other Joint Service Centre projects.
803. To carry out this modelling work, information will be required on expected future levels of each performance parameter over the life of the Contract; probability analysis is then needed to assess the impact of the future levels. The parameters need to be assessed on as realistic a basis as possible, taking account of all the factors which could influence their future levels. The expected future levels will need to be assessed for year one of operation, and for several future years in the life of the Contract.
804. The more closely defined the shape of the probability curve, the easier it should be to assess the impact of various payment scenarios. However, the assumptions that underpin the probability distribution of the scenarios need to be soundly based and justified by trends, forecasting models, experience elsewhere, and capacity constraints. If the Local Authority and its financial/technical advisors do not have the information to allow a sensible probability distribution of future levels to be predicted, then the suitability of the parameter for inclusion in the payment mechanism will need to be carefully considered.
805. Some Local Authorities have successfully operated a version of their Output Specification and payment mechanism on the existing service for a short period to help with this modelling work.
806. Local Authorities are advised to include worked examples for the proposed payment mechanism, ideally for each of the performance standards, in the Payment Mechanism Paper issued to the Bidders as part of the ITN.

Bankability

807. Experience has shown that it is perfectly possible to finance unitary charge systems, provided the payment mechanism is objective, reasonable rectification periods are included, and deductions are appropriately weighted. Financiers will typically expect the deductions for sub-standard performance to be accommodated within their financial model runs, which show the sensitivity of the financing to various events. Financiers will inevitably want to assess and minimise the risk of losing the whole unitary charge.

Variations to the Payment Mechanism

808. The Contract will set out the unitary charge for the entire Contract term. Due to the uncertainties of inflation rates and certain operating costs over a long term Contract, it is usually in the interests of both the Local Authority and Contractor to set out provisions for varying the unitary charge in certain specified circumstances. The Contractor should always be encouraged to control its costs, but if there are mechanisms for addressing unforeseeable changes in costs, the Contractor will not, for example, have to make such a significant provision for this risk in its bid price. Whilst the Local Authority should ensure it obtains a competitive price by holding a well-run competition, it will take additional comfort if there is some means of ensuring

the price it has agreed to pay in future years will not be in excess of future market prices for such services.

809. The Contract must achieve the right balance between the provisions for change in law, indexation and any benchmarking and market testing arrangements, as these are inherently interrelated, particularly in relation to the allocation of operating cost risk. For example, if indexation is based on the Retail Prices Index (RPI), the Contractor must either bear any cost increases in excess of RPI, or pass these costs to Sub-Contractors, either directly, or by managing them (for example, through market testing). In addition, a Contractor will be more willing to take risk in relation to certain changes in law if they have some protection through the benchmarking or market testing provisions. The Local Authority should ensure that it considers such inter-relationships in preparing its ITN documents.

Indexation

810. The Contractor may be concerned to protect itself against inflation rates increasing over the course of the Contract and so rendering the prices initially set out in the Contract insufficient to meet its operating costs and financing obligations. The payment mechanism is likely therefore to include arrangements for indexing the unitary charge agreed at Contract signature. If there is no indexation mechanism, the Contractor may have to build a contingency into the price to cover inflation risk. This is unlikely to give the Local Authority Best Value, as the risk is outside the control of the Contractor and, historically, has been difficult to forecast accurately. It is highly unusual for prices to be fixed (i.e. without indexation) throughout the term of a Joint Service Contract or, conversely, for the whole unitary charge to be indexed.
811. The Local Authority should focus on the appropriate method of applying indexation to the unitary charge at an early stage in project development (i.e. as part of the business planning work). By the time the ITN is issued, the Contract should specify the type of index to be applied, and how it will apply (for example, whether it applies to the whole unitary charge or whether it is part of a formula). The Local Authority should, in deciding what indexation to include in its ITN, or what percentage of the unitary charge this applies to, give consideration to indices other than RPI. In determining the appropriate approach, the Local Authority will need to have a clear understanding of the potential funding solutions for the project.
812. An alternative way of capturing efficiency gains is to build in price review mechanisms at regular intervals. Significant cost decreases arising from, for example, technological improvements, can then be shared with the Local Authority. Conversely, the Contractor may argue that the Local Authority should share part of the burden of any significant cost increases outside the Contractor's control.
813. The Local Authority should take care with the selection of appropriate indices. Choosing an index that may be short-lived, or is not independently produced, is not a sensible approach, nor does it make sense to have too narrow a focus on a particular industry or sector. This is because, in specific sectors, Contractor or their affiliates are themselves responsible to a significant extent for inflationary costs (that is, they can actually affect the index by increasing their price). The choice of index may also have an impact on the transaction satisfying the off balance sheet test under FRS5, and the financial advisors will need to assess the impact of different indices accordingly.
814. In determining the approach to indexation, it is important that Local Authorities properly link these requirements to the unitary charge and not to separable elements of the charge, i.e. the Local Authority should avoid a direct link between the banding and the cost inputs.

Benchmarking and Market Testing

815. Although in theory it is sensible to compare costs to ensure that value for money continues, the practice of benchmarking and market testing are often more difficult, and sometimes impossible. This difficulty may be due to the inter-related nature of the services being purchased, and the absence of a ready comparator. Benchmarking should be the responsibility of the Contractor, both from a cost and management perspective.
816. Generally, only 'soft' services are appropriate for benchmarking and market testing. Soft services are those services that do not involve a significant capital investment in their performance, or affect the value of any capital asset under the Contract. Services such as life-cycle maintenance should not be benchmarked or market tested.
817. Given the interoperability of the components of the Joint Service Centre, any proposals for market testing will need to be looked at very carefully. Local Authorities will need to determine how this should be dealt with.
818. In developing the approach to benchmarking to be included in the Contract, Local Authorities will need to take account of their Best Value responsibilities. In particular, the Local Authority will need to ensure that the Contractor is contractually obliged to assist the Local Authority undertake the Best Value Review in accordance with the appropriate timetable. Perhaps the easiest way to deal with this issue is for the Local Authority to focus on the Best Value Review of the function, and to incorporate any benchmarking (and potentially market testing) of soft services within the review and benchmarking framework of the Best Value Review. In doing this, Local Authorities may need to distinguish between Best Value Reviews of the whole function and the benchmarking and market testing of any soft services associated with the PFI Contract.
819. Local Authorities should be aware that any benchmarking or market testing could result in either an increase or a decrease in the unitary charge, and the Contract will need to include arrangements for dealing with any potential outcomes. The transaction will also need to be off balance sheet in accordance with the requirements of FRS5. The guidance on FRS5 makes it clear that any market testing of services will create a separately identifiable payment stream. Market testing can therefore only apply to purely soft-service related elements of the transaction, as these are not included in the overall assessment of risk associated with owning the asset.

Service Changes

820. A change mechanism will be included in the Contract for dealing with changes to the service. Appropriate arrangements will need to be included in the Contract and payment mechanism to reflect the impact of any such changes on the payment mechanism, where the impact of any change is to be met through the unitary charge.

DEVELOPING JOINT SERVICE CENTRES

PART B5

PFI - Invitation to Negotiate & Project Agreement

Contents

Section 1: Developing the ITN and Project Agreement

Section 2: Evaluation of Bids

Section 3: Contractual Issues Covered in Model PFI Project Agreement

Section 1: Developing the Invitation to Negotiate and Project Agreement

821. Once the short-list of Bidders has been selected, the Authority will be in a position to issue the Invitation to Negotiate (ITN) to the three or four short-listed Bidders.
822. Whilst the ITN should be substantially ready to be issued at the time that the short-list is selected, it may be helpful to have a short period (say four weeks) between the selection of the short-list and issue of the ITN. This will allow the Authority to incorporate into the ITN any issues identified as part of the pre-qualification and short-listing process (within the confines of the Procurement Regulations). However, experience shows that a thorough OBC, including a market sounding exercise, will enable the Authority to develop and issue an ITN without the need for this interim stage.
823. Having such a period can also provide time for the Authority to meet with each of the short-listed bidders to outline the next stages of the process and discuss further any project specifics. Any major issues of concern to the bidders (such as the timetable for the next stage) identified during these 'clarification' meetings can also be incorporated into the ITN documentation before it is issued.
824. If any major issues have come to light as part of the pre-qualification and short-listing process, the Authority may need to revisit some of the original assumptions included in the OBC, Reference Project or PSC. If necessary, the scope, affordability and funding arrangements for the project should be re-affirmed and any changes reflected in the assessment of accounting treatment. All of this must be done before the ITN is issued.

Structure of the ITN

825. The ITN should in most cases be a development of the Information Pack, but provide more detail in terms of:
- Instructions and guidance to the short-listed bidders on the process to be followed, the timetable, the Authority's requirements for bids, and the criteria for evaluation of bids
 - Details of the services required (as set out in the Output Specification)
 - The proposed contractual terms governing the arrangement, including any preferred Contract length and payment mechanism
 - The extent to which Bidders are able to submit variant bids.
826. It is important that the ITN is fully developed before it is issued. Authorities cannot expect bidders to respond adequately if the documentation is incomplete or unclear.
827. This Joint Service Centre Procurement Pack has been developed on the assumption that the ITN will be developed as two 'volumes':
- Volume One – the Instructions and Guidance to Bidders.
 - Volume Two – the Project Agreement, incorporating a draft Output Specification and Payment Mechanism.

828. **Volume One** – the Instructions and Guidance to Bidders (the 'Instructions'), should set out the Authority's requirements from Bidders, the process to be followed in the bidding process and how the Bids will be evaluated.
829. **Volume Two** – the Project Agreement, should set out all the proposed terms of the agreement between the Authority and the Contractor. A standard Project Agreement has been developed as part of this Joint Service Centre Procurement Pack. Wherever relevant, the Project Agreement incorporates and builds on the approaches set out in HM Treasury's Standardisation of PFI Contracts 2004 (SoPC), and the 4ps' Local Government Supplement to SoPC. The contractual, and commercial position set out in the Project Agreement, can be used by Authorities in its entirety, except where there are project-specific issues. The degree of derogations from the standard Project Agreement must be discussed and agreed with the relevant Government Department.
830. The Project Agreement will enable Authorities to strike a balanced contractual position that is commercially deliverable for the private sector and can provide value for money for the Authority. In providing a common understanding and approach to the issues involved it should reduce the time and cost of negotiations of local authority Joint Service Centre PFI Contracts.
831. Authorities have typically found it useful to require bidders to submit a 'Standard Bid' to assist the evaluation process, and to give a common starting point for contractual negotiations. However, the use of a standard bid should not indicate that the Authority has a preferred option. Innovation and variant bids should be encouraged. The Standard Bid should be standard only as regards a Project Agreement setting out a proposed allocation of risks.

Bid Preparation Period

832. Discussions with Bidders during the Bid preparation period are helpful as they allow the Authority to explain some of the background thinking behind the ITN documentation, and allow Bidders to explore innovative solutions to meeting the Output Specification. These discussions should be confidential to each Bidder, unless they result in any modification to the definition of service requirements, in which case such changes should be notified to all Bidders.
833. Following a brief period to assimilate the documentation, Bidders should be invited to raise any points of principle or clarification issues. Where appropriate, these issues should then be negotiated and reconciled prior to the submission of Bids. Experience has shown that this early negotiation leads to better, more complete Bids and significantly reduces the time taken to finalise the deal once Bids have been submitted.

Section 2: Evaluation of Bids

834. As with the evaluation of the pre-qualification and outline proposals, an evaluation framework will be needed to assess and evaluate Bidders' proposals submitted in response to the ITN. This framework must be able to deal with both the Standard Bid and with any Variant Bid submissions.
835. The criteria on which the Authority intends to base its choice of Contractor should be stated in the OJEU Notice. No weight should be given to financial or technical thresholds previously passed at the pre-qualification stage unless new information causes previous judgements to be revisited. Sometimes, the composition of a bidder changes between Pre-qualification and ITN bid submission. For example, a party that was assessed in the Pre-qualification Evaluation may have been replaced or a new party may have been introduced that would have been evaluated at the Pre-qualification stage had they been introduced at that time. In this case, the Authority should subject the new party to the same Pre-qualification procedures as before.
836. The Instructions and Guidance to Bidders should include an indication of the overall structure of the evaluation framework (ideally with an indication of the weighting to be applied to each category).

Suggested procedures for bid evaluation

837. The overall aim of the evaluation process is to select the bid that is the most economically advantageous to the Authority having regard to the Authority's overall objectives.
838. The principal evaluation criteria by which bids should be evaluated are as follows:
- The extent to which bids meet the Authority's requirements not only at commencement but throughout the Contract Period;
 - Whether or not the bidders' technical proposals are deliverable (on their own and within the proposed timescale);
 - Whether or not the Bidders' proposals are sufficiently flexible to accommodate future needs of the Authority in discharging its statutory responsibilities;
 - The cost of the payments by the Authority to the bidder throughout the Contract Period;
 - Whether or not the bidders' proposals offer value for money.
839. Bid submissions should be considered in parallel by specialist evaluation groups, each of which will include a mix of the Authority's project personnel, other interested parties and appropriate external advisers. The evaluation teams should have the full bid submission available to them and so that they can consider the overall approach to the project in order to understand each bid as a whole before carrying out specialist evaluations.
840. The groups should assess the bids according to their quality and deliverability. The term quality in this context refers to fitness for purpose and therefore covers any aspect of a bid that affects the delivery of services. Deliverability refers to the likelihood that all aspects of a particular bid (including timing and cost) could in fact be delivered by the bidder concerned.

Preliminary evaluation

841. After receipt, each bid should be initially checked for compliance with the ITN and for completeness. Bids which are not substantially complete or which are non-compliant with the ITN may be rejected. During the evaluation period, the Authority should reserve the right to call for further information from the Bidders to assist it in its consideration of their bids. The Authority should consider raising any matters for clarification in order to refine and finalise, with the Bidder, the definition of obligations, the allocation of risk and the payments required from the Authority.

Detailed evaluation

842. Bids should then be evaluated having regard to criteria under the following headings:
- Technical, Design, Operational and Organisational
 - Commercial and Contractual
 - Financial
843. As with the outline proposal stage, it is suggested that an overall summary evaluation model is developed that sets out the results of the evaluation of the Standard and Variant Bids. Such a model should be supported by detailed marking schedules, with appropriate weightings, setting out the specific requirements expected under each component of the evaluation framework. The evaluation framework must be capable of dealing with local circumstances and the Authority's detailed requirements. In developing the evaluation framework for the technical aspects, it is important that the Local Authority includes appropriate allowance for innovation in Bidders' proposals to deliver the Output Specification.
844. Authorities should not underestimate the amount of time required for this evaluation stage. It is often necessary to hold further discussions with the Bidders to fully evaluate the proposals being made, particularly where Variant Bids have been submitted. Time will need to be included in the evaluation period for such discussions.
845. At the end of the evaluation process the Authority may de-select one or more of the Bidders, seek a Best and Final Offer (BaFO) from all or a revised short-list (typically a BaFO has been sought from no more than two Bidders) or select a Preferred Bidder. Whichever option is chosen, the conclusions of the evaluation should be fully documented in an 'ITN Evaluation Report' and the decision as to how to proceed further reported to and agreed with members.
846. As with the pre-qualification and short-listing stages, Bidders that are not to be taken forward should be informed as soon as possible and be offered the opportunity for a de-briefing on where their ITN proposals were judged to be deficient.

Section 3: Contractual Issues Covered in Model PFI Project Agreement

847. This Section examines the relevance to Joint Service Centre PFI projects of contractual issues covered in Standardisation of PFI Contracts Version 3, dated April 2004 ("SoPC"). Unless otherwise indicated, the 'Sections' referred to in this Section relate to the relevant Sections of SoPC, and not this Procurement Pack.

Introduction – Section 1

848. Section 1 of the SoPC includes required drafting for a range of general definitions along with a clause dealing with the interpretation of the drafting. The required drafting for the definitions and the interpretation clause has been incorporated into the Model Project Agreement included in this Procurement Pack.

Duration of Contract – Section 2

849. Section 2 of the SoPC sets out the factors to be considered in determining the duration of a contract. These issues are relevant to Authority Joint Service Centre projects. Authorities have typically used a contract period of 25 years and the Model Project Agreement included in this Procurement Pack is drafted on this basis. However, Authorities requiring shorter or longer contract periods may request different contract periods as part of Variant Bids as set out in Volume 1 "Instructions and Guidance to Bidders" of Model 9 (Invitation to Negotiate) of this Procurement Pack.
850. SoPC includes required drafting for the duration of contract. The required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.

Service Commencement – Section 3

851. Sections 3.1, 3.2, 3.3 and 3.5 of SoPC are all relevant to Authority Joint Service Centre projects.
852. Section 3.4 of SoPC suggests that key aspects of the Contractor's Bid should be incorporated into Schedule 2 (Contractor's Proposals) of the Model Project Agreement to ensure the Contractor is bound to deliver the service in accordance with the proposals it submitted as part of its Bid. The Model documentation included in this Procurement Pack assumes that a number of technical and service delivery method statements will be sought as part of the Bids and will be used in the manner suggested in Section 3.4.
853. Section 3.4.1 of SoPC suggests that the contract should set out that the output specification takes priority over the technical solution being provided by the Contractor (as set out in Contractor's Proposals), and under no circumstances should the output specification be amended to reflect the Contractor's solution. Where it is not practical within Joint Service Centre projects for the Contractor to have completed comprehensive design submissions for all elements of the facility, because such design requires input from all the various stakeholders involved in the scheme, the relevant Contractor's Proposals may contain a strategic programme for completing such designs as well as indicative design proposals. This Procurement Pack does however, encourage Authorities to ensure bidders liaise with the Authority and all relevant stakeholders at an early stage in the procurement to ensure such concerns are addressed as early as possible.
854. Section 3.6 of SoPC relates to acceptance and service commencement. Section 3.6.2 identifies the details that should be set out in the contract in relation to the commissioning and certification of the availability of the Joint Service Centre. SoPC

also specifies that the contract should set out who is responsible for assessing satisfaction of the tests. The choice of arrangements is a matter for local discretion but many projects have adopted the "independent certifier" approach.

855. The contract should also set out how minor design variations and defects, deficiencies or omissions of a snagging nature which do not prevent the Contractor from notifying that services are available are to be dealt with. Design variations usually occur where the relevant standards cannot be fully complied with due to unforeseen circumstances. A mechanism for determining how such minor design variations should be agreed by the parties. In respect of defects, deficiencies or omissions, these are usually dealt with by way of a "snagging list" of items which the Contractor is required to make good within one month of notification of the snagging list or such other reasonable period as agreed between the parties.
856. Section 3.7 refers to the issues that arise if a Contractor is taking over existing services, as well as contracting to provide new or additional services. Within Joint Service Centre PFI projects, Contractors will usually be required to design, construct and manage new facilities and therefore there are unlikely to be any existing services for which the Contractor will have responsibility. However, there may be instances where Contractors are responsible for providing interim services or refurbishing premises and in such circumstances the output specification together with the payment mechanism will need to incorporate provisions to incentivise timely and full completion of the necessary work.
857. Section 3.7.2 identifies three options for when the Contractor should take over full or partial responsibility for service delivery. The output specification and Model Project Agreement assume that option one is followed, with responsibility for all sites in the contract taken over by the Contractor at financial close or following a brief mobilisation period. This approach provides a clean start and minimises ambiguity about responsibilities between the Authority and the Contractor, and is therefore the recommended approach.
858. If an Authority decides to include an interim service period within the contract, the output specification and payment mechanism will need to include arrangements for ensuring that the Contractor is not paid for those elements of the service that do not meet the requirements set out in the output specification.

Protections against late service commencement – Section 4

859. Section 4 of the SoPC is relevant to Authority Joint Service Centre PFI contracts. The Authority will want to ensure it is protected against prolonged delay by the Contractor in achieving the full service requirements as set out in the output specification. There are a number of mechanisms through which such protection can be obtained.
860. Within the Model Project Agreement it is recommended that if the Contractor has not been able to make services available from the planned service commencement date, Authorities may either require the Contractor to compensate the Authority through liquidated damages until such time as the services commence (or the contract is terminated) or require the Contractor at its own cost to provide temporary accommodation which meets the Authority's requirements.
861. Another mechanism is the use of longstop dates. Section 4.5 of the SoPC provides guidance in this regard and Authorities procuring Joint Service Centre projects have typically incorporated a longstop date after which the contract may be terminated if the Contractor has not completed the works.
862. The Project Agreement will also need to deal with the circumstances where the Joint Service Centre facility met the relevant standards at the start of the contract, but failed

to do so during the service period, as a consequence of a failure in the maintenance regime. Appropriate drafting is included in the Model Project Agreement in this regard.

863. Section 4.6 of the SoPC includes guidance on dealing with early full service commencement. This may be an issue for some Authority Joint Service Centre projects, as the Contractor may be able to deliver an accelerated works programme than that anticipated at contractual close. Depending on the structure of the payment mechanism, the Authority will need to include arrangements for dealing with any such unforeseen acceleration and the potential implications in terms of affordability.

Supervening Events – Section 5

864. Section 5 of the SoPC is relevant to Authority Joint Service Centre projects. Three categories of causes of delay in service commencement are identified, for which relief may be appropriate:
- Compensation Events – events which are the Authority's risk and for which the Contractor should be compensated
 - Relief Events – events that are best managed by the Contractor and for which the Contractor bears the financial risk, but in respect of which no rights of termination should arise
 - Force Majeure Events – a limited set of events that are best managed by the Contractor and in respect of which rights of termination can arise.
865. The guidance on each of these events in Section 5 is relevant to Authority Joint Service Centre projects. SoPC includes required drafting for supervening events and the required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.

Information Warranties – Section 6

866. Sections 6.2 and 6.3 of the SoPC relate to Contractor due diligence and Authority warranties. The guidance on these issues is applicable to Authority Joint Service Centre projects where the Contractor will be heavily dependent, in its assessment of the relevant risk, upon the accuracy of the historical information and data provided by the Authority as part of the procurement process and in response to Contractor's' due diligence enquiries.
867. Generally in Joint Service Centre projects only information relating to transferring employees is warranted by the Authority. However, when granting any warranties, Authorities should have regard to the criteria listed in paragraph 6.3.1 of the SoPC. Authorities should note that they will be liable for any compensation arising from the inaccuracy of any warranted information, and the contract should contain an appropriate price variation mechanism.
868. Section 6.3.3 of the SoPC includes required drafting for a typical exclusion from contracts in which warranties are not given by the Authority. The required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.
869. Section 6.4 of SoPC deals with surveys and reports. The Authority should consider the extent to which the perceived value of latent defect risk can be minimised by the availability of detailed survey information on the existing condition of the Site. Such surveys are likely to be key to pricing.

870. Within Joint Service Centre projects, the Contractor will usually take the Site in its existing condition as at contractual close and will have prime responsibility for all site conditions as well as conducting any required investigations. To the extent that it is not practical for the Contractor to investigate areas of the Site (for example due to occupation or use of an existing building), the Contractor will be relieved from liability arising in such areas unless such conditions should reasonably have been discoverable, in which case such liability will be borne by the Authority. Such areas should be clearly identified within the contract to limit the potential exposure of the Authority.
871. Section 6.5 of the SoPC concerns latent defects risk. Risks in relation to latent defects will arise in any project where the Contractor is taking on responsibility for refurbishing existing premises, as opposed to designing and installing a new Joint Service Centre. The Model Project Agreement included in this Procurement Pack assumes that latent defect risk will be transferred to the Contractor. The appropriate approach in any particular contract should be assessed in terms of the value for money for the Authority of the different options available, and in exceptional circumstances there may be a need to share latent defect risk.
872. The Local Authority must think through its approach to latent defects risk before commencing the procurement process, as this risk may significantly impact on the scheme costs, the value for money achieved and the procurement timetable. The factors that should be taken into account include:
- The nature and quality of existing information relating to the premises;
 - The existing condition of premises; and
 - The extent of any recent works carried out by the Authority
873. The Authority should identify in the Invitation to Negotiate Instructions and Guidance to Bidders and Model Project Agreement the approach that they believe will offer best value within the parameters of project affordability, bankability and a reasonable and realistic approach to risk allocation. Authorities may also invite bidders to offer alternative structures if improved value for money can be demonstrated.
874. However, in all cases where the Authority expects to transfer latent defects risk, it should recognise that detailed survey work will need to be undertaken by the bidders, either alone or through a joint appointment, and this will need to be built in to the Bid preparation timetable.

Service Requirements and Availability, Maintenance, Performance Monitoring, Price and Payment Mechanism, Payments and Set-Off – Sections 7 to 11

875. Sections 7 to 11 of the SoPC contain principles and approaches for dealing with service requirements, performance monitoring and structuring the payment mechanism.
876. Part [] of this Procurement Pack provides detailed guidance on defining the services required for a Joint Service Centre project and developing the output specification. Part [] of the Joint Service Centre Procurement Pack provides guidance on developing the payment mechanism for such a scheme. Parts [] of this Procurement Pack include guidance on performance monitoring, and how this should be incorporated into the output specification and payment mechanism. The guidance in this Procurement Pack is consistent with SoPC.

877. Section 8.1 of SoPC includes required drafting on maintenance. The required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.
878. Section 8.5 of SoPC includes required drafting on surveys. The required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.
879. Sections 11.3 and 11.4 of SoPC include standard drafting on set-off and VAT respectively. The standard drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.

Change in Service – Section 12

880. The guidance contained in Section 12 of the SoPC is applicable to Authority Joint Service Centre PFI contracts and the required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.

Change in Law – Section 13

881. Section 13 of the SoPC deals with the definition and allocation of Changes in Law. The SoPC recommends that discriminatory and specific changes in law (together referred to as 'qualifying changes in law') should be an Authority risk, and general changes in law a Contractor risk or shared risk depending upon which provides the Best Value for the Local Authority. The Local Government Supplement to SoPC amplifies this approach and allocates changes in law relevant to Best Value. This guidance is equally applicable to Authority Joint Service Centre PFI contracts.
882. Authorities should assess whether general changes in law should be a Contractor risk, or be treated as a shared risk having regard to the commentary in Sections 13.7 and 13.8 of the SoPC.
883. In respect of Joint Service Centre projects, Authorities should consider inserting specific changes of law which relate both to the construction of the premises as well as to the nature of the services to be provided from within the facility. Obviously such definitions will be determined on a case by case basis dependent on the mix of service provision.
884. Section 13 of the SoPC includes required drafting on change in law issues. The required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.

Price Variations – Section 14

885. Section 14 of the SoPC contains principles and approaches for dealing with price variations, including indexation, benchmarking and market testing. These issues are relevant to Authority Joint Service Centre PFI projects.
886. Section 14 of SoPC includes suitable drafting on market testing, the principles of which has been incorporated into the Model Project Agreement included in this Procurement Pack.

Sub-Contractors and Employees – Section 15

887. The guidance in Section 15 of the SoPC on the issue of sub-contractors and employees is relevant to an Authority Joint Service Centre project.

- 888. Some Authority Joint Service Centre projects may involve the transfer of employees under the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) involving the transfer of Authority employees or possibly a 'second generation' transfer involving the transfer of employees from an existing Contractor to a new Contractor.
- 889. In developing the output specification and Model Project Agreement, Authorities should consider how any specified training requirements and other employee requirements might be satisfied by the employees likely to be on the transfer list, and if there is a likelihood that the requirements cannot be met by the transferring employees at the service commencement date, to consider what arrangements might need to be put in place.
- 890. In developing the Model Project Agreement Authorities should also take account of the Code of Practice on Workforce Matters in Local Authority Service Contracts and the suggested contract clauses. The suggested drafting from the Code of Practice has been incorporated into the Model Project Agreement included in this Procurement Pack.
- 891. Bidders will expect appropriate information about the qualifications and experience of each potential transferring employee to be provided as part of the bidding process, and for an appropriate level of certainty over the numbers and details of transferring employees to be made available. Uncertainty over such details, or the absence of such information during the bidding process, will affect the ability of bidders to appropriately price their bids.

Assignment – Section 16

- 892. The guidance and suggested drafting included Section 16 of the SoPC relating to restrictions on the Authority assigning or transferring its rights or obligations under the contract are applicable to Authority Joint Service Centre PFI contracts.
- 893. Section 16.3(B) of SoPC includes required drafting on restrictions on transfer of the contract by the Authority. The required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.

Change of Ownership – Section 17

- 894. Section 17 of the SoPC deals with the issue of change of ownership of the Contractor. These issues are relevant to Authority Joint Service Centre PFI projects and the Model Project Agreement included in this Procurement Pack incorporates such drafting.

Termination, Treatment of Assets on Expiry of Service Period and Surveys on Expiry and Termination – Sections 18, 19 and 22

- 895. Sections 18 and 19 of the SoPC deal with the options open to an Authority at the end of a PFI contract and the Model Project Agreement stipulates that the Authority has a right to require the Contractor to transfer all its rights, title and interests in and to any assets to the Authority at no cost.
- 896. A key issue for Authorities is the identification of required 'tests' at the end of the contract term to demonstrate that the specified requirements have been met. The choice of hand-back condition is an issue for local discretion and will be partly determined by the affordability of different options.
- 897. Sections 19 and 22 of the SoPC include required drafting on the treatment of assets at the expiry date and on surveys on termination respectively. The required drafting

has been incorporated into the Model Project Agreement included in this Procurement Pack.

Early Termination and Calculation and Payment of Early Termination Payments – Sections 20 and 21

- 898. The approach set out in Section 20 of SoPC as supplemented by Section 5 of the Local Government Supplement to SoPC in terms of both events of default and consequences, are applicable to Authority Joint Service Centre projects.
- 899. As noted in paragraph 20.2.2.2 of the SoPC, there may also be service specific issues which Authorities decide to incorporate depending on the mix of service provision within the facility.
- 900. Sections 20 and 21 of the SoPC include required drafting on early termination and calculation and payment of early termination payments respectively. The required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.
- 901. Local Authorities should also have regard to the guidance in Section 21.3 in the SoPC (certainty of compensation amounts), which limits the circumstances in which the Authority's termination liabilities can be increased without its consent.

Indemnities, Guarantees and Contractual Claims – Section 23

- 902. Section 23 of SoPC deals with the issue indemnities, guarantees and contractual claims. These issues are relevant to an Authority Joint Service Centre PFI project. This Section of SoPC includes required drafting on indemnities and the required drafting has been incorporated into the Model Project Agreement included in this Procurement Pack.

Insurance – Section 24

- 903. Section 24 of SoPC deals with the issue of Contractor insurance. These issues are relevant to an Authority Joint Service Centre PFI project and the Model Project Agreement included in this Procurement Pack incorporates the required drafting on insurance issues.
- 904. As set out in 24.3.4, Authorities should also have regard to the HM Treasury Guidance on Insurance Issues on the sharing of insurance premium increases.
- 905. Local Authorities should note that the issue of insurance is likely to be a difficult area and the Local Authority's Risk Management Officer should be fully involved in the drafting and negotiation of insurance issues.

Information and Confidentiality – Section 25

- 906. Section 25 of SoPC deals with the issues of information and confidentiality in a PFI contract. These issues are relevant to an Authority Joint Service Centre PFI project and the Model Project Agreement included in this Procurement Pack incorporates such required drafting.

Intellectual Property Rights – Section 26

- 907. Section 26 of the SoPC deals with the issue of intellectual property rights. These issues are relevant to an Authority Joint Service Centre PFI project and the Model Project Agreement includes appropriate drafting.

Dispute Resolution – Section 27

908. Section 27 of the SoPC deals with the issue of dispute resolution. These issues are relevant to an Authority Joint Service Centre PFI project and the Model Project Agreement included in this Procurement Pack incorporates the required drafting.

Local Authority Step-in – Section 28

909. Section 28 of the SoPC deals with the issue of Authority step-in. The guidance on step-in is relevant to an Authority Joint Service Centre PFI project and the Model Project Agreement included in this Procurement Pack incorporates the required drafting.

Miscellaneous Provisions – Section 29

910. Section 29 of the SoPC includes suggested drafting on miscellaneous contractual provisions. The Model Project Agreement included in this Procurement Pack incorporates the required drafting.

Direct Agreement – Section 30

911. Section 30 of the SoPC deals with the Direct Agreement. These issues are relevant to an Authority Joint Service Centre PFI project and the Procurement Pack incorporates the model Direct Agreement from SoPC.

Land and Property Interests – Section 31

912. Section 31 of the SoPC deals with the issue of land and property interests. The Model Project Agreement includes appropriate drafting.

Alternatives to and Variants of Project Finance – Section 32

913. Section 32 of the SoPC deals with the alternatives to and variants of project finance. These issues may be relevant to an Authority Joint Service Centre PFI project and the Authority will need to take its own legal and financial advice on these issues where relevant, ensuring that such advice is sought from appropriately experienced corporate financiers and legal advisors with detailed experience of other similar structures.
914. 4ps have produced a separate note that sets out a number of issues for consideration by Authorities in those instances where bidders have submitted bids that do not include a typical project finance structure, instead offering an alternative to or variant of project finance. A copy of the note is available from the 4ps project support team.

Commitment Letters – Section 33

915. Section 33 of the SoPC deals with commitment letters. The guidance and model commitment letter are relevant to an Authority Joint Service Centre PFI project and the Local Authority should ensure that the guidance is followed as part of selecting the Preferred Bidder. This Procurement Pack includes a copy of the model commitment letter from SoPC.

Due Diligence over Sub-Contracts and Financing Documents – Section 34

916. Section 34 of the SoPC deals with the issue of due diligence over sub-contracts and the financing documents. These issues will be relevant to an Authority Joint Service Centre PFI project and the Authority will need to take its own legal and financial advice on such issues.

Refinancing – Section 35

917. Section 35 of the SoPC deals with the issues of refinancing. These issues will be relevant to an Authority Joint Service Centre PFI project and the Model Project Agreement included in this Procurement Pack incorporates the required drafting from SoPC.

DEVELOPING JOINT SERVICE CENTRES

PART B6

PFI – Selecting Preferred Bidder

Contents

Section 1: Selection of Preferred Bidder

Section 2: Reserve Bidders

Section 1: Selection of Preferred Bidder

918. The selection of a Preferred Bidder could be seen as signalling the end of the competitive process. Since competition is the paramount driver of value for money, great care needs to be taken to ensure that the appointment of a Preferred Bidder is not made prematurely, thus precluding other options. On the other hand, prolonging competition beyond a point that is optimal, merely racks up the costs for both the Authority and short-listed Bidders, and reduces the appetite of Bidders for participation in future bidding rounds.
919. Reaching Preferred Bidder is the final stage before financial close. The window between these two stages is intended to be used to formalise certain details, such as the detailed drafting of certain provisions, finalising and drafting the non-controversial schedules to the Contract, and putting the financial documentation in place, rather than to have substantive negotiation over the essential Contract terms. The ideal time to nominate a Preferred Bidder is, therefore, when the key commercial issues have been resolved, albeit some of the necessary due diligence/credit committee processes of the funding institutions remain to be completed.
920. The final negotiations should be limited to fixing the final detail of the transaction documentation and satisfying the reasonable requirements of the funders. Since it is highly undesirable to reopen commercial terms at this late stage, the risk of this should be minimised by insisting that the Preferred Bidder's funders have indicated their comfort with the risk allocation embodied in their Bid at a stage where there is still the lever of competition. The Authority's financial advisors should contribute to this process by advising whether the Bidder's proposals are realistic, and the levels of financial commitment are appropriate.
921. Anything more, particularly where it involves a major reallocation of the risk transfer previously agreed, or a radical reassessment of the price at which the Bids were placed (either ITN Bids or BaFO), or the introduction of funding institutions without prior involvement hitherto, would usually be indicative of a Preferred Bidder being announced prematurely.

Key Criteria for Selecting a Preferred Bidder

922. Delays post the selection of a Preferred Bidder tend to be as a result of acts or omissions prior to the selection of a Preferred Bidder. If the time-scales shown on the indicative Procurement Timetable in this Procurement Pack are to be achieved, there are a number of key criteria that should have been met prior to the selection of Preferred Bidder. These include the potential Preferred Bidder having:
- Accepted the contractual terms.
 - Confirmed access to finance that does not require underwriting by the Authority.
 - Presented proposals that meets the requirements of the Output Specification.
 - Quoted a price that is affordable to the Authority.
 - Put forward a whole-life solution that demonstrates Best Value.
 - If a consortium, shown that it is a cohesive entity rather than a disparate collection of organisations.

- Submitted a Bid that is able to satisfy the requirements of the relevant Department in relation to balance sheet treatment.
923. If these criteria are satisfied, the Authority should stand down the other remaining Bidders and (if appropriate) establish a Reserve Bidder.

Acceptance of Contractual Terms

924. Whilst a number of elements of the Contract will always remain to be negotiated between the appointment of the Preferred Bidder and financial close, it is important that the likely Preferred Bidder accepts the key contractual terms that form the basis of the agreement between the parties.
925. Guidance on the form of letter to be sent to a bidder informing them of their appointment as Preferred Bidder can be found at Section 33 of SoPC.
926. However, the Project Agreement, Payment Mechanism and Output Specification contained in this Procurement Pack reflect HMT's Standardisation of PFI contracts 2004 and those issues should not be subject to significant negotiation.
927. It is also important that the Authority's assessment and evaluation of the Bids is robust to ensure that the:
- Financing packages proposed by the likely Preferred Bidder are deliverable;
 - Bidder has involved the debt and equity providers in a review of the contractual terms and proposed risk allocations, and they have accepted those contractual terms;
 - Debt providers have undertaken preliminary due diligence of the contractual documentation and that this is evidenced in the Bid (or BaFO) submitted by the likely Preferred Bidder.
928. Many of the difficulties experienced by Local Authorities of drawn-out periods negotiating with Preferred Bidder are attributable to a failure to tie down contractual documentation in a realistic manner at a sufficiently early stage in the procurement process. A Preferred Bidder has often been selected prematurely, well before the key commercial terms of the contractual package have been settled, and in some other Local Authority service areas before a draft Contract has been produced.
929. It is recommended that all of the commercial terms in the contractual documentation and Output Specification be fully negotiated and agreed upon before the appointment of a Preferred Bidder. This should include confirmation from the debt providers that the contractual terms are acceptable.

Confirmed Access to finance

930. A Bid cannot be credible without satisfactory assurances of the adequacy of funding. Prior to the selection of a Preferred Bidder the Authority should seek assurances from the funding institutions behind the proposed Preferred Bidder that they would be willing to finance the proposed project. As part of the Authority's assessment and evaluation of bids, as much information as possible should be gleaned as to:
- The 'quality' of the funding institutions;
 - The financing plan and the preliminary term sheet for the financing facilities to deliver that plan;

- The security they are likely to seek;
 - Their experience of financing PFI/PPP projects; and
 - The proposed method of funding;
931. To enable these conditions to be met, the Authority should, as part of the response to the ITN (or BaFO), seek from Bidders preliminary term sheets for the facilities required as part of the financing plan. The deliverability of the financing plan should be an explicit part of the criteria for evaluating bidders proposals, and a matter on which the Authority should seek the advice of their financial advisors in order to test the proposals received from the Bidders.
932. Before the appointment of a Preferred Bidder, the Authority should require confirmation from the debt providers to the Bidders (likely to be as part of the BaFO), of the following:
- That the debt providers have reviewed the results of the financial model runs reflecting the results of the commercial proposals agreed between the Authority and the Bidder as a basis of the Bidder's selection as Preferred Bidder, and are satisfied, subject only to final credit approval, that those results are capable of supporting the debt facilities envisaged by the project's financing plan.
 - That all key aspects of the debt providers' due diligence process capable of affecting their willingness to enter into the financing have been completed to the debt providers' satisfaction. It will be necessary to identify which aspects of the due diligence process have this degree of significance. To sign-off certain issues, debt providers may require to engage specialist consultants. In deciding how far the due diligence process should have been completed before a Preferred Bidder is selected, the Authority will need to pay attention to the cost of the due diligence process.
 - That the debt providers have reviewed and signed off the Project Agreement, and/or have put forward proposed changes as part of the Variant Bid process.
 - That debt providers have been asked to confirm that, subject to any outstanding aspects of their due diligence programme, they have received 'in principle' approval from their credit committees or other internal sanctioning authorities to enter into the financing on the basis contemplated by the financing plan.
 - That a timetable to financial close has been submitted, and agreed with the debt providers. Confirmation should also be sought from the debt providers regarding the extent of their due diligence programme still remaining to be completed.
933. The Authority should not require all debt providers' due diligence checks to have been completed prior to the selection of a Preferred Bidder. In most cases, it will be more cost effective if parts of the due diligence work is carried out after the selection of Preferred Bidder. Bidders are understandably reluctant to commit to the expense of full debt providers' due diligence until they enjoy the security of Preferred Bidder status, and the Authority should not expose Bidders to unnecessary expense before this point. The Authority should include in the ITN Instructions and Guidance to Bidders a statement of its requirements as regards completion of debt providers' due diligence prior to selection of a Preferred Bidder. If a BaFO is used, this statement should be repeated in the Invitation to submit a BaFO. This will enable the process to be discussed and agreed with Bidders, and their debt providers, during the bidding process. The potential preferred bidder should commit to there being no time or cost

consequence to the Authority of due diligence undertaken after confirmation of their status as preferred bidder.

Proposals meet the Output Specification

934. In some respects this is the most obvious criterion to meet. Bidders are likely to have come up with a variety of solutions to meet the requirements set out in the Output Specification. The judgement to make before selecting a Preferred Bidder is whether that Bidder offers the most innovative and cost-effective solution to meet the requirements of the Output Specification without the service either being gold-plated at the one extreme, or falling below acceptable standards at the other.
935. If it looks likely that, despite there being a leading Bidder, another Bidder has the scope for refining its Bid to match more closely the Authority's requirements, then the opportunity should be given at the negotiation stage to short-listed Bidders to improve on their earlier Bids within a certain time-scale. It clearly benefits the Authority to take advantage of the existence of competition at this stage and to negotiate and agree as much as possible while there is still more than one Bidder remaining.

Project is Affordable to the Authority

936. A Bid may be poor value for money but affordable. It may be good value for money but nonetheless unaffordable. Before appointing a Preferred Bidder, the Authority will need to be satisfied that the Bid offers Best Value and is affordable. In this context, affordability means assessing the project cash flows (including the client-side management costs) over the duration of the Contract period, making realistic assumptions regarding Authority budgets, indexation, the levels of interest to be earned on any cash balances and including contingency sums where appropriate.

Best Value

937. In examining Bids, the Authority should not seize on, or be unduly repelled by, short-term features unless they affect the Best Value of the project over the life of the Contract.
938. This judgement needs to be made by looking at the whole-service/whole-life solutions offered by the short-listed Bidders. For example, Bidders may have different solutions to meet the Output Specification, with one choosing to have high up-front capital investment with lower future lifecycle and maintenance requirements, and another having relatively low initial capital investment but with more frequent renewals and refurbishment. The Authority should concern itself with the overall results of the mix under the different approaches, rather than the balance of individual components within it. The temptation to cherry-pick Bids by comparing and contrasting constituent elements against each other should be avoided. As long as the approach meets the requirements of the Output Specification and is affordable, the Bid offering Best Value in terms of whole-life costs should be accepted.

Contractor is a Cohesive Entity

939. At the stage of selecting a Preferred Bidder, it is important that the proposed delivery structure is coherent and presents a deliverable project structure.

PFI Criteria

940. A PFI scheme will also need to satisfy the PFI criteria set by the ODPM and PRG. In particular an update of the FRS5 assessment will need to have been done and the assessment confirmed that the transaction as structured will meet the off balance sheet kept under FRS5.

Preferred Bidder Letter

941. A Preferred Bidder Letter is contained in this Procurement Pack for adoption and used by Authorities.

Section 2: Reserve Bidders

- 942. There is a balance to be struck between premature selection of a Preferred Bidder, thus closing off competition early, and the maintenance of competitive pressure in order to continue to improve value for money for the Authority.
- 943. Bidding for PFI/PPP projects can be expensive. These considerations apply to both Bidders and Authorities alike.
- 944. From the Bidders' perspective, it is preferable that the length of the procurement process is kept to the minimum, with the early announcement of a Preferred Bidder so that any further contracting costs are incurred in the knowledge that business has been secured.
- 945. From the Authority's point of view, especially in the early PFI deals, many key negotiating issues have arisen after the appointment of a Preferred Bidder, providing a potential stumbling block to Contract signature. Consequently, it is suggested that most of these issues should be resolved before the selection of a Preferred Bidder. Nonetheless, many Authorities believe that their negotiating position during this critical phase would be weakened without an alternative Bidder to hand.
- 946. A method needs to be in place to balance these countervailing needs. Prolonging the competitive process by obliging the other short-listed Bidders to keep full bid teams in place, when the reality is that the Authority has internally decided on a Preferred Bidder is unfair to the unsuccessful Bidders. It exacerbates the costs of bidding, it ties up resources that might otherwise have been used to win business elsewhere, and it does not foster the good faith implicit in delivering public private partnerships.
- 947. Equally, the Authority has to have an effective safeguard against the possibility of the essential Contract terms being re-opened by a Preferred Bidder, once freed from competitive pressures.
- 948. The practice of appointing Reserve Bidders best meets the needs of both Bidders and the Authority. Under such a system, at the same time as the Preferred Bidder is selected, the next favoured Bidder would be invited to be Reserve Bidder. Reserve Bidder status would mean that should negotiations with the original Preferred Bidder fail to reach financial close, the Authority would automatically offer the Reserve Bidder the opportunity for further negotiations.
- 949. At the time of being selected, the Preferred Bidder should be informed of the existence of a Reserve Bidder. The Authority should also consider setting key negotiating deadlines for reaching agreement, after which date it would reserve the right to invite the Reserve Bidder to participate.
- 950. Authorities do, however, need to bear in mind that a Reserve Bidder may be reluctant to incur further significant costs to develop their existing Bids, without a contribution towards such costs. In such situations, the Authority would have to assess whether the costs of the contribution are outweighed by the potential increase in value for money by having the Reserve Bidder develop new proposals. The Reserve Bidder would also have to weigh the loss from not having costs reimbursed against the potential gains to be had from winning the competition through an enhanced Bid.

DEVELOPING JOINT SERVICE CENTRES

PART B7

PFI - Completion Issues

Contents

Section 1: Negotiation and Achieving Financial Close

Section 2: FRS 5

Section 3: Local Government (Contracts) Act 1997 Certificates

Section 4: Final Business Case

Section 1: Negotiation and Achieving Financial Close

951. In an ideal world all commercial negotiations would have been completed before the selection of a Preferred Bidder. This then allows 'close' to be a series of mechanical and housekeeping exercises from the Local Authority's point of view, with much of the real activity being carried out by the Contractor and its funders, who will be involved in settling the ancillary documents and finance documents. In the real world, however, this rarely happens and there are often difficult commercial points to negotiate and agree, and once the Preferred Bidder has been selected, there will inevitably be a period of final negotiations.
952. Management of the period between the appointment of a Preferred Bidder and financial close is critical to the success of the procurement. Key to its success is the development of a proper, effective partnership between the Local Authority and the Preferred Bidder, whereby there is a mutual interest in achieving financial close, while still accommodating each party's requirements.
953. The work to be put in by both parties to reach financial close should not be underestimated. The Local Authority should plan ahead for this important phase of the project.

The Negotiation Strategy

954. The first and most critical task before such negotiation commences is preparation. Whatever the temptation, it is important not just to sit down with the Preferred Bidder and 'try to do a deal'. Before negotiation starts, it is critical to determine the following:
- What issues are important to the Local Authority, what it wishes to achieve (the essentials), what would be nice to have but are not essential (its wishes), and what the Local Authority is prepared to concede or trade. In making such an assessment it is important to be realistic.
 - What issues are likely to be important to the Preferred Bidder; what the Local Authority can give that the Preferred Bidder would value, but the Local Authority may not.
 - What are the alternatives; issues that the Local Authority hope to improve through negotiation.
955. In preparing the negotiation strategy, it is important that a sensible balance is taken; the focus should be on the main aspects of the project and developing a long-term partnership.
956. In determining the negotiation strategy, the project director will also need to determine who should attend the negotiation meetings. In most instances this will need to be the project team, although not all members of the project team are likely to be required at every negotiation meeting. There may also be instances where other officers and advisors not on the project team will be necessary; such as the risk management officer is likely to be needed for the final negotiation of insurance matters.
957. The Local Authority will need to involve officers' senior enough to resolve negotiation issues as they arise. In most instances this should be the project director, but for specific issues the project owner may need to be involved in the negotiations. There

may also be instances where a particular matter has to be referred to members, or other external commentator, such as the external auditor.

958. In selecting the negotiation team, it will be necessary to allocate roles and responsibilities, such as the lead negotiator on a specific issue, and somebody tasked with recording what has been agreed during the negotiating session. It is imperative that agreed positions are fully documented.
959. A good tactic is to agree a schedule of meetings at the start of the process, and to determine target dates for completion of specific issues. The project director needs to be realistic in preparing such plans and timescales; poor positions are often made when a deadline looms.
960. The Local Authority also needs to be prepared to negotiate. Negotiations will not get very far if both parties are reluctant to move from their opening stance. However, the Local Authority also needs to trade accordingly, and to keep focussed on the long-term aim of delivering a successful project and to develop a partnership that can work together for the period of the Contract.

Managing the Process to Financial Close

961. It is helpful to view this period as a critical path of events leading up to financial close. This phase of the procurement will involve a high degree of input from the Local Authority's advisors, and hence management of them.
962. The point where both the Bidder and the Local Authority have reached agreement on all the contractual documents, in addition to all relevant technical issues and agreed the unitary charge for the project is often referred to as commercial close. On completion of the Bidder fixing the interest rate incurred on the bank debt taken out to finance the project is often referred to as financial close.
963. Either at the time of appointment, or immediately afterwards, the Local Authority and the Preferred Bidder should agree a timetable of events leading up to financial close. This should reflect all of the processes that each party needs to undertake, with a realistic timescale for each. This timetable should reflect milestones and constraints such as:
 - Local Authority internal approvals
 - The time needed to negotiate any remaining issues on the Contract and ancillary documents
 - Design development that is required, or time required to complete any statutory processes
 - Any deadline by which the project must reach financial close for funding reasons
 - The time needed for any remaining due diligence to be completed and Bank credit committee meetings to take place
 - The time needed to obtain an opinion on the accounting treatment of the project
 - ODPM/DCMS/DH review and approval of the Final Business Case.

Local Authority and Stakeholder Approvals

964. The Local Authority will need to ensure that it obtains all of the necessary approvals for the project. This will depend upon the arrangements for delegation of powers agreed for the project. For example, while day-to-day decisions on negotiation issues may have been delegated to the project director, Members are likely to expect to approve the Final Business Case.
965. Stakeholders must also ensure they obtain appropriate approvals for the project in accordance with their internal grievance arrangements. The time and logistics involved in obtaining such approval should be factored into the project timetable from the outset to avoid unnecessary delay later in the process.

Contract and Ancillary Documents

966. The basis of appointment of the Preferred Bidder will have included reference to an agreed mark-up of the Contract, and identification of any remaining issues to be negotiated. It is far more difficult for the Local Authority to negotiate in a non-competitive environment, and for this reason the Local Authority should avoid re-opening issues either itself or by the Preferred Bidder. Doing so can result in protracted negotiations and difficulty in achieving a position that represents best value. Best practice is to resolve such issues prior to the appointment of the Preferred Bidder.
967. The parties will also need to devote time and effort to completing negotiations on ancillary documents, including:
- The Lender's Direct Agreement
 - Various sub contracts
 - Method statements.

Design Development and Statutory Processes

968. Bidders often reserve completion of the design solution until Contract signature. However it is normal for the design development procedure and sample designs to be agreed prior to selection of the Preferred Bidder (this should be set out in a contractual Method Statement). This should set out in the Contract the arrangements on how the parties are to proceed in agreeing final details of the scheme, and the review arrangements. Appropriate regard will need to be given in the arrangements for consultation with relevant parties.
969. The Local Authority should also consider in advance of selecting a Preferred Bidder how to deal with any statutory processes, such as consents and approvals where this is necessary.

Deadlines

970. It is not uncommon for either the Local Authority or the Preferred Bidder to need to complete financial close by a particular time. Examples include:
- The time that the PFI credits need to be drawn down will expire

- There is a fixed period within which the unitary charge is agreed, after which there is an agreed process for adjusting it for inflation
 - The Preferred Bidder needs to sign the project before its year-end.
971. Aside from these, practical issues such as other requirements for individuals' time may be an issue.
972. In any event, the Local Authority should anticipate these deadlines at an early stage when setting its timetable, but avoid taking into account matters that can be resolved by other means, such as back-filling individuals' other responsibilities. The right balance should be struck between speed and delivering a strong long-term partnership.

Final Due Diligence and Bank approval

973. It will not be possible for the Preferred Bidder's bank to complete its due diligence process until after appointment. This is because some matters, such as completion of Contract negotiations, will not take place until that time and also because the Preferred Bidder will be unwilling to incur the cost without certainty of its recovery.
974. The Local Authority's position should be that it is acceptable for final due diligence to be undertaken post-Preferred Bidder appointment, but it should be according to an agreed timescale and working towards a stated Bank Credit Committee meeting. In the past, matters arising out of the due diligence process have been a major cause of project delay and increase in costs. While the Local Authority should accept the need for the Bank to go through its necessary approval processes, it should also ensure that the Preferred Bidder has satisfied itself that it has a set of proposals that will not encounter difficulties at due diligence. The Local Authority should not generally accept any time or cost consequences of due diligence undertaken after confirmation of Preferred Bidder status.

Avoiding Changes

975. Changes to the scope of the project or the details of the Output Specification after Preferred Bidder appointment should be avoided because they are likely to delay the timetable, and it will be more difficult for the Local Authority to ensure Best Value.
976. If changes are necessary, the Local Authority should follow changes through to the financial model and the change in unitary charge, ensuring transparency at all stages.

Changes in Cost

977. The affordability of the project will be one of the most important issues for the Local Authority to consider and confirm in the Final Business Case. Ideally, the only matter that will affect affordability at this stage will be changes in the interest rate attached to the bank debt raised for the project by the Preferred Bidder, and the impact on the unitary charge.
978. This is a risk that the Local Authority carries up to financial close, and there should be a strategy to monitor changes in interest rates and the impact on project affordability. This will start at the time that the Preferred Bidder is appointed, when the Local Authority should be aware of the impact of changes in interest rate on the unitary charge offered. Ongoing liaison with the Preferred Bidder will ensure that the Local Authority has as much certainty as possible of the final unitary charge at financial close.

Section 2: FRS 5

Introduction

979. The objective of this part of the Procurement Pack is to provide practical guidance to Authorities on how to address the accounting treatment of Joint Service Centre PFI schemes. The aim of this guidance is to promote consistency in the application of the relevant accounting standards, and to reduce the costs incurred by individual Authorities by standardising the approach as far as possible.
980. ODPM also has a need to ensure that the accounting analysis is considered at the earliest stages of the scheme, in order to provide greater certainty when allocating its capital resources. If a scheme has a significant risk of being considered 'on-balance sheet' then ODPM needs to be aware at approval stage in order to consider the funding implications.
981. To this end, this guidance also includes an early warning mechanism for Authorities to apply to their schemes to identify those schemes that have a higher risk of being considered on-balance sheet.

Prudential Accounting Regime

982. The prudential regime applicable to Local Authority capital finance is contained in Part 1 of the Government Act 2003 and came into operation on 1st April 2004. The control concept of the new regime is to require each Local Authority to set their own borrowing and credit limit by reference to principles of affordability and prudence contained in the CIPFA Prudential Code. Subject to powers reserved to the Secretary of State to impose borrowing and credit ceilings where natural economic circumstances so require, there is no longer any direct central Government control over Local Authority capital expenditure. Therefore, whilst PFI contracts may still amount to credit arrangements (as defined in Part 1 of the 2003 Act) the cost relates to affordability rather than any borrowing or credit ceiling. Affordability considerations will be assisted by any PFI financial support available from ODPM.
983. ODPM provides funding to Local Authorities for PFI schemes through the mechanism of PFI financial support or "credits". PFI "credits" will only be provided where a scheme is judged to provide value for money. HM Treasury has published guidance on how bodies procuring PFI projects should assess vfm (which is available on the HM Treasury website). Such guidance makes it clear that procurement decisions need to be based, first on a consideration of which procurement option is the most appropriate, given the nature of the capital investment proposed and the public service with which it is associated, and secondly, on an unbiased and rigorous assessment of which of the available options is likely to represent the best value for money solution. All PFI transactions should be structured to achieve maximum vfm and not a specific balance sheet outcome. Balance sheet treatment should be considered after vfm has been established and is largely decided by an assessment of risk transfer. If the majority of risk in a given project is best placed with the Contractor then it is likely to be off the Local Authority's balance sheet. However, if the risk is retained by the Local Authority it should receive an on balance sheet treatment. Attempts to reverse engineer a specific balance sheet treatment by shifting risk are likely to erode the vfm of a project and lead to a sub-optimal outcome. Such an approach should be avoided.
984. Whether a project is regarded as off balance sheet or on balance sheet could affect the affordability of the project. Although Central Government departments can provide revenue support in either case, they have different budgetary considerations when assessing whether they wish to do so, depending on the balance sheet treatment of a project. To allow Central Government departments to make proper

decisions concerning the grant of revenue support, Local Authorities must provide an “initial view” of the project’s accounting treatment when seeking such financial support and when assessing the relevant qualifying criteria. Further details of the applicable qualifying criteria can be assessed from the ODPM website.

985. The local authority SORP defines proper practices as:
- ASB Application Note F to FRS 5 ‘Reporting the Substance of Transactions - Private Finance Initiative and other contracts’ (September 1998) (the ‘Application Note’); and
 - SSAP 21 Accounting for leases and hire purchase contracts.
986. The Application Note seeks to determine whether a PFI scheme is, in substance:
- A financing transaction for a property, with an accompanying service contract; or
 - The provision of services, in which an underlying property is used.
987. In June 1999, HM Treasury Taskforce issued Technical Note No. 1 (Revised) ‘How to Account for PFI Transactions’ (the ‘Technical Note’) to promote consistency across the public sector when interpreting the Application Note (AN). The Technical Note does not replace the Application Note, but is complementary to it, providing further guidance in areas where there is scope for variations in interpretation. The Accounting Standards Board has stated that the Technical Note is ‘not inconsistent’ with the Application Note. The Technical Note therefore represents ‘best practice’ for the public sector when interpreting the relevant parts of the Application Note.
988. The Local Authority SORP provides that the Technical Note is ‘influential’ but not mandatory for Local Authorities. It is important to note that this guidance supplements the relevant accounting standards, described above, and should be applied in conjunction with them. In any cases of uncertainty, the accounting standards should be referred to for definitive guidance.

Project Agreement

989. The Project Agreement in this Procurement Pack standardises many aspects of Joint Service Centre schemes, including:
- The overall allocation of risks;
 - The separability of the scheme (driven by the payment mechanism, and benchmarking provisions); and
 - Other factors, for example, the compensation payable on Contractor default.
990. Where Authorities adopt the contract without changes, certain aspects of the accounting analysis will have been addressed already. This will leave Local Authorities to assess those factors that are driven entirely by factors, for example, demand risk, or that are dependent upon the Contractor’s specific solution, for example, design risk.
991. This document provides guidance to Local Authorities, based on the assumption that they adopt the Project Agreement, on approaching the analysis of the Local Authority and solution-specific factors. The principles and methodology in this guidance similarly apply where Authorities adopt alternate contract arrangements to those in the Project Agreement, but in these circumstances Authorities will need to consider,

taking advice as necessary, on the resulting implications for the detailed application of the accounting assessment.

Value for Money

992. As the Technical Note observes, “The objective of PFI procurement is to provide high quality public services that represent value for money for the taxpayer. It is therefore value for money, and not the accounting treatment, which is the key determinant of whether a project should go ahead or not. Purchasers should focus on how procurement can achieve risk transfer in a way that optimises value for money and must not transfer risks to the Contractor at the expense of value for money.”

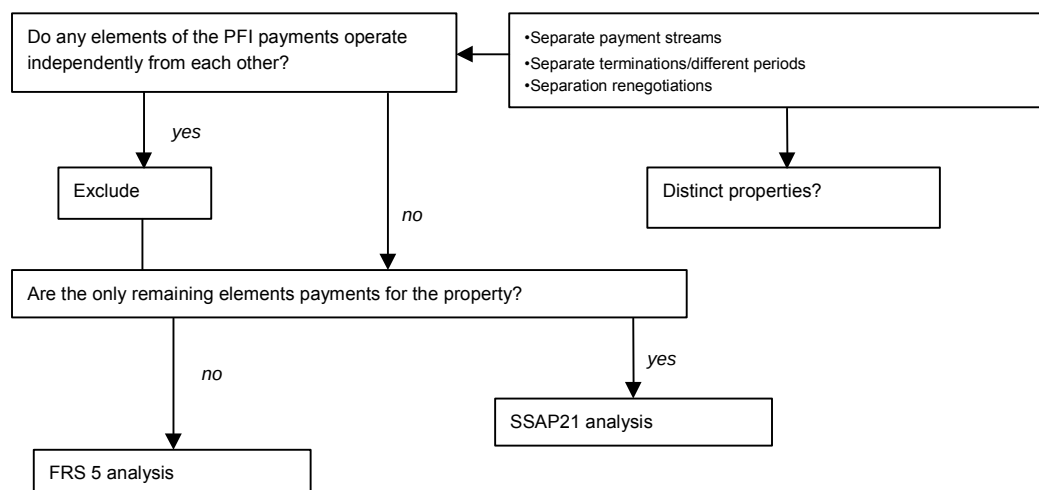
Determining the accounting treatment

993. This document seeks to promote consistency by Authorities in applying the relevant accounting standards to Joint Service Centre PFI schemes. Ultimately, however, the responsibility for determining the appropriate accounting treatment and the Authorities' annual financial statements, rests entirely with Authorities in consultation with their auditors.

Overview of FRS5 Approach

994. The first stage in the analysis involves identifying whether any elements of the contract are separable.

Figure 23



Separability

995. This section provides guidance on how to determine whether elements of the Contract are separable and should, therefore, be considered further on an individual basis. Separability is examined from the perspective of the separation of services – examining the extent to which the contractual provisions of the Project Agreement may result in the separation of services.
996. The first stage in the accounting analysis is to determine if any elements of the Contract are separable (i.e. the commercial effect is that individual elements of the PFI payments operate independently from each other). ‘Operates independently’ means that the elements behave differently and can therefore be separately identified.

Any such separable elements that relate solely to services should be excluded when determining which party has an asset of the property. Paragraph F10 of the Application Note, which is elaborated upon in the Technical Note, provides that a Contract may be separable in a variety of circumstances, including, but not limited to, the following three situations.

- 997. Situation 1 - the contract identifies an element of a payment stream that varies according to the availability of the property itself and another element that varies according to usage or performance of certain services.
- 998. Situation 2 - different parts of the contract run for different periods or can be terminated separately. For example, an individual service element can be terminated without affecting the continuation of the rest of the contract.
- 999. Situation 3 - different parts of the contract can be re-negotiated separately. For example, a service element is market tested and some or all of the cost increases or reductions are passed onto the purchaser in such a way that the part of the payment by the purchaser that relates specifically to that service can be identified.

Is the scheme separable under Situation 1?

- 1000. The Project Agreement includes, the indicative payment mechanism during the operational period of the contract, extracted below. If Authorities do not use this payment mechanism, then they will need to seek appropriate advice from their PFI accounting advisors.
- 1001. For the purposes of the accounting analysis, we are principally concerned with how the Base Unitary Charge is calculated, and the way in which deductions for poor performance or non-availability are applied. The Unitary Charge does not, therefore, appear to comprise separate payment streams for availability of the property and provision of services, and consequently does not appear to be separable between these two elements.

Is the scheme separable under Situation 2?

- 1002. There appear to be no provisions in the Project Agreement for partial termination of individual services, for example, as a result of continued poor service performance.

Is the scheme separable under Situation 3?

- 1003. The Project Agreement provides for the benchmarking of 'Operational Services'. Any identified variations in excess of 95% - 105% of the base cost will result in an adjustment to the unitary payment, or in the market testing of those services. Where market testing is carried out, any price variations will result in an adjustment to the unitary payment, and consequently will be separable.
- 1004. The Project Agreement does not list the individual services which fall within the benchmarking and market testing provisions, since this may vary between schemes. If all services are subject to benchmarking or market testing, then they will all be separable. Once eliminated, this will leave a payment stream that represents payment solely for the property, and SSAP 21 will be applied to determine the accounting treatment, with the likely result of an on-balance sheet treatment for the Authority.
- 1005. For the purposes of the FRS 5 analysis, only risks that flow from features of the property are relevant. For practical purposes, this means that the key services are likely to be the Hard Facilities Management (FM) services – principally lifecycle replacement and building and equipment maintenance (including janitorial services).

Consequently, it is important that, for accounting purposes, that benchmarking and market testing provisions do not cause the Hard FM services to be separable from the payment for the property.

Indexation

1006. The Unitary Charge is usually indexed to reflect the commercial reality that some of the Contractor's costs, relating to services, will increase over the course of the Contract. However, the Contractor's capital financing costs represent a large element of its overall costs and will usually be fixed over the life of the Contract.
1007. Thus when, for example RPI, is used as an index, Value for Money considerations usually mitigate against applying the full effect of the indexation to the whole Unitary Charge. One solution to this is to split the Unitary Charge into indexed element unindexed elements, with the latter broadly equivalent to the Contractor's annual debt repayment costs. However, since indexation of payment streams can be seen as a basic form of benchmarking, this can sometimes lead to these two elements being seen as separable under situation 3.
1008. When deciding how indexation should be used within the payment mechanism, Authorities should have regard to the possibility of separation. Possible solutions include:
- Ensuring that annual maintenance and lifecycle costs are included in the unindexed element; or
 - Indexing the whole unitary payment by a fraction of RPI.

Determination of Accounting Standards to be applied

1009. Having determined any separable elements, consideration needs to be given as to which accounting standard to apply, as follows:

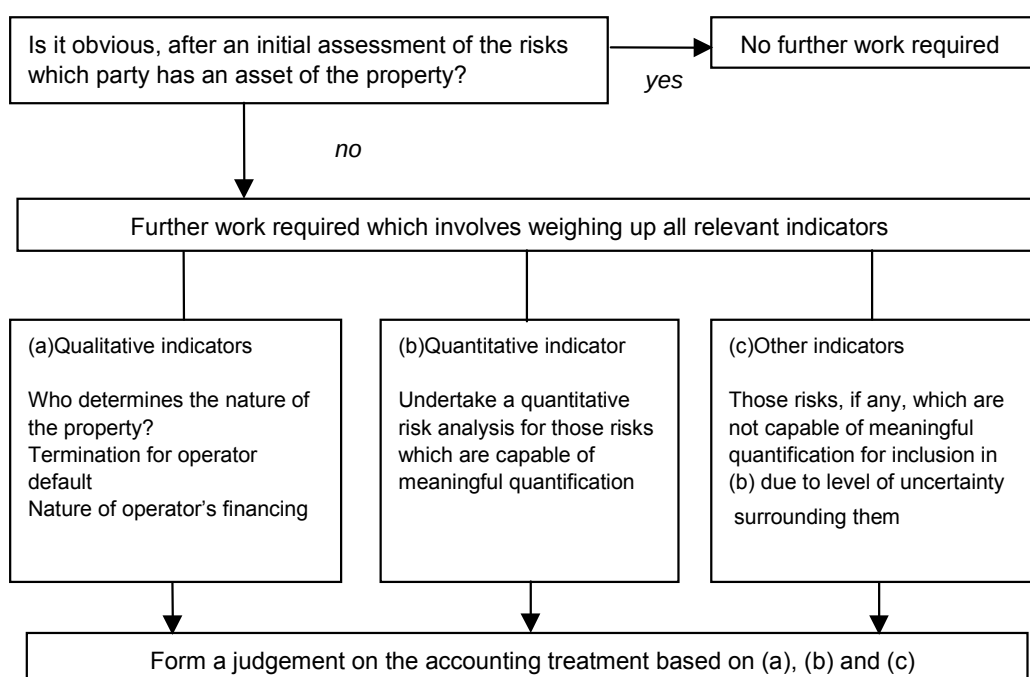
Figure 24

Contract components that comprise:	Accounting treatment
Payment for services only	Expense as a revenue cost as incurred
Payment for facility and services	Determine in accordance with FRS 5
Payment for facility only	Determine in accordance with SSAP 21

FRS5 Approach

1010. The diagram below sets out the formal approach under the Technical Note, the principles of which are consistent with the Application Note.

Figure 25



Qualitative Indicators

1011. The Application Note states that in determining which party has an asset of the property, it will not be appropriate to focus on one feature in isolation. It adds that it will often be useful to consider other factors to assess whether the scheme is, in substance, a financing transaction - for example, an assessment of the Contractor's financing and the extent to which the senior debt will be paid out under all events of Contract default. The Technical Note expands these considerations into formal qualitative indicators, and provides some further guidance on their assessment:

- Nature of the Contractor's financing.
- Termination for Contractor default.
- Who determines the nature of the facility?

Nature of the Contractor's Financing

1012. The Application Note provides that all aspects of the Contractor's financing arrangements should be taken into account, and notes that a very high level of gearing is an indicator that the property is an asset of the Authority. The Application Note does not give any indication as to what level of gearing would indicate a financing arrangement, other than to say that a 'significant level of equity' is an indicator that the property is an asset of the Contractor, but without defining significant. The Technical Note also does not add any further guidance in this area.

1013. However, experience of PFI schemes and their accounting analyses suggests that where bank financing (i.e. debt and debt-like instruments) represents greater than 90% of total financing, it would generally be considered as an indicator of a financing arrangement. However, there are no hard-and-fast rules, and judgements need to be carefully exercised.

1014. The private sector typically delivers Joint Service Centre PFI schemes through a non-recourse financing structure using a Special Purpose Vehicle (SPV). There are many and varied combinations of capital financing in PFI schemes. The table below considers common scenarios, but these will not always apply, and professional judgement will often be needed to assess the levels of bank financing and equity (i.e. equity and equity-like instruments) in each scheme.

Figure 26

Type of finance	Who provides?	Payment committed annually?	Funding provider has direct influence over the SPV operations?	Order of payment in the event of SPV liquidation.
Senior Debt	Third party, usually a bank	Usually – principal and interest	Not usually	Usually immediately after SPV preferential creditors
Bond Finance	Bond issued, often with monoline insurance underwriter.	Usually - principal and interest	Not usually	Usually immediately after SPV preferential creditors
Mezzanine debt	Often the senior debt lender, or where bond finance, the bond insurance provider	Yes, but usually only to the extent that senior debt or bond cover ratios are maintained.	Not usually	Usually a preferential creditor after senior debt or bondholders.
Subordinated debt	Usually the private sector parties to the transaction – the SPV equity holders.	Yes, but only to the extent that both senior debt/bond and mezzanine debt cover ratios are maintained.	Usually, if equity holders are providing the sub-debt.	Usually an unsecured creditor, of equal rank with other unsecured creditors. Occasionally, subordinated to all other creditors.
Equity	Usually the private sector parties to the transaction.	No but can pay dividends although usually only to the extent that all debt cover ratios are maintained.	Yes	Remaining funds after payment of all creditors.

1015. Mezzanine debt and subordinated debt are commonly described as either debt or 'quasi-equity'. Where these types of financing are included in a scheme, it is necessary to consider their nature in order to determine whether they are debt or equity-like in nature. Table above describes three characteristics of each component that can be used – whether annual payments are made, the level of control that the provider has over the SPV operations, and the preferential status of the component in the event of SPV liquidation.

1016. Generally, if a component has a preferential status in terms of annual payment and redemption, then this is an indicator that it is more akin to debt than equity. Similarly,

if the provider has no executive control or voting rights over management decisions, this is also an indicator that it is debt, rather than equity-like in nature.

1017. On this basis, it can be seen that mezzanine debt is usually debt, rather than equity-like in nature. Subordinated debt is more problematic, and a key test can be the preferential status on SPV liquidation. If the debt is subordinated to all other creditors, including unsecured creditors, then this is an indicator of an equity-like instrument.
1018. Where a high level of gearing provides evidence to suggest a financing transaction, it is necessary to examine whether there are any financial guarantees from one, or more, of the parent companies over the liabilities of the SPV. This seeks to establish whether or not the parent companies' financial liabilities are merely restricted to the level of equity and quasi-equity. Very often parent companies will provide performance guarantees over, for example, the construction of the property, or the provision of FM services. The former are not relevant for this purpose as they relate to the construction phase, while the latter may only be relevant insofar as they relate to hard FM services. Parent company guarantees over the financial liabilities of the SPV provide evidence that overrides the non-recourse assumption of the arrangement by extending the parent companies' financial risk beyond the level of equity and/or subdebt. However, if an SPV has a high level of gearing, and there are no financial guarantees from the parent companies then this is an indicator of a financing transaction.
1019. Although not an accounting issue, where there are no guarantees in place and little equity in the SPV, this should prompt the Authority to question the extent to which the SPV can, in reality, bear the commercial risks of the scheme, and whether ultimately those risks may come back to the Authority.

Termination for Contractor Default

1020. The Application Note states that where a Contract is terminated early and the senior debt financing will be fully paid out by the Authority under all events of default, including Contractor default, this is an indication that the scheme is a financing arrangement.
1021. The Project Agreement sets out the compensation payable in the event of contractor default whereby the Authority has the option to re-tender the provision of services or to require an expert determination of the value of the remaining contract.
1022. If the Authority chooses to re-tender, the objective will be to enter into a new contract with the Compliant Tenderer who offers the highest lump sum capital payment (representing the bid from the new contractor to take over the property and contractual commitments in return for the future income stream from the Authority). The Authority will then pay to the contractor the Adjusted Highest Compliant Tender Price.
1023. If the Authority chooses not to re-tender the contract, an expert determination of the contract value will be sought. The compensation payable to the contractor will be the Adjusted Estimated Fair Value:
1024. The compensation payable will, therefore, be based on the market value of the unexpired term of the remainder of the contract – measured by a competitive tender exercise or by an expert determination. Since this arrangement provides no guarantee that the bank financing will be fully paid out this indicator would provide contributory evidence that the property is an asset of the contractor.

Who determines the nature of the Facility?

1025. This indicator is effectively identical to the assessment of which party bears design risk for the quantitative analysis. In most cases, where the contractor has bid against an output-based specification, then it will be responsible for determining the nature of the property, and this indicator will provide evidence that the property is an asset of the contractor.

Quantitative Analysis of the Risks

1026. Under the general principles of FRS 5, whichever party has the greatest access to the benefits of the facility, and exposure to the risks inherent in those benefits, should recognise an asset of the facility. In other words, the accounting treatment follows the commercial allocation of the risks. This should be determined by examining the extent to which each party bears potential variations in property profits or losses.
1027. The Application Note highlights that a range of factors will be relevant in determining the extent of property profits and losses and it will be necessary to look at the overall effect of these factors when taken together. It further notes that any potential variations that relate purely to a service should be ignored. The principle here is to distinguish potential variations in costs and revenues that flow from features of the property from those that do not.
1028. The Application Note also notes that greater weight should be given to those features that are more likely to have a commercial effect in practice. Where there is no genuine possibility of a particular scenario it should be ignored. In applying this, the Application Note highlights that it is necessary to consider both the probability of any future profit variation arising from a facility factor, and its likely financial effect.

Initial analysis of the risks

1029. The first stage of the analysis is to undertake an initial assessment of the risks. If it were obvious from this assessment which party bears the majority of the risks, then no further work would need to be done.
1030. Whilst other approaches to assessing the risks may be equally valid, ODPM is promoting the approach set out in this document to ensure consistency and to aid evaluation. Based solely on the Project Agreement, the risks appear to be allocated as follows:

Risk/Principal Factor	Borne by the Authority	Borne by the Contractor
Demand risk	X	
Third party revenues		X
Design risk		X
Penalties for under-performance or non-availability		X
Potential changes in relevant costs		X
Obsolescence		X
Residual value risk	X	

- 1031. From this indicative analysis, it is not clear which party bears the majority, by value, of the risks, and further analysis will, therefore, generally be required.
- 1032. Demand risk is, arguably, the most important risk in Joint Service Centre PFI schemes, since it will usually be borne by the Authority and is often seen as difficult to quantify. This section describes how to meaningfully assess.
- 1033. The AN defines demand risk as 'the risk that demand for the property will be greater or less than predicted or expected.

Design risk (including obsolescence)

- 1034. The Application Note highlights that where the contractor has significant discretion over how to fulfil the PFI contract and makes the key decisions on what property is built and how it is operated, bearing the consequent costs and risks, this is an indication that the property is the contractor's asset.
- 1035. The contractor should provide a design solution to meet the Authority's output specification, and accept responsibility for all construction and annual costs incurred as a consequence. In such circumstances, the contractor will bear design risk. This is further supported by the clauses dealing with maintenance and latent defects.
- 1036. The accounting treatment is determined with regard to the risks associated with the property during the operational period of the contract. The Application Note highlights that construction risk is not generally relevant because such risk normally has no impact during the property's operational life. ODPM would not expect local authorities to include construction-related risks in their accounting analyses.

Residual Value risk

- 1037. Residual value risk is the risk that the actual residual value of the facility at the end of the contract will be different from that expected. This risk is more significant where the length of the PFI contract is significantly shorter than the expected economic life of the property.
- 1038. 'Standardisation of PFI Contracts' issued by HM Treasury PFI Taskforce notes that where a facility has no alternative use, the contractor will seek to generate its expected return over the life of the contract and there is no realistic prospect of transferring residual value risk. Joint service centres would normally be considered as a facility with no alternative use, and therefore residual value risk should normally lie with the Authority.
- 1039. The Project Agreement provides that, on contract expiry, the contractor shall either assign its interest in the Head Lease to an assignee notified by the Authority, or shall surrender its interest in the Head Lease to the Authority without compensation.

Third party revenue risk

- 1040. Third party revenues, where present, should be modelled. Risk ranges should reflect possible variations in third party income and can take into account assumptions concerning expected growth as a consequence of improvements to the property.
- 1041. Where the contract provides for third party income above a certain level to be shared, the Authority will bear an element of the upside revenue risk.

Penalties for under-performance and non-availability

1042. Most PFI schemes include penalty regimes that provide for deductions to be made to the Unitary Charge where the facility is unavailable or where services fall below agreed standards. The Project Agreement provides frameworks for penalty regimes for, respectively, poor-performance of services and unavailability of the property.
1043. When assessing the level of likely deductions to be applied, a realistic view should be taken, based on the following factors:
- Likelihood of failures: If the contractor's design solution is particularly innovative, for example, through the use of new construction techniques or materials, problems could arise during the operational period, leading to deductions. However, if the design is straightforward and the construction uses standard techniques and materials then this is less likely to lead to operational problems and financial deductions;
 - Rectification periods: If the rectification periods are generous then the contractor could resolve problems sufficiently quickly to avoid significant penalties;
 - What is the likely level of deductions? There are two general approaches to considering the expected level of deductions: Either consider individual failures and calculate the actual financial deductions that would occur through the deduction regime, or take a holistic view of the likely level of annual deductions to the Unitary Charge for all relevant failures. Although the first approach is technically a 'purer' method, in practice the latter approach is generally used and considered sufficiently accurate for the purpose. Typically these are modelled as percentage deductions applied to the Unitary Charge. It is important to remember that the relevant Unitary Charge should be used for this i.e. excluding any separable elements and non-relevant services.
1044. When using the holistic approach, however, care must be taken when considering the estimated level of deductions and a 'common sense' view needs to be applied.

Potential changes in relevant costs

1045. This is the risk that relevant costs will vary in a different manner to that expected. The relevant costs are those annual costs that are considered for design risk purposes, namely, lifecycle replacement and annual maintenance.
1046. The Technical Note observes that "Who bears this risk will depend upon whether or not the price variations can be passed onto the purchaser. If the unitary payment is fixed or varies in relation to a general inflation index the risk is borne by the contractor. If the unitary payment varies with specific indices to reflect actual costs of the contractor then the pricing risk is borne by the purchaser."
1047. In the Project Agreement, the Base Unitary Charge consists of an Indexed Element and an Un-Indexed Element. The Indexed Element will be indexed each year in line with Retail Prices Index.
1048. The risk of potential changes in relevant costs lies, therefore, with the contractor, and should be modelled by reference to likely changes in the relevant cost streams against likely increases in RPI.

Factors Not Capable of Meaningful Quantification

1049. As noted previously, where a quantitative analysis is undertaken, it should only include those risks that are capable of meaningful quantification. Consideration needs to be given, therefore, to those risks that cannot be meaningfully quantified and the impact that they might otherwise have on the results of the quantitative analysis.
1050. The approach to assessing the potential impact of these 'unquantifiable' risks on the overall judgement involves considering whether or not such risks provide substantive evidence to suggest that the conclusions drawn from the quantitative risk analysis and the qualitative indicators should be overturned. In particular, the Technical Note states that "the potential impact of these risks on the overall judgement will need to be carefully considered and properly justified".
1051. Typically the risks considered here are those that might result in changes to the facility e.g. changes in general and sector-specific legislation and inadequacies in the output specification, together with those that might create 'big-bang' changes in demand.

The Overall Judgement

1052. In forming the overall judgement, it is necessary to consider all three elements – the results of the quantitative indicator, the qualitative indicators and the unquantifiable risks together. This is an area where professional judgement must be applied, and cannot be done in a mechanistic way.

What do we do if our scheme is assessed as on-balance sheet?

1053. The scheme is likely to be on-balance sheet if demand risk is sufficiently significant to outweigh other risks. This is likely to be inherent to the scheme. If generic risk ranges have been used for areas such as design, one option is to revisit these for robustness. Two issues need to be borne in mind when taking this course of action:
- Any risk ranges must be balanced, consistent with the underlying commercial rationale and supported by appropriate evidence. The Authority must therefore ensure that it does not simply choose, or ask its consultants to provide, ranges that will result in an off-balance sheet view; and
 - It is possible that further consideration might result in ranges that generate a stronger on-balance sheet view.
1054. Other, more radical, options surround the risks borne by the Authority, i.e. demand and residual value risk. However, these options are likely to have implications in respect of value for money or joint service centres quality and thus should not be considered without due care or ODPM approval. Risks must never be transferred at the expense of Value for Money.

Section 3: Local Government (Contracts) Act 1997 Certificates

1055. The 4ps have produced A Guide to the Local Government (Contracts) Act 1997 – A Practical Guide to the Provisions and their Effect. It is important that Authorities make appropriate provisions for completing local government certificates, particularly since these may be a ‘condition precedent’ in the Contract. It is suggested that Authorities and their legal advisors review the 4ps guide as part of developing the Project Agreement and subsequently as part of the final negotiations to ensure that the relevant steps are taken.

Section 4: The Final Business Case

1056. If the Local Authority is seeking central government financial support towards the costs of the Joint Service Centre project, the ODPM/DCMS/DH will require a Final Business Case (FBC) to be prepared. This will form the basis of the relevant Department's final approval for the scheme and, assuming that the FBC is approved, allow the Department to award the Promissory Note for the PFI Credit for the project.
1057. The FBC may also be a useful way of reporting to members the position on the negotiated Contract, and therefore the means of seeking member approval to the subsequent award of the Contract. In most cases Contract signature is likely to follow shortly after the approval of the FBC by members and, where the Local Authority is seeking central government support towards the costs of the project, the relevant Department.
1058. Local Authorities will however have their own reporting and decision making structures for the final approval of a project before the Contract can be signed and will need to determine how the preparation of the FBC should be organised alongside other arrangements for member reporting.
1059. This guidance sets out a suggested approach to the structure of the FBC and is based on that used by a number of Local Authority PFI schemes now in operation. If Local Authorities have developed their own reporting structure for an FBC (perhaps in other service areas), they will need to determine the most appropriate structure for developing the FBC for the project.
1060. Local Authorities will also need to determine if the FBC is to become a public document (having regard to the requirements of the Freedom of Information Act), and if so to determine how any commercially sensitive information included in the FBC should be identified and subsequently removed from the public document (following member and [Department] approval).
1061. In summary, the FBC should provide documentary evidence as to how the negotiated Contract has met the objectives and key criteria developed for the scheme at the time of preparing the OBC, and any subsequent amendments to those objectives and key criteria made during the procurement process.

Executive Summary

1062. This section of the FBC should provide a short summary of the key issues included in the detailed sections of the FBC. The aim should be to keep this to a maximum of two to three sides and to ensure that all of the pertinent issues relating to the PFI Contract are addressed.
1063. This section of the FBC can also usefully include a succinct description of the negotiated project. The Executive Summary of the FBC might for example include appropriate commentary on the following issues:
- The Contractor
 - Term of the Contract
 - The expected investment regime included in the Contract
 - The estimated economic and service benefits of the project

- The fit of the project with other Local Authority policies and strategies
- The quality of the service delivery arrangements and negotiated approach against that envisaged in the Reference Project and OBC
- A summary of the performance standards and performance targets agreed with the Contractor, including where appropriate how these fit with any statutory targets.

Project Objectives

1064. The OBC will have included a series of aims and objectives for the project, and ideally the same aims and objectives will have been used throughout the procurement process, such as in the Information Pack, Output Specification and ITN. The model documentation included in this Procurement Pack assumes that this would be the case, and wherever possible there is appropriate cross-referencing to facilitate this approach.
1065. The FBC should set out how the proposals in the negotiated Contract meet the objectives developed as part of the OBC, and if there are departures from those objectives the reasons for the departure. If the objectives have been developed further since the OBC was approved by members (and the PRG if appropriate), or if new requirements have come to light during the procurement of the project, such as successor standards to those envisaged at the time the OBC was prepared, appropriate commentary should be included in the FBC on each issue.

Financial Issues and Affordability

1066. This section of the FBC could usefully set out the negotiated position on each of the following topics:
- Value for money – confirmation that the project offers value for money in accordance with a Stage Three assessment set out in the HM Treasury Value for Money Assessment Guidance.
 - CPA and Best Value – a description of how the project fits with the Local Authority's CPA and Best Value strategy for the service, and how Best Value will be measured throughout the term of the Contract
 - Affordability – the Local Authority will have made an assessment of the affordability of the project at the OBC stage. This computation should be updated using out-turn figures for the negotiated PFI Contract. Commentary should be included on how any material changes since the OBC was prepared are to be dealt with.
1067. Supporting schedules (not necessarily detailed financial models) for each of the above might usefully be included as appendices to the FBC.

Stakeholder Consultation

1068. The FBC can usefully outline how the relevant stakeholders have been consulted throughout the procurement of the project. This commentary might usefully refer to each of the following:
- Internal Stakeholders – outlining how the project has been developed by the project team, in consultation with members, the strategic project board, the stakeholder board, relevant departments and other internal stakeholders
 - Community and Staff – outlining how the local community and relevant staff have been consulted throughout the process.
1069. The FBC could also usefully explain how the consultation arrangements are to continue throughout the term of the Contract.

Procurement Process and Competition

1070. The FBC should include a summary of the competitive process followed to ultimately select the Contractor and the decisions taken at each stage of the procurement process. As a minimum, it is suggested that appropriate commentary be included in the FBC in respect of the following stages:
- Pre-Qualification and short-listing
 - The Invitation to Negotiate Bidding stage
 - Best and Final Offers (if used)
 - Selection of Preferred Bidder (and Reserve Bidder where appropriate)
 - Negotiations to financial close
 - Any issues arising from a Stage Three assessment in accordance with the HM Treasury Value for Money Assessment Guidance.

Risk Allocation and Accounting Treatment

1071. A section should be included in the FBC summarising the negotiated position as regards the allocation of key risks inherent in the project. In particular, there should be appropriate commentary on those areas where there has been departure from the risk allocation position envisaged at the time the OBC was prepared.
1072. The Local Authority will need to determine if the transaction will meet the requirements of FRS5. The FBC should include a statement on the accounting position of the transaction under FRS5. The FBC should also include copies, as appendices to the FBC, of the relevant opinions on the risk transfer test prepared by the Local Authority's chief financial officer and its external auditor.

Contract and Payment Mechanism

1073. The FBC should set out the final position on the Authority Vires for the PFI project.
1074. The FBC should set out the position on whether any statutory processes have still to be completed, such as planning permissions, and if appropriate, how and when those

statutory processes will be progressed and where the risk and responsibilities for completing the work lie.

1075. The FBC should include a summary of the key contractual issues negotiated as part of the PFI Contract and set out, probably in the form of a table as an appendix to the FBC, any derogation from the relevant Department and HM Treasury approved sector specific contract as regards *Standardisation of PFI Contracts* issues. This should include the reasons for those departures and an indication of the impact of not adopting the approach as set out in the sector specific contract (i.e. the position set out in the Model Project Agreement included in this Procurement Pack). The legal advisors to the project should be responsible for preparing such a table. The table should be approved by the project director and with the Local Authority's monitoring officer.
1076. The relevant Department may also request a copy of the negotiated PFI Project Agreement to be submitted with the FBC.
1077. Commentary should also be included in this section of the FBC on pertinent aspects of the payment mechanism agreed with the Contractor, such as key components of the payment mechanism, and how the performance of the Contractor will be monitored. This might usefully include details of the investment programme agreed as part of the Contract negotiations.
1078. Commentary might also usefully be included in this section of the FBC on the key commercial issues specific to the project. This might include commentary on the following:
- The position agreed on the treatment of taxation
 - The anticipated third party revenues included, or anticipated in the Contract
 - How service integration will be facilitated through the project.

DEVELOPING JOINT SERVICE CENTRES

PART B8

Contract Management and Performance Monitoring

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Section 1: General Principles

1079. Contract management is the activity whereby a Local Authority ensures that the respective roles and responsibilities set out in the Contract are fully understood and fulfilled to the contracted standard so that the aims and objectives of the Local Authority are achieved and Best Value is delivered. Where contracted standards are not fulfilled, the Local Authority will apply mechanisms established in the Contract to rectify any under-performance in the provision of the Joint Service Centre.
1080. Performance monitoring is a specific activity within overall contract management. It includes the day-to-day process of monitoring trends, assessing whether the services contracted for are delivered to the required standard, and assessing the remedial action taken by the Contractor when the performance standards are not met.
1081. The PFI Contract should define the basis for the future long-term operational and managerial relationship between the Local Authority and the Contractor, and must be actively managed if it is to remain efficient, relevant, productive and trouble-free.
1082. Contract management itself is a distinct activity that follows on from the procurement process, and mobilisation. The contract management arrangements should be considered and thoroughly planned for from the beginning of the procurement of the project. While some degree of continuity is important, new processes, systems and management responsibilities will be needed once the Contract has been signed.
1083. Preparation for this relationship highlights the following principles:
- Continuity – early on in the procurement process the Local Authority should designate a Contract Manager and staff who will be responsible for managing the Contract when it comes into effect. The designated Contract Manager may or not be the Project Director responsible for managing the procurement of the project.
 - Knowledge – the Contract Manager will need to fully understand the Local Authority's requirements for the project and the associated project documentation.
1084. Recognition of these two principles is essential for effective contract management.
1085. The procurement process can be so demanding that arrangements for contract management do not always receive the early attention that they deserve.
1086. The overall aim should also be for the Local Authority to work in partnership with the Contractor, which should be defined in a mutually agreed partnership protocol and operational manual that comes into effect at Contract close. Succession planning by both parties is also vital. Having a shared focus on delivery of the, where each party understands the objectives and business of the other, and has mutual trust and openness, are as important to the success of a project as the fulfilment of the formal Contract terms. The partnership protocol and operational manual should also include an agreed method of problem resolution.
1087. Contract management and performance monitoring are closely connected and for a project are likely to be undertaken by the same team. Management and monitoring procedures should be kept simple for both parties in order to maximise the effectiveness of the Contract. Over-complex systems are likely to be costly to run, difficult to enforce and ineffective in the long run. The essence should be to only

monitor the essentials, and to avoid being inundated with information that is not strictly relevant for the purpose of assessing delivery of the project.

- 1088. The Local Authority will also need to establish early on in the procurement process realistic resources and budgets to cover the costs of contract management. The responsibilities and reporting lines of the Contract Manager will need to be defined at the same time.
- 1089. It is important that the adequacy of the Local Authority's arrangements for the contract management and performance monitoring of the project are independently checked or audited from time to time. As noted in the earlier parts of this Procurement Pack, Local Authorities should also ensure that appropriate arrangements are included in the PFI Contract for Contractor assistance with Best Value Reviews and the CPA.

The PFI Project Agreement

- 1090. Effective contract management depends on getting the Contract right. The PFI Project Agreement should contain appropriate provisions on contract management covering the monitoring required by the Local Authority and by whom.
- 1091. Good PFI Contracts position the Local Authority as a customer receiving services. However, some risks, such as those risks retained by the Local Authority, or due to sub-standard service delivery by the Contractor, will still have to be managed. There will also be a need to manage change, changes in the law, and revised Local Authority requirements.
- 1092. The Local Authority may also have to increase its management and monitoring capability where there is continued under-performance by the Contractor.
- 1093. The Contractor will be dependent on the delivery of certain enabling services by the Local Authority, and other service providers. This will have implications for contract management by the Local Authority, not least in terms of monitoring, information flows, and the meeting of the build period milestones. Experience from the early operational schemes suggests that these 'liaison' responsibilities should be clearly identified and allocated within the Local Authority's monitoring team.
- 1094. Over time there will inevitably be the need for further consideration of the appropriate levels of management and monitoring. For example, on completion of the build period may be an opportune time to re-assess the levels of monitoring necessary. In any subsequent re-assessment, Local Authorities should be aware of the financial consequences if their management and monitoring processes lead to the inadvertent re-acceptance of those risks that have been contractually allocated to the Contractor as part of the procurement process. However, in some cases an adjustment in risk allocation may be acceptable, where in the light of experience or in order to best accommodate essential changes to the project this will result in a better balance between risk allocation and Best Value.

Section 2: Managing the Relationship

1095. Throughout the life of the Contract the Contract Manager will have the responsibility of protecting the Local Authority's agreed contractual position, ensuring that the agreed allocation of risk is maintained, and that Best Value is achieved.
1096. The management of the relationship between the Local Authority and the Contractor will be dependent on a number of factors, including the extent to which the Local Authority's requirements may change over time. Particular care should be paid to the early years of the Contract, during the build period and when the risk of problems is likely to be highest. More monitoring resources may be required during the build period than thereafter.
1097. The Local Authority should also put in place a document setting out the internal responsibilities for contract management and performance monitoring. This should set out the documentation requirements, and the arrangements for invoice management to ensure invoices are paid within the contractually specified period.
1098. Underlying these arrangements will be specific provisions in the Contract covering all of the elements of service delivery and payment. These will include:
- An Output Specification establishing the required performance levels and associated information requirements for judging service performance.
 - The respective roles and responsibilities for performance monitoring and information provision.
 - Arrangements for reporting the results of performance monitoring in relation to each of the agreed performance standards.
 - Conditions precedent for release and acceptance processes, and the commencement of payments.
 - The payment mechanism.
 - Mechanisms for benchmarking and market testing, including the division of responsibilities and any consequences on the payment mechanism.
 - Interruptions in service delivery and/or performance monitoring due to supervening events.
 - Handling of any qualitative factors relating to the contracted services, such as the results of a customer survey.
 - Managing changing requirements during the life of the Contract, including change of law, change of financier and/or change of control.
 - Mechanisms for problem solving and dispute resolution.
 - Contingency arrangements in the event of failure to deliver the core investment programme within the agreed timescale, or other default by the Contractor leading in either instance to early termination.
 - Contingency arrangements in the event of default in the Contractor's supply chain, or other urgent problem likely to affect the smooth delivery of the contracted services.

- Preservation of the Local Authority's ability to re-tender on termination of the original Contract.
 - Rights of the Local Authority to audit the Contractor's systems, including accredited quality management systems.
1099. The Contract Manager will therefore need to establish and maintain appropriate records and information management systems.
1100. PFI Contracts typically last a long time and although early termination will be an option in cases of poor performance, it will be a very unsatisfactory solution for both sides. Early termination for Contractor default will reflect a major failure on all the systems put in place to ensure satisfactory service delivery. Such an event presents the Local Authority with a major problem of how to ensure the continuation of the joint service centre to the public. The aim therefore should be to establish a relationship in which both sides are open, share information fully and work in partnership to solve problems. It is also important to remember that the Contractor will be monitoring the Local Authority's adherence to the Model Contract Project Agreement (in this Procurement Pack) includes outline drafting for a partnership board as a means of encouraging such an approach from an early stage in the process.

Hands On Versus Hands-Off Monitoring

1101. Local Authorities have wide experience in procuring stand-alone construction services, and it may be tempting to adopt a detailed hands-on approach in a PFI project. Such an approach must be avoided.
1102. While the overall principles are the same, because of the longevity of the Contract, the Contractor's 'ownership' of the asset and complex risk allocation between the parties, the Local Authority's management processes will be performed differently under a PFI Contract as compared to traditional procurement. Therefore the level of a Local Authority's management activity may be less than in a conventional project. Local Authorities should recognise the importance of the long-term partnership implicit in PFI Contracts but they must avoid action that could result in risk being transferred back to the Local Authority.
1103. The Local Authority should not engage in detailed management activities. However, it should ensure during the procurement process that the chosen Contractor will have acceptable performance monitoring, quality management and management information systems, and cash flows during both the development and delivery stages.
1104. The Local Authority should audit these systems with planned and random spot checks to satisfy itself that performance is being measured and reported reliably, accurately and comprehensively.
1105. The Local Authority will also require financial information to reassure itself about the Contractor's continuing financial viability where this is dependent on revenue from third parties, or where the Contractor's costs are higher than it had anticipated, or where the Contractor finances the project from internal resources.
1106. It follows that the Local Authority should not normally expect to approve any detailed designs or arrangements. The Local Authority should only need to ensure through occasional checks that the Contractor's quality assurance system for achieving the quality of design and service standards specified in the Contract is working.

1107. Whilst the Local Authority should not interfere in relations between the Contractor and its sub-contractors, it must guard against problems arising from the Contractor not having proper control of the project. There may also be a need to manage the relationship and interfaces between the Contractor and other suppliers who work for the Local Authority outside the Contract.
1108. Local Authorities procuring Joint Service Centre PFI projects may decide to appoint an Independent Certifier to confirm the Contractor's compliance with the Output Specification and associated relevant standards during the build period and in some cases also thereafter. In many instances this has been a joint appointment with the Contractor's financiers (and with a duty of care to the Local Authority) to ensure cost effectiveness of the checking arrangements. Where such an appointment is intended, it is important to ensure that there is no potential conflict of interest.
1109. Incentives and remedies must be in place to ensure that the Contractor provides accurate and timely data to assure the Local Authority that the contracted service will continue to be provided to required standard. The approach should incorporate a constructive partnership with the Local Authority's Contract Manager playing a key role in the relationship.
1110. Any contract that the Local Authority has with an Independent Certifier must also contain clear arrangements for reporting the results of performance monitoring to the Local Authority and Contractor. The Contract Manager and/or Independent Certifier will also need to liaise closely with any financier's representative, including sharing information and being present at joint meetings with the Contractor. Both the Local Authority and financiers have a common interest, vis-à-vis the Contractor, in the quality of the infrastructure and service continuing to be delivered to the required specification.

Who Pays for Monitoring?

1111. The cost implications for the Contractor of the Local Authority's monitoring requirements will need to be agreed in the Contract. Generally it will be sensible for each party to bear its own costs of monitoring. This should reassure the Contractor that the Local Authority will not act with too heavy a hand and will avoid any possible conflict of interest.
1112. Where a Local Authority requires independent experts or extra surveys, for example for benchmarking exercises, the Best Value Review, disputes, dilapidation and condition surveys, it should pay for them itself. These may of course increase the workload on the Contractor.

Contract Management Structures

1113. The Contract will define the basis for the long-term operational relationship between the Local Authority and Contractor to ensure delivery of the required services. The Local Authority must ensure that it has available sufficient resources and people with the right level of experience and authority to manage and monitor the Contract and its outputs.
1114. There must be people with the right interpersonal and management skills to manage the relationship with the Contractor. Clear roles and responsibilities should be defined.

1115. A list of the skills and competencies that might usefully be found in the contract management team is set out in Figure 47. It will be necessary to judge which of these, and to what level, are appropriate for each project.

Figure 27 Skills and Competencies for Contract Management

Knowledge of: • The types of Contract and Contract Law • The procurement process including specifications and contract management needs • The supply conditions and developments in relevant markets • Payment mechanism • Risk management techniques and contingency planning • The terms and conditions of the Contract • The roles and responsibilities of the contract manager, users and Contractor • The need to seek and achieve continuous improvement • Benchmarking techniques and their application • Performance management techniques • Quality assurance techniques • The need to forecast future demand • The principles underpinning Local Authority accounting and financial management • Relationship management. Abilities • To define the business needs and develop a contracting strategy • To identify the principal demand and cost drivers of the project • To produce and implement plans for managing the relationship with the Contractor • To complete an analysis of risks associated with the Contract • To analyse the contract management environment and adopt the appropriate management style • To apply contract management procedures and techniques • To negotiate successfully • To control expenditure • To manage users and users' demands • To manage relationships successfully Individual Qualities • The ability to work effectively as a member of a team • Effective negotiating and influencing skills • Effective interpersonal skills • Well developed analytical skills • A forward look and proactive approach • The ability to exercise sound judgement • A positive and practical attitude to change and innovation • The ability to work reliably under pressure and prioritise competing demands.

1116. The Local Authority should establish a suitable contract management structure and appoint a Contract Manager, with clear objectives, well before the Contract commences. The Contract Manager will act as a channel of communication with the Contractor throughout the life of the Contract. Whilst individuals will change, the aim should be for continuity of contract management procedures.
1117. The Contractor should be made fully aware of what structures have been established with the Local Authority, particularly in respect of roles and responsibilities of the Contract Manager and the management reporting arrangements. The Contractor will usually appoint its own contract or project manager to act as its interface with the Local Authority.
1118. The Contract Manager will be responsible to the Local Authority and must have:
- Clear delegated authority.

- Clear and recognised reporting lines to senior management, and a specific budget for carrying out the contract management functions.
1119. The resources to be devoted to contract management will be affected by the overall size of the project, and the particular stage it has reached (such as before and after completion of the build period). For most projects it is expected that the Contract Manager will be supported by, or co-ordinate, a team, consisting of a range of specialists and with varying levels of involvement. Over bureaucratic structures should be avoided.
1120. It should be the Contract Manager's responsibility to decide on the composition of the team, how it should be used, and whether and when to call on additional expertise (within the scope of the allocated budget).

Expertise in the Contract Management Team

1121. Membership of the team will reflect the various skills and knowledge required to effectively discharge contract management responsibilities during the build period and thereafter. Typical disciplines that need to be represented, or be available are:
- Liaison responsibilities – including in respect of members of the public, members, generally within the Local Authority and other third parties
 - Handling and dealing with user queries, correspondence and complaints, if not adequately dealt with by the Contractor
 - Checking and administering the monthly monitoring forms and accounts from the Contractor
 - Auditing and sample checking Contractor records
 - Dealing with the media and publicity about the progress and performance of the project
1122. The Contract Manager will need access to the full team from the outset, even if some of the services are only to be called upon infrequently.
1123. The main focus of the Contract Manager and the contract management team will be to facilitate an 'intelligent customer' approach and not to interfere with the way the service is delivered by the Contractor, provided the Output Specifications is met. It will be the responsibility of the Contract Manager to co-ordinate inputs from the various team members in order to ensure effective and consistent contract management. The level of input by various members of the team will depend on the circumstances. For example, it will be important that the legal advisors to the project, who should normally be those involved in the procurement process, are well briefed on the detail of the Contract. Although they should be members of the contract management team, they may only be called upon infrequently to advise the Local Authority in circumstances where disputes or problems of interpretation arise with the Contractor, or where changes are being considered.

Sourcing Contract Management Expertise

1124. In cases where a Local Authority itself maintains appropriate expertise, it may wish to source all or part of the contract management function in-house. This has

advantages in helping to develop the partnership approach required in long-term relationships.

- 1125. Where a Local Authority does not have all of the expertise required, it may be appropriate to buy in advice from external consultants, either on an ad-hoc basis, or more likely, under a long-term framework arrangement. Where contract management expertise is bought in, it will be important to ensure that commercially confidential information held by the Local Authority is protected.
- 1126. The terms of reference, timescales and basis of fees for such advisors (and the Independent Certifier) must be clearly defined so as to ensure that ownership of the project rests with the Local Authority. Any Contract with external advisors to provide contract management services must contain clear arrangements for reporting results of performance monitoring to the Local Authority and the Contractor.
- 1127. If bought in contract management is chosen or required, decisions will be needed on the length of time the advisors should be engaged. Consideration should be given to continuity. If however at any time the work has to be re-allocated, it is essential to provide the new advisors with full access to the previous organisation's records, and for parallel running prior to hand-over.

Training

- 1128. Local Authorities should ensure that appropriate training on contract management is provided for the Contract Manager and contract management team members prior to award of the Contract, and during all subsequent stages of the Contract. This is particularly important at the early stages of a project as experience of the new systems is developed.
- 1129. It has been the practice in some Local Authority PFI projects for such training to be organised jointly between the Local Authority and the Contractor. This can have the advantage of ensuring more cost effective training and reinforcing the partnership. Some training, especially on ensuring that partnership working does not blunt public accountability and the rules of propriety, may better be undertaken solely within the Local Authority. However the Contractor does itself need to understand the issues involved.
- 1130. The training might be supplemented with an early audit review of the contract management arrangements, to ensure that any settling-in issues are picked up at an early stage.

Dispute Resolution Procedure

- 1131. A crucial role for the Contract Manager is to try to ensure that by preventative action formal disputes do not arise. The procedures for liaising with the Contractor and the maintenance of agreed records of performance can help to resolve problems before they escalate. However, these may not always be successful.
- 1132. As going through the courts may not be appropriate for the disputes that can arise under a PFI Contract, an alternative formal dispute resolution procedure may offer a more efficient and cost effective method of resolving any disputes. The Contract will specify the procedure for handling disputes and *Standardisation of PFI Contracts* deals with this issue in detail. The Contract Manager will have an important role to play in this procedure.

Section 3: Stages of Contract Management

1133. Generally speaking there are four stages in PFI contract management in a Local Authority project:
- The procurement stage
 - Mobilisation period and tasks
 - The Build Period
 - The service delivery stage
1134. Where existing assets will be handed over to the Contractor to manage and modernise, the build period and the service delivery stage will overlap. However, for convenience this Procurement Pack refers to these as separate stages to distinguish between the contract management activities applicable to an investment programme and to operational service delivery.

Procurement Stage

1135. Preparations for the long-term management of the Contract need to be started at the very beginning of the overall project. This is to ensure that delivery of the service specification is capable of proper monitoring over the life of the Contract.
1136. Although contract management and monitoring is the last stage of the overall procurement process, it is critical as it is concerned with the delivery of the Contract over time. If it is to be carried out effectively it must be thought about at the outset, and incorporated into the development of the project and the negotiation of the Contract. This will help to ensure that service levels and value for money targets continue to be met over the life of the Contract.
1137. To assist this process, it is essential to include (or make available) in the Local Authority's project team the Contract Manager designate, and possible performance monitoring expertise. These should be close to the negotiating team so as to provide practical help in developing how the specifics of the service to be delivered and the monitoring system are reflected in the Contract.
1138. As payment of the full unitary charge is conditional upon the quality of the performance of the service, the Local Authority must be able to monitor the Contractor's performance against the outputs specified under the PFI Contract. A failure to match contractual outputs will affect those payments. The Output Specification must therefore include monitoring requirements that the Contract Manager should help to develop.
1139. These monitoring requirements should be based on objective and, where possible, quantifiable data, with a clear connection between the data collected, the achievement of the Output Specification and the financial implications of poor performance. The overriding objective should be to concentrate on critical elements of the projects, although the Contract needs to protect the Local Authority against long-term performance that remains persistently sub-standard.
1140. The requirements, and monitoring and auditing processes to be set out in the Contract, should be described in outline in the Instructions and Guidance to Bidders and should directly support the principles underlying the unitary charge. As set out

earlier in this Procurement Pack, Local Authorities should encourage Bidders to propose innovative solutions for Contract monitoring in their Method Statements. The Bidder's response on monitoring as set out in their Method Statements will be an important aspect of bid evaluation.

Mobilisation Period and Tasks

1141. Joint Service Centre projects are likely to need to include a mobilisation period between Contract signature and service commencement, and the Local Authority will need to determine those tasks that the Contractor needs to have satisfactorily completed before the Contractor can commence the services. The Model Contract in this Procurement Pack refers to these as the mobilisation tasks. The tasks should be documented in a mobilisation plan, which may either be specified in the Contract, or developed through negotiation with the Contractor. The aim of the mobilisation plan is to ensure a safe and continuous level of service is provided at the point of transfer of service responsibilities.
1142. The PFI Contract should also deal with the consequences of these mobilisation tasks not being completed by the planned service commencement date, and it will be the responsibility of the Contract Manager to monitor the Contractor's completion of the mobilisation tasks, and management of any delay in completion of the tasks.

Build Period

1143. During this stage the role of the Contract Manager is to monitor the Contractor's progress towards meeting the investment milestones set out in the Contract, and ultimately the Build Period completion date.
1144. As soon as the Contract is awarded, the Contract Manager should start to establish close-working relationships with the Contractor at all levels. While not inhibiting the Contractor's ability to manage delivery of the [sources], the Local Authority should be an active and intelligent customer.
1145. During the Build Period the Contract Manager, on behalf of the Local Authority, should aim to do no more than monitor the Contractor's procedures. This may involve inspecting and commenting on designs, having access to the sites, and confirming compliance with procedures, such as the quality assurance arrangements and independent certifier procedures. However, there must be a clear limit to the extent of the Local Authority's responsibilities as involvement to a greater extent than is appropriate for monitoring purposes may lead to the Local Authority taking back risk it is paying the Contractor to accept.
1146. The Contract Manager should only require sufficient management information from the Contractor to retain confidence that the Build Programme is being delivered in accordance with the requirements of the Output Specification, Contract and the relevant safety requirements. The Contract Manager should be in a position to assess whether the Contractor will achieve the milestones and/or Build Period completion date (or an earlier date if the Local Authority wishes and can afford such).
1147. Subject to the above caveats, during the Build Period (and for subsequent lifecycle investment programmes) the Contract Manager may need to deal with a range of issues, including:
- Design Variations.

- Installation monitoring role. The Contract Manager should have rights of entry onto the sites, and the right to raise concerns with the Contractor as to contractual failures (including non-compliance with quality assurance regimes).
- Delays or changes to the Build Programme. In such instances the Contract Manager should receive details and be responsible for confirming, on behalf of the Local Authority, whether delays were outside the control of the Contractor and whether these might entitle the Contractor to an extension of time for completion of the Build Programme. The Contract Manager would in exercising this responsibility normally first advise the Local Authority and make recommendations for action, and subsequently confirm the decision of the Local Authority. Knowledge of the Contract is essential, particularly in relation to supervening events.
- Local Authority changes. Insofar as the Local Authority requires any variations to the works (both during the Build Period and thereafter), the Contract Manager will be the conduit through which requests are made, negotiated and agreed with the Contractor, including details of design, working practices, price, and any variation to the unitary charge.
- Commissioning. The Model Project Agreement included in this Procurement Pack contains outline drafting for the commissioning tests that the Contractor will have to satisfactorily meet before the Local Authority adopts any new [insert details]. The Contract Manager will need to be assured by the Contractor that all tests are satisfied, and that the requirements of the Output Specification and payment mechanism are met. This will be done in conjunction with the Independent Certifier. Where the tests specified in the Contract and Output Specification are not satisfied, the Contract Manager would normally advise the Local Authority and make recommendations for action. The Contract Manager will subsequently need to ensure that such action was carried out by the Contractor, and confirm or otherwise to the Local Authority that the tests have been satisfactorily met.
- Dealing with Snagging. Snagging should relate only to minor issues and the Local Authority will need to consider how it wishes to deal with any such issues, in particular to be clear on its acceptance or otherwise of such items, and how rectification of any snagging issues are to be treated.
- Planning Issues.

1148. The Contract Manager will need to be aware of any project related risks retained by the Local Authority. Responsibility for monitoring and managing these risks may, where appropriate, be assigned to the Contract Manager.

Service Delivery Stage

1149. Although the Contract Manager will be managing and monitoring both a Build Programme and the delivery of the operational services from the Contract commencement date, following completion of the Build Period the Local Authority may wish to review its contract management and performance monitoring arrangements to deal more effectively with the new circumstances arising in monitoring service delivery.
1150. The Contract Manager should continue to avoid excessive monitoring which interferes with the Contractor's flexibility to resolve operating problems as they arise (within the terms of the Contract).

1151. During the service delivery stage the Contract Manager may need to deal with a range of issues, including:
- Definition, implementation and operation of the Local Authority's own direct monitoring system (such as the 'read-only' access to the Contractor's contract management systems).
 - Handling any 'settling-in' period, where the Service Provide may be afforded a degree of flexibility from the full performance regime. If this is agreed, it should be for a defined period only.
 - Monitoring the provision of contracted services, to assure they are in conformity with the requirements of the Output Specification and associated performance standards, allocating performance deductions in accordance with the payment mechanism in the Contract.
 - Receiving, checking and authorising (subject to the Local Authority's delegation of responsibilities) invoices, for the payments of the unitary charge at the frequency and within the period allowed for payment under the Contract, and calculation or recalculation of the payment for services in accordance with the provisions set out in the Contract.
 - Dealing with incidences of Contractor default and any allowable rectification periods and/or supervening events.
 - Ensuring that the Contractor's books are audited in accordance with the provisions of the Contract.
 - Monitoring the Contractor's approach to rectifying sub-standard performance, including where first responsibility rests with the Contractor's agent or sub-contractors.
 - Joint inspection of repair and maintenance obligations, either periodically and/or towards the end of the Contract term in line with the responsibilities for surveys in the Contract.
 - Monitoring compliance with health and safety requirements where this is provided for under the Contract.
 - Ensuring compliance with the Local Authority's policies and procedures, where these are contractual requirements.
 - Monitoring (by way of sample testing) the Contractor's quality management systems, where such information is required for Contract compliance purposes. The Contract Manager would, where there was concern about such systems, normally first advise the Local Authority and make recommendations for action and subsequently confirm the decision of the Local Authority.
 - Agreeing any benchmarking or market testing arrangements and outputs, provided for in the Contract, with the Contractor.
 - Periodic inspection of the Contractor's management information database and records. This might also include the use of 'mystery customers'.
 - Handling change primarily within the Contract provisions on change, and in conformity with the wishes of the Local Authority (including new service requirements). These would involve advising the Local Authority on the need

and options for change, assessing the implications of requesting any changes and the impact on both sides; acting as issuer of the Local Authority's instructions for change; recipient from the Contractor of requests for change; administration of any general change mechanism; and responding to other changes such as a change of law.

- Advising on whether the Contract as signed continues to make sense in terms of the Local Authority's objectives for the Joint Service Centre.
 - Receiving notification of any proposed refinancing arrangements, considering any implications for the Local Authority, including the potential for sharing any gains between the Contractor, financiers, and the Local Authority, and where required notifying the Contractor of the Local Authority's conclusions.
 - Handling service users and other stakeholders. There should be provision for users and stakeholders to report unsatisfactory performance or faults firstly to the Contractor, but then to the Contract Manager if performance does not improve.
 - Handling relations with the media and other third parties on behalf of the Local Authority and with the Contractor.
 - Maintaining contingency plans in case of major threats to the continued delivery of the specified service. The Contract Manager will need to be able to advise the Local Authority on such issues should the need arise.
 - Certain Local Authority staffing Issues.
 - Approval of Contractor sub-contractors (in accordance with the provisions in the Contract).
 - Determination of acceptability of third party use, such as [insert details], and any payments due to the Local Authority.
1152. There are other instances where the Contract Manager is likely to have a role, and the above list is not intended to be exhaustive.

Liaison between the Local Authority and the Contractor

1153. While the Contract Manager should be the primary point of contact on behalf of the Local Authority with the Contractor, it may be advisable to establish a formal liaison and partnering board with membership comprising representatives of the Local Authority, the Contract Manager, the Contractor, and other stakeholders as appropriate. Such a board should meet periodically, probably every four to six weeks during the Build Period, reducing in frequency to say every three months thereafter.
1154. A partnership board can provide an essential forum for the two sides to deal with more important problems and help the Contractor to better understand the Local Authority's on-going business. The Contract Manager should report the outcome of such meetings to the Local Authority's senior management. A partnership board is also an invaluable tool to pool experience for dealing with issues such as the Best Value Review and development of the Joint Service Centre Operational Study.
1155. Subject to the provisions of the Contract, the partnership board may also be asked to consider and advise on the arrangements for hand-back at the end of the Contract.

Continuity of Management and Monitoring

- 1156. PFI Contracts will typically be for a period of 25 years, and this poses continuity problems. Rarely will the initial contract management team still be in place at the end of the Contract. As a consequence it is important to ensure that all monitoring procedures are properly documented, including any advice on conducting the relationship.
- 1157. The Local Authority should consider providing reference guides to all of the project documentation, and a checklist of key stages and issues that will require action during the life of the project.
- 1158. Where a Local Authority has a series of PFI or PPP Contracts to manage it should produce (or regularly update) a more comprehensive contract management manual that can be used for all its PPP and PFI Contracts.
- 1159. In addition a succession plan for personnel should be constructed to ensure personnel do not change at the same time and the team always includes new and old hands. Contractor personnel will also change over the Contract period, and this may also affect the ongoing relationship.

Expiry of the Contract

- 1160. The Contract Manager will have a role as the Contract draws to its natural conclusion. This work should take place well before expiry, and in accordance with the arrangements set out in the Contract. Assuming that the Local Authority is following the Model Contract included in this Procurement Pack, the Contract Manager will be responsible for checking compliance with the hand-back procedures set out in the Contract, which will involve surveys prior to expiry and set-off of the unitary charge into a retention fund.

DEVELOPING JOINT SERVICE CENTRES

PART C1

NHS LIFT - SCHEMES IN PROCUREMENT

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Section 1: Developing the OBC

1161. Authorities seeking to develop their Joint Service Centres through NHS LIFT are required to prepare an outline business case (OBC) to support and justify their choice of service delivery route. Reference should be made to Part A5 of this Procurement Pack for further details and in particular Section 1 which specifies the requirements for projects developed through NHS LIFT.
1162. Although, the OBC is seen as the primary document pursuant to which the decision of whether or not to award central government financial support to a project will be made, authorities developing Joint Service Centres through NHS LIFT are encouraged to prepare OBCs regardless of whether or not they are seeking central government support. The formulation of a document containing all relevant information concerning the proposed Joint Service Centre, including the process adopted to ensure the project will provide value for money will assist the authority in ensuring its strategy for the project is comprehensive and fits within the authority's strategic and corporate objectives, as well as enabling the authority to obtain the appropriate internal approvals for the proposed project in accordance with its internal governance requirements.
1163. Whilst central government departments assess LIFT projects in a similar way to PFI projects, the Project Review Group will not technically review the Lease Plus Agreement, the Strategic Partnering Agreement or the Shareholders Agreement for individual schemes at the OBC stage. Since such standard documents have been developed and approved by Partnerships for Health (in conjunction with Partnerships UK), local schemes and prospective private sector partners are not expected to amend such documentation other than where there are specific aspects of a particular scheme which require a different approach (for example, a site specific issue). Instead, the relevant department will rigorously review the development and approach of the Strategic Service Delivery Plan ("SSDP") (in which proposals for, and the strategic context within which, the initial schemes to be developed by LIFT Co will be set out). For present purposes, details of the Joint Service Centre should be contained in the first SSDP along with all other initial projects to be developed by LIFT Co. A standard template for the SSDP can be obtained from Partnerships for Health.
1164. The following information will usually be contained in the SSDP and will not require repetition in a formal OBC or FBC-
- evidence of design, quality and sustainability which will be included in the standard tenants requirements and service specifications;
 - the Output Specification, the details of which will be contained in the relevant tenants requirements and service specifications;
 - evidence of appropriate risk transfer and accounting treatment which is incorporated into the standard documents and accompanying PfH guidance on capital charges;
 - the standard LIFT agreements (Strategic Partnering Agreement, Shareholders Agreement and Lease Plus Agreements) since these have been approved by PfH and any changes to these will only concern project specific issues;
 - use of external advisors. PfH appointed a set of advisors to draft and develop the standard NHS LIFT documentation and guidance which local authorities are free to use. In addition, 4ps have negotiated competitive rates with a panel of 3 legal and 3 financial advisors, each with expertise in NHS LIFT which are

available for local authorities to use. Anyone seeking to use any such advisors should consult PfH or 4ps (www.4ps.gov.uk) respectively for further details;

- bankability which is built into the LIFT programme and continuously [ensued] through the regular input of PfH and the ongoing development of the standard documents and guidance of the programme.

1165. Area departments will expect to see addressed within LIFT OBCs will generally include:-

- evidence of compliance with criteria (general and sector) for central government funding;
- demonstration of the way in which any JSC proposals assist in promoting or achieving the authority's wider objective (e.g. diversity and innovation);
- evidence of commitment and support for the project from key stakeholders and service users;
- how the provision of soft facilities management services (e.g. cleaning, security and waste management), fixtures, furniture and fittings and ICT will be procured and provided within the facility;
- any independent review of the proposed rentals to demonstrate how the public sector will obtain value for money by going through LIFT as compared to the public sector comparator;
- the accounting treatment;
- the amount of central government support required, together with details of how the remaining revenue requirements will be met;
- project management arrangements;
- timetable for the project;
- how all statutory approvals and internal and external governance requirements will be accommodated and satisfied during the progress of the project.

1166. When applying for central government support, authorities should base their requirement for support on an estimate of the capital expenditure to be incurred by the Contractor. The relevant departmental bid guidance and criteria recommends that authorities set out the basis of their assessment (normally anticipating using a 70/30 abatement split when there is good reason to depart from this basis), together with any assumptions made. Authorities should seek to reduce the need for central government support through use of capital receipts wherever possible as well as other sources of funding (public/private) as well as the appropriate apportionment which have been secured. If any such funding is contingent on the satisfaction of certain criteria, authorities should also demonstrate how any shortfalls may be met in the event certain criteria are not satisfied within the requisite time period. This is particularly important since central government funding will not be available to bridge any funding shortfalls which may arise as a result of default by any authority partners.

1167. Proposals should set out the cost in terms of PFI credits per square metre floor area to enable such costs to be benchmarked against existing projects. Where a facility will be jointly and permanently occupied by partners (e.g. PCT or voluntary sector

body), the PFI credits sought should be reduced to exclude floor area occupied by such partners.

1168. Further guidance concerning applications of central government support for LIFT JSCs can be obtained from the ODPM website at www.local.odpm.gov.uk (the "PFI Support for Local Authorities taking out a Lease Plus Agreement in an NHS Building Version 2").
1169. OBCs are also required to demonstrate how the proposal has been assessed to provide value for money. The HM Treasury procedure for assessing value for money requires authorities to complete a Stage 2 assessment at OBC stage based on Stage 1 assessments conducted by sponsoring departments (see www.hm-treasury.gov.uk for a full description of the procedure and Part A5 of this Procurement Pack).
1170. Authorities should appreciate that limited central government funding is available and within over 120 authorities situated within designated LIFT areas, it is inevitable that demand will exceed supply. However, authorities should consider alternative ways in which to fund their costs.

Section 2: Project Management and Levels of Participation

Levels of Participation

1171. One of the key distinctions between using NHS LIFT and other service delivery routes such as the PFI, is that the former concerns the overall strategic framework in accordance with which facilities are developed as well as the delivery of individual facilities or a number of facilities. Given this additional strategic dimension, authorities have a number of different levels at which they can participate in local NHS LIFT schemes, all of which were initially explored in Part A3:Developing JSCs Through NHS LIFT.
1172. We explore these options in further detail below since any choice between them will have an impact on the extent to which an authority will need to be involved in the full project management structure of the local NHS LIFT scheme.

Figure 28

Summary - Levels of Participation in NHS LIFT
• No involvement at all • Level 1 – Being named as a contracting authority in the NHS LIFT OJEU but not signing any of the 3 principle LIFT agreements • Level 2 – Becoming a Participant under the Strategic Partnering Agreement without signing the Shareholders Agreement or a Lease Plus Agreement • Level 3 – Becoming a Participant (under the Strategic Partnering Agreement) and becoming a Tenant under at least one Lease Plus Agreement • Level 4 – Becoming a Shareholder in LIFT Co.

1173. No Involvement

- 1173.1 Authorities within designated NHS LIFT areas have the option to decide to have no involvement in their local NHS LIFT scheme, whilst. authorities not situated within designated NHS LIFT areas will not be able to participate in their local scheme even if they wanted to.
- 1173.2 With the introduction of LIFT, authorities should appreciate that their opportunities for working in partnership with their local health and social care partners will be significantly reduced if such partners are involved in the local NHS LIFT scheme and the authority has decided to have no involvement. This will be especially the case if such partners have granted LIFT Co exclusivity in relation to the provision of certain works and/or services including the commissioning, design, construction and completion of their future accommodation needs together with facilities management services. . In practical terms exclusivity means any such partners will be required to procure certain works and services through LIFT Co, whilst the authority, not being a contracting authority for the purposes of the NHS LIFT procurement exercise, will not be able to procure any works or services through LIFT Co, thereby reducing opportunities for authorities and such partners to jointly develop facilities and integrate service provision.
- 1173.3 Authorities deciding to have no involvement in their local schemes will however be able to take leases from LIFT Co or their local health care providers (e.g. PCTS, dentists, GPs etc.) in just the same manner as they would from any other leaseholder since such arrangements (being normal commercial leases) are not caught by the public procurement rules. However, legal advice should be sought, if necessary, to ensure the authority in entering into such a traditional lease is in legal terms doing so and will not be receiving any services in addition to those normally provided by a

landlord. Otherwise, there is a risk that the actual arrangement may come within the ambit of the EU procurement rules.

1174. Level 1 – Contracting Authority

- 1174.1 This is probably the most flexible option for authorities who are unclear as to the extent of any involvement in the local NHS LIFT scheme but do not want to prevent themselves from being actively engaged in the scheme later in the process if they decide such involvement would facilitate the discharge of their functions.
- 1174.2 By being named as a contracting authority in the OJEU notice advertising the award of the contract to the private sector partner who will establish LIFT Co, the authority may participate in the procurement process (i.e. the drafting of the information which bidders receive about the project, evaluation of compliant bids, contribute to the selection of the preferred bidder and negotiate project specific amendments with the preferred bidder). Obviously the extent of any such involvement will be determined by the authority and its relationship with the other partners in the scheme.
- 1174.3 The key advantage of this option is the fact the authority does not make any financial obligation. To a certain extent, it can exercise a "wait and see" approach since this level of engagement contains no obligation to play any role within the scheme, but gives the authority the option to do so subject to the constraints of the public procurement regime. The authority may decide to sign any of the three principal LIFT agreements at a later stage in the process and will be permitted to do so. Such flexibility is not available under the option discussed above.
- 1174.4 Authorities should note, however, that an argument can be advanced that by becoming a contracting authority for the purposes of the OJEU notice, the authority has agreed to take part in the scheme at some stage in the future but as time elapses the strength of this argument is weakened if the authority does not participate in the scheme in any meaningful way. For example, if the authority after being named in the OJEU notice only takes a Lease Plus Agreement in year 12, it would be advisable for the authority to obtain legal advice concerning the extent to which it is still able to take advantage of the original OJEU notice. It could be argued that having not undertaken any action for the first 12 years of the arrangement, the original OJEU notice no longer allows the authority to procure services/works thereunder. Each case should be considered on its own individual merits.

1175. Level 2 - Participant

- 1175.1 Any authority who seeks to participate in the strategic planning and partnering aspects of the NHS LIFT scheme with its local primary health and social care providers may in addition to or without taking a Lease Plus Agreement, do so by becoming a signatory to the Strategic Partnering Agreement ("SPA"). By signing the SPA, an authority would obtain representation on the Strategic Partnering Board ("SPB") which is responsible for overseeing the operation of LIFT Co (the private sector controlled special purpose vehicle established to delivery the required accommodation needs of all partners) However, there is an important decision for authorities to make when contemplating becoming a signatory to the SPA which relates the extent of work that the authority will be obliged to put through LIFT Co.

- 1175.2 Entering into the SPA without granting exclusivity to LIFT Co, gives authorities the greatest level of flexibility. If an authority grants exclusivity to LIFT Co it will effectively be obliged to put certain of its future accommodation requirements to LIFT Co through the life of the SPA (which will generally be 20 years). Given the wide range of authority functions and the equally diverse range of accommodation requirements that an authority may have at any one time, authorities should ensure they seek proper legal advice before they decide to give any level of exclusivity to LIFT Co. Not may authorities have opted to grant LIFT Co exclusivity, although we are aware of certain authorities such as Barnsley Metropolitan Borough Council who has granted exclusivity only in relation to social services accommodation (including the provision of accommodation for children and persons with hearing disabilities) with a capital value above a certain agree financial threshold. Before considering granting exclusivity, authorities should ensure they understand exactly what it means since a breach of this obligation could result in the authority being required to pay LIFT Co substantial compensation.
- 1175.3 Generally, exclusivity extends the Partnering Services and the FM Services and Works under a Lease Plus (provided the capital value of such is in excess of £20,000) or any non-capital transaction for the provision of accommodation. Partnering Services includes services which authorities will generally have sufficient capacity to undertake in-house. These services include estate management, service planning, estate planning, property development and supply chain management. Authorities may wish or need to "buy-in" some services from LIFT Co, however, it is unlikely that local authorities will wish to purchase all such Partnering Services exclusively from LIFT Co.
- 1175.4 In most instances authorities have become Participants under the SPA without granting exclusivity. This allows them to ask LIFT Co to develop proposals for and (once approved by the SPB) implement such proposals for their future major health and social care related capital projects if they so desire but will not be obliged or required by the terms of the SPA to do so. If requiring such flexibility, authorities should carefully review the terms of the SPA to ensure there is nothing within such terms which requires them to put any proposals through LIFT Co, other than any they specifically wish to do so. If the terms of the SPA are not clear, authorities should investigate the inclusion of additional provisions to make their obligations expressly clear. As a general rule, projects or schemes should not be contained in the SSDP or Schedule 14 (Schedule of Council Accommodation) of the SPA if the authority is not sure that it wants LIFT Co to develop them. Any projects in such documents will be bound by the exclusivity provisions.

1176. Level 3 – Participant and Tenant.

- 1176.1 In addition to becoming a Participant, authorities may enter into Lease Plus Agreements under which they receive accommodation from LIFT Co in return for a rental charge over the twenty five years of the lease. In addition to providing normal landlord services, the landlord (LIFT Co or one of its subsidiaries) would provide operating and facilities management services, although the provision of soft facilities management and ICT services is not generally included within the scope of the first three waves of LIFT schemes.
- 1176.2 In respect of JSC schemes, the authority may take a Lease Plus Agreement over a whole facility and sub-let certain parts to its partners or alternatively the authority together with its partners may each take a Lease Plus

Agreement over their respective part of the facility. However in the latter instance consideration should be given by authorities and partners as to how service integration and unnecessary duplication of services is to be prevented under this arrangement.

- 1176.3 The standard form of Lease Plus Agreement is a standard lease with additional operational services which LIFT Co (or one of its subsidiaries) will provide as landlord of the facility. Such additional services include obtaining relevant insurances, undertaking lifecycle maintenance and unprogrammed maintenance work as well as responding to requests for alterations to the facility as required by tenants. In view of such additional services, the rental payments under the Lease Plus are slightly larger than they would ordinarily be for a standard lease.
- 1176.4 Since entry into the Lease Plus Agreement could be regarded as a contract for works and services, even if an authority was just entering into a Lease Plus and not participating in any of the other NHS LIFT arrangements, compliance with the EU procurement process would be required. For this reason, only an authority named in the initial OJEU notice can take a Lease Plus in accordance with the procurement rules. However, an authority seeking to take a sub-lease (i.e. a lease from a PCT who holds the Lease Plus Agreement) will not be subject to the EU procurement rules if the sub-lease is a normal lease.

1177. Level 4 - Shareholder

- 1177.1 Authorities may, in addition to becoming a Lease Plus Agreement Tenant and/or becoming a Participant under the Strategic Partnering Agreement (with or without granting exclusivity) consider taking an equity stake in LIFT Co. The Shareholders Agreement ("SHA") envisages local health and social care stakeholders being shareholders in LIFT Co, whether or not they are signatories to the SPA. Any shareholding that the authority or other local health economy stakeholders take in LIFT Co will be part of a minority shareholding. Membership of the LIFT Co Board of Directors will give authorities some influence over LIFT Co's operations and the planning of future requirements, but this must be viewed from the context of a private sector controlled company.
- 1177.2 A minority shareholding may be acquired, for example, in return for land transferred into LIFT Co and to the extent that the value of assets transferred exceed the shareholding, the excess value could be taken in cash or other forms of investment in the company.
- 1177.3 As a Shareholder, an authority will be entitled to dividend payments (if and when declared) by LIFT Co. However, there is a mechanism for the top slicing of profits when certain thresholds of profits in excess of the proposed investors' internal rate of return (IRR) are reached (i.e. 15%, 30% and 50% to be reserved on the excess over 20%, 25% and 30% of IRR respectively). The percentage of dividend is held in reserve and will generally be distributed to stakeholders in the local health and social care economy following determination by the Strategic Partnering Board.
- 1177.4 Authorities should note however, that there is only one class of shares for public sector shareholders in LIFT Co and they are only permitted one Director to represent their collective views on the LIFT Board of Directors. For this reason it is important for the authority to engage with its public sector partners to explore who will take any such shareholding (up to a maximum of

20% for the public sector) and in what proportions. If there is more than one public sector shareholder, the public sector parties must determine the identity of their single representative and determine in accordance with whose directions such a Director will vote. Drafting a co-operation agreement between all public sector participants might be a useful tool in this respect to agree ways in which certain matters will be determined. This is particularly important since there are a number of shareholder consent matters in the SHA requiring the unanimous consent of all shareholders and any disagreement between public sector shareholders would delay the proceedings of the company.

1178. As depicted above, there are a number of issues for authorities to consider when becoming involved in NHS LIFT schemes, most of which are not mutually exclusive. Therefore, it may be possible for an authority who does not take an initial shareholding in LIFT Co to do so at a later stage in the development of the project. There may also be other ways in which authorities may be involved in their local NHS LIFT scheme. For example, they might occupy some space within a LIFT Co supplied facility pursuant to an informal sharing arrangement with the existing Lease Plus Tenant. Authorities should make their own assessment of the extent to which any involvement would enhance their strategies for the future development of primary health and social care premises within their locality and determine their participation accordingly. They should appreciate however, that a failure to engage in the scheme at all may significantly reduce their future opportunities for working with their local primary and health care providers to realise the efficiencies and cost savings that better user-focussed service delivery could achieve.

Project Management

1179. The level of involvement of an authority in the local NHS LIFT scheme will be determined to an extent by the manner and level of engagement of the authority within the overall project management structure of the scheme as it proceeds with the procurement of the LIFT Co partner. However, in general the principles concerning the early identification and implementation of appropriate project management roles and structures apply to authorities developing JSCs through NHS LIFT just as they do to authorities developing JSCs through the PFI. Reference should be made to Part B1 as well as the additional guidance contained in this Section 2.
1180. Authorities seeking to develop JSCs through NHS LIFT schemes which are in procurement should ensure their internal project management structure compliment and fit into the general overall structure established for the NHS LIFT scheme as a whole. Internally the authority should identify a relevant Project Sponsor (political post) and Project Manager (lead officer role) for determining and spearheading the authority's involvement in the local LIFT scheme, as well as liaising with the other LIFT parties to ensure there is "buy-in" and consensus concerning the overall strategy of the local LIFT scheme. Such appointments should be supplemented as and when appropriate by technical and service specific expertise from each of the main departments whose services will be accommodated within the proposed JSC, since it will be essential that such representatives assist in developing the output specification and tenants requirements for the proposed JSC and ensuring the scheme develops in a manner which will allow the authority to participate and gain from their involvement. A summary of the suggested project

management structure for LIFT projects is available from the Department of Health website.⁷⁴

1181. Given the potentially large number of stakeholders involved in NHS LIFT schemes, authorities must ensure they liaise regularly with the LIFT Project Director and are represented on the LIFT Strategic Partnering Board (whether as a full participatory member or merely as an observer). Such involvement will ensure the authority's concerns are taken on board during the procurement of the LIFT partner as well as enabling the authority to ensure its corporate and service specific strategies are aligned with the envisaged activities of the local LIFT scheme when it becomes operational. Authorities who do not engage with their local LIFT scheme during this process may discover they have fewer opportunities to realise the efficiency and service alignment benefits which the LIFT initiative is designed to facilitate.
1182. Authorities are also advised to encourage all key local health and social care providers with whom they are seeking to work to engage in the project. This will ensure the scheme has maximum local stakeholder support, thereby enabling the strategy devised by the Strategic Partnering Board to be as inclusive and reflective of the locality's needs as possible.

Procurement Timetable

1183. As demonstrated by the existing operational NHS LIFT schemes, the procurement process for such schemes can take slightly longer than the average 15-21 months encountered in the PFI market. However, such timescales are most probably reflective of the pioneering nature of such schemes. Guidance from the Department of Health⁷⁵ suggests projects should take only 12 months from the issue of the advertising OJEU to the appointment of a partner, with three months allocated for each of the following:-
- selecting the shortlist of bidders to be invited to submit bids;
 - bidders developing detailed bids;
 - evaluation of detailed bids; and
 - identification and negotiation with the preferred bidder to financial close.
1184. Given the availability of standard documentation which has been accepted by the market, the increasing familiarity with the LIFT structure by the market and stakeholders as well as the project support available from Partnerships for Health and 4ps, it is not inconceivable that projects should not reach financial close within this timetable. However, to ensure this is possible considerations such as the management of stakeholder input, streamlined procedures for pulling together bidder information and evaluating bids as well as ensuring issues such as planning approvals and obtaining the necessary stakeholder consents must be factored into the timetable early in the process.

⁷⁴ NHS LIFT Starter Pack 2002

www.dh.gov.uk/ProcurementAndProposals/PublicPrivatePartnership/NHSLIFT/NHSLIFTGuidance/fs/en

⁷⁵ See footnote 66.

External Advisers

1185. Consideration should be given to methods of appointing and using external advisors (legal, financial and/or technical) in a manner which is cost effective for the authority. Authorities may want to consider use of some or all of the following:-
- appointing joint advisors for all public sector bodies involved in the scheme, although a clear strategy must be agreed with such advisors at the outset as to how any conflicts of interest between such bodies will be handled should they arise during the course of the procurement;
 - 4ps have appointed a number of financial and legal advisors, experienced in advising on NHS LIFT schemes, which are available to authorities who subscribe to the 4ps NHS LIFT Extranet⁷⁶ at heavily discounted rates;
 - the Office for Government Commerce have pre-selected a number of legal, financial and technical advisors, available at negotiated rates from their S-cat, L-cat and PCS products;⁷⁷
1186. External advice should compliment in-house expertise and it is advisable within NHS LIFT projects for all public sector parties to ascertain the nature and extent of internal expertise before considering appointing external advisors. This should be assessed in light of the various different stages of the process. For example, bespoke legal and financial advice might be sought at the initial stage of the LIFT scheme for an authority to help it determine the level and extent of its involvement but it might be capable of dealing with all other enquiries during the majority of the procurement process internally. The need for further advice may only arise following the selection of preferred bidder to assist the authority during the negotiation process. A combination of the above suggested options might be appropriate for different stages of the process and it should not be assumed that external legal advice will always be necessary throughout the process.

Working With Other Stakeholders

1187. The large number of potential stakeholders in NHS LIFT schemes inevitably means ensuring co-operation and appropriate input is key to the successful working of the scheme. Many authorities are accustomed to working with their local health care partners pursuant to Section 31 Health Act 1999 arrangements, whilst for others this may be relatively uncharted territory. Regardless of which category you fall into, authorities should seek to use the strategic planning and development model which lies at the heart of NHS LIFT and modify it according to their bespoke needs.
1188. Given the contribution made by voluntary organisations to health and social care provision within localities (for example, the salvation army and the women's royal voluntary service), authorities should ensure the ambit of LIFT does not just extend to public statutory bodies but is also accessible to such groups. Whilst the extent and manner of their involvement can be determined by on a project specific basis, their contribution should not be overlooked nor ignored when devising a collective strategy for the area.

⁷⁶ For further details please see www.4ps.gov.uk

⁷⁷ For further details please see www.ogcbuying.solutions.gov.uk

Section 3: Pre-Qualification, Shortlisting, ITN and Selecting a Preferred Bidder

1189. The extent to which authorities will be involved in the various aspects of the procurement process will be determined to some extent on the level of engagement by the authority within the overall scheme. For example if an authority only wants to take a Lease Plus Agreement, it will want to participate fully in the development and evaluation of bidders' specifications for sample schemes and its scheme in particular, but may not be interested in participating further in the procurement process. In general however, the relevant guidance contained in Parts B3, B6 and B7 should be followed as supplemented by any specific guidance issued by Partnerships for Health.

1190. However, it is worth noting the following:-

- the standard documentation issued by Partnerships for Health including the model pre-qualification questionnaires, evaluation methodologies, invitation to negotiate documents and appointment of preferred bidder and reserve bidder letters should be reviewed carefully by authorities to ensure they take account of issues and considerations which are of particular significance to local government;
- authorities should ensure the selection of sample schemes put forward to bidders are reflective of their potential requirements since it will largely be on the basis of these that the value of lease plus payments will be assessed;
- authorities and their partners should take the opportunity to ascertain the experiences of any bidders elsewhere within the NHS LIFT initiative and make contact with other appropriate authorities and partners to ascertain the nature and success of such relationships. Such liaison might also assist individual schemes learn from the lessons of operational schemes so that they may avoid certain issues;
- above all authorities and their partners should appreciate that the procurement process will result in the appointment of a partner to deliver accommodation for at least the next 25 years (unless the arrangements are terminated early). Therefore, ensuring it is a partner who is willing to work with all local partners, and not just the PCT or the authority is essential.

Section 4: The Output Specification – Tenants Requirements and Service Specification

1191. Similarly to PFI projects, a JSC developed through NHS LIFT will require the formulation of an output specification. In NHS LIFT schemes this will take two forms namely the Tenants Requirements, which specify the works to be undertaken by LIFT Co (or its subsidiary) in developing the facility as well as the Service Specification in relation to operational services to be provided by the landlord throughout the term of the Lease Plus. Both these specifications are contained in Schedule 3 and Schedule 9 of the Lease Plus Agreement respectively.
1192. Both sets of specifications should be developed and refined with the LIFT Co partner during the procurement process to ensure the Tenant obtains the most appropriate and value for money solution, since it is against such specifications that due payment will be calculated.
1193. In general terms the same principles apply to the formulation of the Tenants Requirements and Service Specification as discussed in Part B3: Output Specification. Each specification outlined should comprise of clear and unambiguous works and service delivery standards, thereby reducing the opportunity for the landlord to interpret such criteria subjectively in a manner which may not accord with the intention of the authority as Tenant. In addition, there are a number of issues which are particularly significant in relation to facilities supplied under NHS LIFT and these issues are considered below.
1194. In addition, an authority may only be occupying a part of a JSC facility pursuant to a Lease Plus Agreement, with its partners occupying other parts of the facility pursuant to separate Lease Plus Agreements, or the authority may be occupying the whole JSC facility under a single Lease Plus Agreement and sub-let parts to its partners, additional considerations will apply as explored below.

Soft FM

1195. Authorities should be aware that the standard OJEU for the first three waves of LIFT schemes, does not include the provision of soft facilities management services. Therefore, LIFT Co is not permitted to provide cleaning, security, catering and waste management services other than those expected of a traditional landlord and only if the value of such services is below the relevant EU financial threshold for services
1196. For this reason, operational schemes have explored a number of ways in which soft FM services, which are crucial to the proper functioning of any JSC can be provided Options to date have included:-
- provision by one of the public sector occupants pursuant to an existing arrangement (for example the authority might consider providing such services through its district service organisation or an occupying health trust might deliver such services to the whole of the facility);
 - provision by each occupant to their relevant parts of the facility;
 - a separate and new procurement exercise being conducted by the occupants to select a soft FM provider (which may or may not be LIFT Co who may decide to bid)
1197. Option 2 does not contribute to the service integration and efficiency objectives pursuant to which authorities and their partners should develop and design the integration of service provision within a JSC and will probably lead to disagreements

or confusion over what will happen to common parts of the building or parts occupied by third parties.

1198. Option 1 has been used on a number of schemes but should only be used where it is clear that such additional provision complies with the procurement rules and the terms of existing arrangements. The main drawback with this approach involves the inevitable interface issues between the soft FM provider and the landlord (who is responsible for the maintenance of hard FM, as well as the fact any such arrangement will be dependent on the identity of occupiers in each facility, with no uniform approach being capable of utilisation throughout the schemes developments unless the party providing soft FM services occupies all developments. Further, what happens if this party leaves the facility; how will soft FM be provided in their absence?
1199. Option 3, although potentially more expensive initially due to the need to undertake a procurement exercise has the potential to enable all occupants to obtain a solution which can be applied throughout the facilities developed by the LIFT scheme at competitive rates which have been tested during the procurement exercise. If LIFT Co bids for such services and is successful in obtaining the contract, the potential interface issues between hard and soft FM provision is also thereby reduced.
1200. In recognition of the importance of soft FM provision to the success of operational JSC schemes, the 4ps in conjunction with Newcastle City Council have developed standard documentation for use by authorities considering undertaking a separate procurement exercise. Such documents are available as part of the model documentation contained in this Procurement Pack and include the following:-
- OJEU notice
 - information pack
 - pre-qualification questionnaire and evaluation methodology
 - invitation to negotiate and evaluation methodology
 - form of contract containing payment mechanism and output specification
1201. Authorities are advised to discuss the issue of soft FM provision with their partners early in the development of NHS LIFT schemes to allow a uniform a coherent policy to be adopted across all LIFT schemes. Advice should also be sought from 4ps and other authorities who have previously developed their own strategies for such provision to ensure the most appropriate and value for money solution is adopted.

ICT

1202. In addition to soft FM, the provision of ICT equipment, software and hardware is also not expressly included within the standard LIFT OJEU for the first three waves of schemes. Authorities embarking upon the procurement of new schemes should either amend their OJEU notices to allow LIFT Co to provide such services if required or explore their options for investing in procuring the installation of appropriate systems and equipment.
1203. Authorities should note that central government funding support is generally only available for the installation of ICT infrastructure (i.e. cabling and data ports etc) but is not available for hardware, software or software.
1204. If the authority together with its partners is seeking a truly integrated JSC where all occupants can communicate with each other through the dissemination of information

across compatible computer systems, shared databases, a central switchboard, printing services and internal LAN networks, on the assumption most partners will have varying degrees of existing ICT use and equipment, the investment required for such services will be considerable. In some instances this will require some parties paying considerably more for systems they are unlikely to utilise to their full potential with others only obtaining their minimum requirements. Issues concerning the standard and specification for any such system will need to be discussed as well as how costs will be apportioned, especially if the JSC will include occupants who will only be situated in the JSC for a short duration.

- 1205. Alternatively, partners may decide to install their exiting systems into their part of the JSC with compatibility between systems and occupiers obtained to the levels permitted by existing systems, with further integration left for future consideration.
- 1206. As with soft FM provision, partners should engage during an early stage in the process the extent of integration they require, the cost implications of their objective and how best this can be achieved within the constraints imposed on each partner.

Service Integration Group

- 1207. Given the issues explored above, the importance of ensuring partners address the extent to which they are seeking to provide a truly integrated JSC early in the development of the project should not be underestimated. The establishment of a group specifically to explore and address such issues, as well as feed them into the process for developing the output specifications should not be dismissed, otherwise it is highly likely that the effective operation of the facility could be impeded.

Single JSC Lease Plus Agreement

- 1208. If an authority is leasing the entire JSC facility, when developing the specification it must ensure the design and materials for the building are such so as to permit it to sub-let the appropriate parts to the intended sub-tenants. For example, if it is intended that part of the facility will be let to a local children's playgroup and another part to a dentist, adequate protection against noise penetrating from one area to the other, as well as sufficient security arrangements preventing children accessing any medical equipment or waste must be made.
- 1209. The authority must also ensure the design and specification takes adequate account of environmental and energy efficiency levels since any utility costs incurred by the landlord will be passed down to the authority as Tenant who may or may not pass a relevant proportion of such costs to its sub-tenants, licencees or informal occupants. For example, if the facility makes good use of natural resources such as daylight and passive solar energy, electricity and lighting bills may be lower.
- 1210. Sub-tenants will also generally have shorter occupation arrangements than the main Lease Plus Agreement, especially if parts of the facility are to be occupied by voluntary groups or organisations such as the community police service or the Citizens Advice Bureau which may only be capable of entering into licences or short term informal occupation arrangements due to their funding streams or nature of their services. Consequently, space within the facility should be capable of being used in the most economical way together with an appreciation that in future, the allocation of space may need to be altered. A useful way around this is to install flexible walls which can be dissembled and moved to meet the space requirements of new occupants.
- 1211. As the main Tenant of the facility it will be easier for the authority to ensure provision for soft facilities management, furniture and fittings and ICT are provided to an acceptable general level, throughout the facility although specific and specialist

requirements will generally need to be accommodated by individual occupants depending on their level of need.

Multiple JSC Lease Plus Agreements

- 1212. Where an authority is one of a number of Lease Plus Tenants in the facility, it will be more difficult for the co-ordinate the delivery of services throughout the facility unless individual Tenants discuss their respective specification requirements with each other before finalising them with the landlord.
- 1213. In such circumstances careful consideration should be given to identifying what will happen to shared space, where it is to be located and who will be responsible for ensuring it is cleaned and appropriate for use by third parties.
- 1214. More importantly, authorities and their partners should consider the use of facility wide standards and performance criteria to make the facility feel as a whole instead of separate units with separate purposes. This should assist Contractors to feel some ownership for the facility, develop a community atmosphere amongst occupants and users as well as encourage users to utilise other parts of the facility, which otherwise they may not consider. Newcastle City Council identified a list of standards applicable for all their Customer Service Centres to which occupants would sign up to. they contributed towards giving each facility a professional atmosphere, as well as informing users of what they could realistically expect to obtain from the facility such as prompt service, information in various accessible forms as well as the resolution of complaints within specified timeframes. Such an approach should be considered for use by authorities, whether they are only seeking to establish a single JSC or a series of community facilities to ensure users can easily identify where they can obtain services, through a number of different means and thereby encourage others to also use such facilities.

Section 5: The Payment Mechanism – Lease Plus Payments

1215. As discussed in Part B4 of this Procurement Pack, the payment mechanism should be closely aligned to the output specification since the former dictates when payment should be made and the latter when as specified in the specification. Whilst the general principles set out in Part B4 are applicable to JSCs developed through NHS LIFT, the additional issues specified below should also be considered.
1216. The payment mechanism for use in NHS LIFT schemes is contained in Schedule 10 of the Lease Plus Agreement which sets out the method for calculating the Lease Plus Payments (LPP) which the Tenant will need to pay during the term of the Lease Plus. The LPP is paid at a constant rate throughout the usual 25 year term of the arrangement similarly to the unitary charge in PFI arrangements. Deductions are made for poor or inadequate performance by the landlord as measured against the Services Specification.
1217. The LPP essentially consists of a monthly payment comprising of the three following elements:-
- payments for the provision of the operational services by the landlord,
 - pass through costs (i.e insurance costs, business rates and Non project Specific Costs (see below)); and
 - utilities costs.
1218. Deductions are made for unavailability and any costs or expenses incurred by the Tenant in using its self help rights as specified in the agreement.
1219. The landlord is given the opportunity to rectify any unavailability or service failures within specified timeframes and is required to provide appropriate and readily available temporary accommodation (which may be in another part of the facility) at no cost or charge where key areas of the facility are unavailable.
1220. Tenants may exercise their rights of self help where this is considered to be appropriate to ensure the proper performance of the relevant services.
1221. The landlord is required to monitor his performance and report accordingly, as well as ensure a helpdesk facility is available to report defaults.
1222. Long term value for money of the services to be provided by the landlord will generally be achieved through various mechanisms including the following;
- Benchmarking the costs of future schemes to ensure that prices are not inflated from the level at which the preferred partner was selected
 - Using the initial schemes to set a level against which the costs of future schemes will be measured, to avoid increases in benchmark costs for future developments
 - Benchmarking the costs of its services against those of other NHS and private sector organizations
 - Undertake best value processes that mirror those commonly in use in Local Authorities, thereby challenging cost assumptions, and regularly confirming that performance is competitive

- Benchmarking against other LIFT schemes in the area and across the country, and ensuring that learning is shared to ensure cost-effective delivery on a long-term basis
- Undertaking regular and stringent market testing procedures for the Lease Plus services as set out in Schedule 5 of the SPA

Non Project Specific Costs

1223. Authorities engaged in the strategic partnering aspects of NHS LIFT projects (i.e. by signing the Strategic Partnering Agreement) should make sure they understand the mechanism through which the private sector partner and LIFT Co will recoup their respective bid and initial establishment and operational costs during the initial phases of the LIFT scheme.
1224. Under Clause 10.3 of the Strategic Partnering Agreement, LIFT Co is permitted to recover such costs in equal amounts divided across the first ten projects (or first six in the case of smaller LIFT schemes⁷⁸) in relation to which one or more Lease Plus Agreements are signed. The standard documentation also permits an alternative allocation of costs which relates to the gross internal area occupied. It is envisaged that such costs will be recovered from Tenants as part of their Lease Plus Payments. However, since the amount of Non Project Specific Costs will be significant in nearly all cases, authorities should ensure there is clarity as between themselves and their LIFT partners as to how liability for such costs will be met. This is especially important since Clause 10.3 proceeds to stipulate that if ten (or six) projects are not entered into by LIFT Co within the first seven years of the scheme, for whatever reason, liability for repaying such costs lies with "relevant Participants." It is for authorities and the other signatories to the Strategic Partnering Agreement to determine and document how and by whom such liability will be met.
1225. Given that the amount of Non Project Specific Costs will generally be in the region of £200,000 - £400,000, authorities should acknowledge that initial Lease Plus Payments will be higher to accommodate the repayment of such costs unless the participants decide between themselves that such costs will be met by one or other participants. In the interests of certainty any agreement as to the apportionment of liability should be documented. Participants should also acknowledge that the impact of this provision may be a determining factor in the identification and prioritisation of new projects.

Single JSC Facility

1226. Where the authority is the sole Tenant, it should appreciate it will be responsible for paying for all utility costs and pass through costs to the extent such costs cannot be passed down to any sub-tenants. The authority should consider the practical implications of this. For example, how will it ensure any occupants of the facility do not unnecessarily increase heating temperatures whilst opening windows at the same time and thereby result in the authority incurring additional costs which it cannot control? Attempts should be made as far as possible to ensure occupants take responsibility for their actions or reimburse the authority for unnecessary costs, matters which could be addressed in the documentation detailing the arrangements between the authority and its sub-tenants or licencees. It is accepted that this will be more difficult to control in relation to informal and temporary facility occupants.

⁷⁸ Specific guidance should be sought from partnerships for Health as to what constitutes a "small" LIFT scheme for the purposes of Clause 10.3 of the Strategic Partnering Agreement.

Multiple JSC Lease Plus Agreements

1227. Where there are various Tenants, arrangements will need to be discussed as to how utility and pass through costs will be apportioned between each Tenant (i.e. in equal shares regardless of use or in proportion to the space allocated to each Tenant?) This will be important given that certain occupants such as health trusts may have more cost onerous requirements for lighting and heating whereas the authority will generally require less intensive supplies.
1228. If facilities have space allotted for use by third parties for the generation of third party income, how will such income be used and who will bear the cost of such space if such space is not used i.e. will third party income go towards reducing the cost of each LPP for each Tenant throughout the facility or will such income be retained by the landlord as additional sums it is able to retain if such income is generated?
1229. Other issues which should be addressed is how will the landlord and Tenants calculate the amount of circulation space required in the facility since proportions have varied from scheme to scheme, with some bidders requiring at least 25% of space for circulation purposes whilst others require only 17%. Advice should be sought from financial advisors, other authorities and the 4ps for guidance in calculating such costs.

Section 6: The Lease Plus Agreement,

Shareholders Agreement and Strategic Partnering Agreement

1230. There are 3 key contractual relationships appropriate for authorities considering involvement in NHS LIFT schemes, each of which are examined below. Authorities can decide to sign up to one or more of the following agreements depending on the extent to which they want to be involved in the strategic partnering aspects of the scheme.

Lease Plus Agreement

1231. The LPA is entered into by LIFT Co (or its relevant subsidiary Fund Co) as landlord of the facility and each Tenant (which might be the authority, a GP practice or a primary care trust). It usually lasts for a 25 year term and is the main document specifying the obligations of the Landlord and the Tenant, which go beyond the usual traditional obligations contained in a standard lease. Akin to accommodation supplied under the PFI, Tenants receive serviced accommodation for which responsibility for lifecycle and unprogrammed maintenance remains with the Landlord. The Tenant is required to pay for such services and the accommodation pursuant to a payment mechanism which penalises the Landlord for poor performance (assessed against agreed specification thresholds) thereby respecting the "no service, no payment" principle of PFI.
1232. The LPA assumes the acquisition of the land upon which the facility stands by the Landlord, which is also responsible for obtaining all appropriate and necessary planning consents.
1233. Tenants are given the right to occupy the premises for the purposes specified in the LPA (usually primary health and social care and ancillary or complimentary services), together with any accompanying planning consents, as well as shared spaces, such as reception, toilets, car parking etc.
1234. In respect of a single facility, the Landlord may issue a single LPA or a number of LPAs to various Tenants. It will then be for each Tenant to appoint a "Tenant's Representative" who is responsible for liaising with the Landlord to ensure all refurbishment or new build works undertaken are in accordance with the specification (Tenants Requirements).
1235. The design and construction of the facility will be carried out by the Landlord (or its subcontractors) in accordance with the
- Tenants Requirements;
 - Landlord's Proposals;
 - project quality plan, cost plan and project programme; and
 - relevant legislation
1236. For standard accommodation such as JSCs, all commissioning is undertaken by the Landlord but for specialist equipment, commissioning will usually be left to individual Tenants. For example, a primary care trust will usually require specialist medical equipment which the trust would be happy to commission.
1237. The rental payments due from the Tenant and the mechanism in accordance with which such payments are made are discussed in more detail in Section 5 above. The Landlord is responsible for monitoring the performance of its services as well as

providing a help desk facility to Tenants to rectify any poor performance by the Landlord.

1238. An independent certifier, at the Landlord's cost, will usually be appointed to certify when the construction works have been completed. The LPA will stipulate the dates in accordance with which the Landlord must complete the works for the facility and which if not met, the Landlord will be penalised when the Tenant occupies the premises.
1239. Tenants may sub-let their premises to third parties (but only for permitted use) with the consent of the Landlord, although the terms of any such sub-lease should be in accordance with the terms of the overriding LPA.
1240. The Landlord is responsible for undertaking all maintenance work for the facility throughout the LPA term as well as insuring the facility. There is a specific provision concerning uninsurability, in which case liaison with the SPB is required to determine who should bear the resultant costs/risks.
1241. the Landlord is permitted to assign, transfer or dispose of its interests in the facility, following SPB consent or a request by a funder, although the Tenant would also have a pre-emption right to acquire the whole facility before any such disposal takes place.
1242. The LPA specifies termination rights for the Landlord as well as for the Tenant. The former include failure to pay due lease plus payments and observe/perform covenants, whilst the latter include abandonment of the works by the Landlord or a persistent breach of the LPA terms.
1243. Authorities should note that all Tenants enjoy the protections of the Landlord and Tenant Act 1954 which preserves their right to renew the LPA on expiry. However, at the end of the term, the authority may also have a right to acquire the freehold depending on whether it is the main public sector tenant of the whole facility.

Strategic Partnering Agreement

1244. The strategic partnering arrangements embodied in NHS LIFT are primarily reflected in the terms of the Strategic Partnering Agreement, to which LIFT Co, the authority, local primary care trusts as well as other local primary health and social care stakeholders are a party. The SPA specifies how such parties should work together in a long term partnership and contains the principles pursuant to which such collaboration should take place.
1245. The SPA has an initial term of 20 years which may be extended by 5 years by any of its signatories although certain signatories can decide not to continue with the arrangement at the end of the initial term.
1246. The SPA contains standard form of sale and purchase agreement for land which will be transferred to LIFT Co (or its subsidiaries) initially and once LIFT Co is operational, and planning matters in relation to all such land is a LIFT Co responsibility.
1247. Once operational, the SPA specifies a New Projects Approval which must be complied with for all new projects to be developed and implemented by LIFT CO and further details of this are set out in Part C3.
1248. The additional services which LIFT Co will be required to deliver, in addition to developing new projects are also set out as Partnering Services which include:-
 - membership of the SPB

- assistance with service planning
- estates and facilities management
- planning services
- property acquisition, disposal and development
- supply chain management
- benchmarking and market testing services
- regeneration and community involvement.

1249. LIFT Co's costs in providing the Partnering services are recovered through the lease plus payments charged to Tenants. Any non project specific costs (i.e. the initial establishment costs of LIFT Co) will be recovered by LIFT Co in ten equal instalments from the first 10 Lease Plus Agreements which are signed, and there are mechanisms for apportioning such costs amongst signatories if 10 such projects are not entered into. This is a potential liability of which authorities should take note if they are not intending to procure any facilities during the initial phase of the LIFT project.

1250. Each signatory appoints a representative onto the SPB, each of whom have one vote and the main role of the SPB is to oversee the operation of LIFT Co, to approve new projects and the SSDP, agrees requests for structural alterations as well as agree market testing tender information and evaluation criteria. The SPB essentially governs the relationship between LIF Co and the signatories, and is expected to meet at least quarterly.

SPB Rights

- To agree the terms of future Lease Plus Agreements
- To agree local authority accommodation schedule variations
- To agree indexation formula for the purpose of payments under further Lease Plus Agreements
- Review of the financial and operating performance of the LIFTCo
- To issue guidance as appropriate in respect of New Projects
- To make representations to the Participants concerning the identity of the Participant's representative on LIFTCo
- To approve the SSDP as varied in future years
- To approve New Projects
- To manage the performance of LIFTCo (financial and operational)
- To agree that following service of a tenant's notice under Clause 17.11 a LeasePlus Agreement should be terminated (and accordingly insurance proceeds not applied to any rebuilding works that might otherwise arise)
- To agree the length of any short-term leases
- To instruct a Tenant to agree to the sub-contracting of any LeasePlus services where so requested by the Landlord or to agree to replacement parties providing such services.

Obligations of the SPB

- To meet to review LIFTCo performance
- To meet regularly (at least every quarter)
- To provide strategic input
- To ensure LIFTCo proposals are consistent with delivery of local accommodation requirements
- To give consents and therefore to consider the matters that require consents – certain terms require the SPB to act reasonably and to make a determination without delay
- To consider and make a determination in respect of all tenants' requirements that are of a structural nature as to whether they should in turn be treated as a New Project
- Consider requests from tenants to replace a supply chain member
- To view operation of arrangements with LIFTCo annually
- To meet within 10 Business Days following the receipt of a Tenant's request that the Lease Plus Agreement be terminated

SPB Forms Opinions

- The SPB is to function as a forum
- The SPB forms opinions in relation of major structural alterations – these should only be carried out following strategic review.
- The SPB is to agree whether criteria for approval of a New Project are met
- To consider the application of insurance monies when insurance claims have been made
- To determine whether it can give a stage 1 approval and therefore whether sufficient information has been provided to make that approval
- In the same way to make a stage 2 proposal and therefore to determine that it has sufficient information to give that approval.
- Where a Landlord to a LeasePlus agreement requests approval to an arrangement that will lead to the termination of the provision of services by a particular Supply Chain Member.

1251. The SPA contains potentially onerous compensation obligations for signatories in the event of a breach of the SPA terms. This is particularly important since provisions concerning the extent of each party's exclusivity obligations are also contained within the SPA.
1252. There are areas of LIFT Co events of default which permit signatories to require remediation by LIFT Co, require the termination of a supply chain agreement, order LIFT Co to cease providing services, procure the appointment of a replacement supply chain member and in some circumstances end LIFT Co's right of exclusivity. Defaults by signatories including material breaches of the exclusivity provisions, failure to attend SPB meetings, delaying approved new projects and non payment can be penalised by LIFT Co by suspension of LIFT Co's duties, immediate termination of the SPA and signatories being required to pay compensation as a result.

Shareholders Agreement

1253. The Shareholders Agreement regulates the relationship between all the shareholders in LIFT Co which will initially include Partnerships for Health (20%), the private sector partner (60%), the authority and any other public sector partners (20%).
1254. The SHA regulates the way LIFT Co is managed. It expressly deals with the allocation of shares to each shareholder (Class A for PfH, Class B for public sector parties and Class C for the private sector partner). It also specifies pre-emption rights for permitted share transfers as well as a series of shareholder consent matters upon in relation to which any action cannot be taken until LIFT Co has secured the consent of all shareholders.
1255. Each shareholder may appoint a Director to the LIFT Co Board with all public sector shareholders being allowed to appoint a single representative. The identity and manner in which such a Director is appointed and acts may be an issue of contention if there are a number of public sector shareholders. Decisions of the Board are taken by majority vote, with the private sector having at least 3 Directors.
1256. Significantly the SHA provides for the distribution of profits to the local health economy in accordance with the wishes of the SPB as well as stipulating what action the other shareholders might take if the private sector shareholder is in material breach of the agreement.
1257. The SHA will expire when LIFT Co is wound up, a shareholder acquires all the shares or the shareholders agree to terminate the agreement.

1258. Authorities should note that there is provision within the SHA for new shareholders to take up shares after the initial establishment of LIFT Co, although any later shareholders may not be entitled to the same extent of rights as Founder Members.

Co-operation Agreements

1259. Given the fact that a number of public sector bodies will usually be represented through a single person or a single vote on the LIFT Co Board, authorities may want to consider the extent to which it would be useful to agree a set of terms, principles or policies in accordance with which such bodies will act. For example, public sector bodies will only be represented by a single Director on the LIFT Co Board. However, it is conceivable that there may be many instances in which the different public sector partners might have a different view. In such circumstances should the voice of the majority prevail or should there be some other mechanism for determining what action the director should take? How will be the Director – a person representing the authority or one of the other bodies, and if a number of parties are interested in acquiring shareholdings in LIFT Co, who will determine what proportion of the available 20% of shares is available to each party?
1260. Authorities should explore with their parties whether such issues together with others can be resolved easily or whether they require more detailed discussion. Either way any decisions or agreement concerning a particular approach or policy should be in writing to reduce the chance of disagreements in future. The terms of any such agreement will depend on the extent of issues in relation to which the parties will come to an arrangement and therefore will vary from one page to several pages depending on each case. Further guidance about the terms and nature of Co-operation Agreements can be obtained from the 4ps.

Section 7: Completion Issues

1261. Reference should be made to Part 8 of this Procurement Pack for relevant guidance.
1262. In addition authorities should also note the procedure for approving the development and implementing of new projects (New Projects Approval Process) which is considered in detail in Part C3 of this Procurement Pack as well as the need to ensure proper and effective governance arrangements are in place to ensure the success of the scheme going forward.
1263. Since NHS LIFT is a 25 year strategic partnering arrangement, the success of local schemes will be determined by the extent to which local schemes operate on a daily basis and respond to new and emerging concerns post financial close. Unlike other transactions completion is only the first step.
1264. Authorities should ensure they participate in the operation of the scheme by inter alia:
- assisting in the recruitment of LIFT Co officers and administrative staff;
 - assist in the recruitment and selection of the Strategic Partnering Board Chief Executive;
 - contribute to the development of the annual Strategic Service Delivery Plan
 - review LIFT Co's annual business plan and reports concerning its progress to ensure projects are proceeding in accordance with expectations;
 - monitor the performance of LIFT Co (or any of its subsidiaries) as landlord of facilities and make recommendations for improvement where performance is continuously sub-standard;
 - assess the extent to which the benchmarking and market testing proposals contained within the SPA need to be implemented;
 - ensure effective and regular contact between all primary health and social care providers; and
 - ensure service integration between JSC occupants is facilitated.

DEVELOPING JOINT SERVICE CENTRES

PART C2

NHS LIFT – OPERATIONAL SCHEMES

Contents

Section 1: Developing the Outline Business Case

Section 2: Project Management and Strategic Partnering Board

Section 3: New Projects Approval Process

Section 4: Documentation

Section 1: Developing the Outline Business Case

1265. Preparing an Outline Business Case is just as important for Joint Service Centre projects to be developed through operational NHS LIFT schemes as it is for authorities involved in NHS LIFT schemes which are embarking upon their initial procurement process. In many ways, the process should be simpler; LIFT Co has already been established, and it will be in the process of developing or has already developed a number of capital projects, thereby demonstrating to the procuring authority the types of infrastructure and services it is capable of delivering. New considerations may however apply depending on the extent to which the authority has been involved in the LIFT scheme to date.
1266. Whilst authorities seeking to develop Joint Service Centres through operational NHS LIFT schemes should refer to the guidance set out in Part A5: Section 1 of this Procurement Pack and Part C1: Section 1, they should also bear in mind the following:
- central government departments will still need to review an OBC for the proposed Joint Service Centre before approval can be given;
 - the contents of the OBC should cover the following:-
 - (1) the nature of the project;
 - (2) the amount of central government support being sought;
 - (3) the key conclusions and recommendations arising from developing the OBC and examining the authority's options for developing the Joint Service Centre;
 - (4) the next steps required to take the project forward;
 - (5) evidence of commitment and support from the authority and its stakeholders;
 - (6) the strategic context within which the services to be provided at the Joint Service Centre exist and the business need for the improvements and benefits to the delivery of such services that the Joint Service Centre will bring;
 - (7) overview of existing services, outputs, strengths and weaknesses, standard of provisions and customer satisfaction levels;
 - (8) authority's objectives for the services to be provided at the Joint Service Centre;
 - (9) description of the options approval process which demonstrated that procurement through the existing NHS LIFT scheme would provide value for money;
 - (10) assessment of the economic and intangible benefits, value for money, affordability and bankability of delivering the Joint Service Centre through the LIFT scheme;
 - (11) overview of how the authority will deliver the project, including details of the Lease Plus Agreement, the balance sheet treatment and project management arrangements; and

(12) how the authority has complied with all the PFI qualifying criteria and the specific departmental criteria specified in any invitations to bid.⁷⁹

1267. In operational LIFT schemes, there will usually be a very short timeframe between approval of the OBC and the date upon which the Lease Plus Agreement concerning the Joint Service Centre is entered into. Consequently, it will not always be necessary to develop a separate Full Business Case, with a letter stating any amendments from the OBC often being sufficient just before execution of the Lease Plus Agreement.
1268. Authorities who are not seeking central government support for their Joint Service Centres are still advised to develop documents akin to the OBC to ensure they have followed a rigorous process demonstrating that the proposed delivery route will deliver value for money. In any event, it is highly likely that the business need of the Joint Service Centre, together with the strategy to be followed will need to be documented to comply with internal governance arrangements.
1269. Authorities who have previously played a role in the procurement of LIFT Co will find the process for approving a Joint Service Centre relatively straightforward since they may already be members of the Strategic Partnering Board and thereby be experienced in approving new project proposals as they come before the Board for consideration. Authorities who have not been involved in the primary development of operational LIFT schemes may find it more difficult to procure the development of their project, not only due to their unfamiliarity with the process, but also due to a lack of support from other members of the Strategic Partnering Board.
1270. Regardless of active engagement in the LIFT scheme, only authorities who are within designated LIFT areas and are expressly included in the advertising OJEU notice for the scheme will be able to develop their Joint Service Centre through the scheme. If an authority is not named within the OJEU notice, it may only take a traditional lease from LIFT Co for a Joint Service Centre in the same manner in which it would do so from any other commercial landlord. Such a traditional lease would not allow the authority to have any input into the design, layout or construction unless it was able to persuade a Strategic Partnering Board member to "sponsor" the development of the Joint Service Centre on its behalf. An alternative option if an authority is not a contracting party for the purposes of the OJEU notice is for the PCT (who is a contracting party for the purposes of the LIFT scheme) to "sponsor" and develop the Joint Service Centre through LIFT Co on behalf of itself and the authority with the authority taking a traditional lease as a sub-tenant of the PCT who acquires the Lease Plus for the Joint Service Centre from LIFT Co. Co-operation between the two parties is paramount if such an approach is to be successful.
1271. Authorities within designated LIFT areas should consult their partners and the other stakeholders in the scheme to ascertain their potential options for developing their Joint Service Centre through LIFT Co to assess the extent to which this offers a more economically viable and attractive solution to any of their other options, all of which should be documented in their OBC.

⁷⁹ Details of the PFI qualifying criteria can be obtained from www.odpm.gov.uk and the specific departmental criteria will be available from the relevant sponsoring department.

Section 2: Project Management and Strategic Partnering Board

1272. Authorities embarking upon JSC projects through operational NHS LIFT schemes will need to ensure their internal project management structures accord with and are capable of working with the LIFT governance arrangements.
1273. If authorities have already signed up to the Strategic Partnering Agreement, they will be existing members of the Strategic Partnering Board ("SPB"). The SPB is a non-statutory body, is the forum through which Participants (i.e. signatories to the Strategic Partnering Agreement) will not only monitor and review the performance of LIFT Co and its supply chain members, but will also approve or reject proposals for new capital developments. Any Participant seeking to develop a proposal must comply with the new project approval process as discussed in Section 3 below. The SPB decides by majority vote the local services and facilities to be provided by LIFT Co and agrees priorities for service development and improvement as contained and revised in the Strategic Service Delivery Plan. All members of the SPB will have the appropriate authority from the body/organisation which it is representing to make decisions which bind its organisation.
1274. Authorities may either become members of the SPB (by becoming Participants to the SPA) or by becoming Stakeholder Representatives. As a Stakeholder Representative, the authority will have no vote on the SPB and its appointment will be subject to the approval of the Participants and LIFT Co, who will also be members of the SPB. The powers of the SPB are set out in Clause 14 of the Strategic Partnering Agreement and authorities who wish to adopt a "wait and see" approach to LIFT Co are advised to consider becoming Stakeholder Representatives at the very least since this will entitle them to attend SPB meetings and remain aware of the developments taking place within the LIFT scheme as well as contribute towards the principles it sets itself for future years.
1275. Given the existing governance arrangements within any LIFT scheme, authorities should ensure they do not develop elaborate structures which are unnecessary. It will be necessary to identify which service areas should be involved in developing the proposals for the scheme, and a similar group to the service integration group developed by Stoke on Trent City Council for their Bentilee Centre might provide a useful strategy point (see Part A2).
1276. Projects involving existing SPB members should be the most easy to develop given the existing SPB forum, although it is still advisable that appropriate working or sub-groups are developed concerning the relevant Participants or Stakeholder Representatives or indeed other bodies to ensure the specifications and designs for the Centre are developed comprehensively with all parties intended to be accommodated within the Centre contributing to its development.
1277. Since most operational LIFT schemes are at a very early stage in their development, the development of projects beyond the initial developments is proceeding incrementally with different schemes adopting different approaches. Authorities are advised to consult authorities in operational schemes to assist them in determining which project management techniques work best to meet particular requirements without becoming over bureaucratic.
1278. Schedule 9 of the SPA contains a deed of succession which allows the appointment of new Participants to the SPB after the commencement of the original agreement, although any such appointment is subject to the approval of existing SPB members. Authorities may want to consider becoming members if they want to develop Joint Service Centres through the scheme.

Section 3: New Projects Approval Process

1279. Authorities seeking to develop JSC projects through operational NHS LIFT schemes will need to adhere to the process for approving new projects as contained in Clause 6 (New Projects) and Schedule 4(New Projects Approval Process) of the Strategic Partnering Agreement. Even if an authority is not a party to the SPA, if it wants LIFT Co to develop its project, both these provisions must be complied with, although in this instance the authority will need to work with the LIFT Participants to ensure their project receives the requisite support to enable it to proceed through the approval process.

The New Projects Approval Process

1280. Schedule 4 (Approval Process for New Projects) of the Strategic Partnering Agreement contains a detailed process for the identification and development of New Projects. New Projects are defined in the standard SPA as:-

" all new build and other capital projects including the enhancement of facilities or parts or premises including all plant, equipment, fixtures and fittings therein each such new build or capital project having a capital value in excess of £20,000⁸⁰ (index linked) and any other non capital transaction for the provision of accommodation identified by the Participants as being required to enable them to provide primary and community based health and social care within the area and the strategy for which is contained in the Strategic Service Delivery Plan".

1281. The above definition makes it apparent that Participants (i.e. signatories to the SPA) determine which projects can be developed and implemented by LIFT Co. Therefore, authorities seeking to develop JSCs through LIFT who are not signatories to the SPA will face greater hurdles than those authorities who are signatories (whether initially or thereafter during the term of the SPA) since they will need to persuade the SPA Participants that their proposed JSC fits within the SSDP strategy.
1282. The first stage for Authorities is to ensure the strategy for their project is contained in the SSDP, together with approximate details of the location and size of the project, an estimate of its affordability and when it will be developed. The SSDP is an annual document, developed by LIFT Co working with Participants, although authorities should note that the second edition of the SSDP should be agreed within 3 months of financial close of the scheme. This is an incredibly short timeframe, especially since the period up to financial close will largely involve finalising the documents and agreeing the technical requests for the first wave of projects. The SSDP is subject to the approval of the SPB and LIFT Co has vote in this regard.
1283. Once the project is contained in the approved SSDP, LIFT Co, as part of the Partnering Services, is required to work with Participants to produce a New Project Proposal, containing, inter alia,
- a description of the project,
 - who the envisaged tenants will be,
 - indicative funding proposals; and
 - how the proposal is consistent with the strategies set out in the SSDP.

⁸⁰ This value can be increased or reduced to meet project specific requirements

1284. Once a New Project Proposal has been formulated, and approved by any Participants who will incur expenditure or liabilities or in respect of whom the New Project will have an adverse impact on the way in which they discharge their statutory functions ("Affected Participants"), it is submitted to the SPB for Stage 1 Approval.
1285. In deciding whether to grant Stage 1 Approval, the SPB is required to consider all relevant factors and representations made by LIFT Co and Participants but is required to grant approval if the New Project Proposal is
- consistent with the SSDP;
 - meets the needs of Affected Participants; and
 - each Affected Participant has voted in favour of approving the proposal.
1286. Once Stage 1 Approval has been granted, LIFT Co will further develop the proposal into a detailed submission to be sent to the SPB for Stage II Approval. The Stage II Submission should include:
- draft LPAs
 - detailed plans, drawings and designs;
 - details of how the site will be acquired;
 - planning approvals
 - financial model;
 - explanation of why the Submission meets the Approval Criteria specified in paragraph 3.4 of Schedule 4 (Approval Process for New Projects), namely affordability, value for money, meets Participants' requirements and is lawful;
 - assessment of effect of the proposals on any Participant employees; and
 - envisaged timetable.
1287. The drafting in Schedule 4 is not particularly clear and in many areas ambiguous, for example, does "planning approvals" require full planning consent with acceptable conditions? Authorities are advised to clarify the nature of the requirements under Schedule 4 in order to prevent any confusion or misunderstanding once the SPA has been entered into since any misinterpretation of any term of the SPA by a Participant could lead to it being in breach of its obligations under the SPA resulting in a potential claim by LIFT Co for compensation under Clause 22.1.3 or such other provision as appropriate.
1288. Once completed, the Submission is sent to the SPB for Stage II Approval. In determining whether such approval should be granted the SPB must assess the extent to which the Submission meets the Approval Criteria specified above and issue written notice of its decision within 30 business days.
1289. A number of important consequences emanate from the decision of the SPB:
- (1) **Rejection for Failure To Meet Approval Criteria.** LIFT Co and any Affected Participants may try to produce a revised submission to address the SPB's concerns. If the revised submission is rejected by the SPB for a failure to meet the Approval Criteria, there is no obligation on either party to continue developing the project and

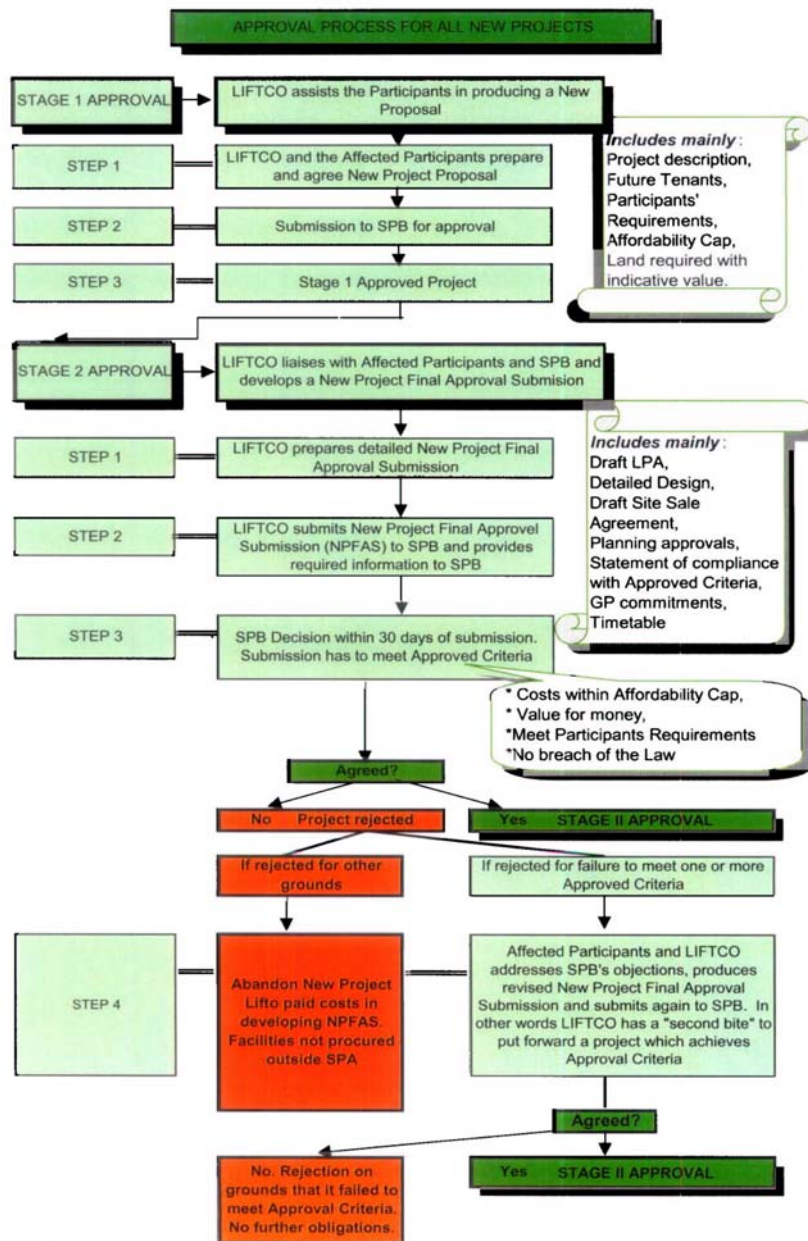
the Participants may decide to procure the project without involving LIFT Co. However, Participants are not permitted to make any changes which are likely to materially change the projected lease payments payable by tenants. What changes will constitute "material changes" is a matter which is yet to be tested but this is an obvious grey area of which Participants should be aware

(2) Rejection for Reasons Other Than a Failure to Meet Approval Criteria. The Participants are required to reimburse LIFT Co for any associated Partnering Services Costs incurred in developing the Submission following its Stage I Approval and Participants are not permitted to proceed with the project either within or outside of LIFT Co

(3) Stage II Approval Granted. LIFT Co may develop the New Project LPAs and obtain and comply with all necessary consents.

1290. Authorities must ensure they are aware of when and which New Projects receive Stage I Approval since any work undertaken beyond this stage by LIFT Co will result in Participants bearing the costs of any such development work by way of Partnering Services Costs, if the SPB votes not to proceed with the project even though it meets the Approval Criteria. Paragraph 3 of Schedule 17 (Partnering Services) contains information concerning agreed annually reviewable rates at which LIFT Co will provide such services.
1291. Any breach of the SPA by a Participant gives rise to an obligation to pay compensation in accordance with the provisions of Schedule 13 (Compensation on Participant Default and Termination), which include such onerous obligations as "anticipated loss of profits." A failure by an Authority to adhere to the procedure set out above could result in substantial sums being due to LIFT Co.
1292. Please see the following decision tree which summarises the approvals process for New Projects

Figure 49 New Projects Approval Process



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Section 4: Documentation

1293. Authorities developing Joint Service Centres through operational LIFT schemes will need to take account of existing documentation as often such will form the basis of future projects.
1294. Authorities who are Participants by having signed the Strategic Partnering Agreement will have a very good idea of the content of previous Lease Plus Agreements awarded by LIFT Co and will be familiar with any project specific amendments that have been incorporated to take account of any peculiarities of the local LIFT scheme. Any such project specific amendments should be minor, relating mainly to the particular circumstances of each Lease Plus Agreement being awarded (e.g. the nature of the facility or site being leased, restrictions on use to comply with planning approvals and specification requirements) and in all other respects comply with the standard Lease Plus Agreement developed by Partnerships for Health. Authorities will be required to justify any deviation from the standard Lease Plus Agreement to Partnerships for Health before they will be permitted to include any non project specific amendments to the standard Lease Plus Agreement. Therefore it is advisable to consider in detail each amendment required and the extent to which LIFT Co and the Strategic Partnering Board are willing to accept and support such amendments.
1295. Authorities who are not Participants should ensure they are aware of the project specific amendments that have been incorporated into existing schemes and assess for themselves the extent to which such provisions will impact on their requirements or the manner in which they perceive the relationship between the Authority (as tenant) and LIFT Co or Hold Co (as Landlord) to work in practice. It is important for authorities to acknowledge that although the arrangement will be akin to a commercial lease, the real value to the authority will be in obtaining the additional facilities management and operational services that the Lease Plus Agreement offers over and above the usual landlord services.
1296. Authorities should refer to Part C1 and the information concerning the development of the tenants requirements and services specifications since these elements should be the areas where Authorities spend a considerable amount of their time to ensure they clearly specify the outcomes in terms of services and the facility they require so as to prevent any misunderstanding or confusion during the term of the lease. It is against such criteria that LIFT Co will perform and any deductions for poor or inadequate performance will be made, hence the importance of ensuring such criteria are comprehensive, quantifiable and unambiguous.
1297. Authorities should also ensure their envisaged use and future use of the leased facility is taken into account when developing their requirements. For example, if an Authority seeks to maximise the potential use of the sharing provisions contained in Clause 23 (Alienation by Tenant) of the Lease Plus Agreement or indeed any of the other arrangements permitted under this Clause, Authorities must ensure their service and accommodation requirements do not unnecessarily restrict them in terms of the persons to whom and the purposes for which certain parts or the whole of the leased facility can be made available for use by third parties in accordance with the terms of the Lease Plus Agreement. After all, 25 years is a long time and the developments in Local Authority service provision required during this time could be substantial.
1298. Authorities seeking to engage in operational LIFT schemes may decide to become a Participant under the Strategic Partnering Agreement as well as and/or a Shareholder in LIFT Co. The former is more significant in terms of ensuring projects are delivered by LIFT Co since as discussed earlier in this Part C2, all projects to be developed by

LIFT Co require a sponsoring Participant who will ensure they are proceeded with appropriately as well as ensuring if the project has received Stage II approval, LIFT Co does not the bear the costs of such development if the Participant or procuring authority decide not to proceed with the project due to reasons others than those permitted under Schedule 4 (New Projects Approval Process). As a Participant is it much easier to contribute to the development of the Strategic Service Delivery Plan and thereby ensure the proposals for the Joint Service Centre fit neatly within the broader LIFT CO strategy.

1299. Becoming a Shareholder in LIFT Co is in many respects a totally separate decision which should be made on the basis of a clear financial assessment of the potential benefits of sharing in the financial performance of the company. Shareholdings can be bought in return for consideration (cash or otherwise) and will generally be subject to the approval of existing LIFT Co shareholders.
1300. Authorities developing Joint Service Centres through operational NHS LIFT schemes will also need to ensure the relevant sponsoring central government department is aware of the proposal and the Strategic Service Delivery Plan within which the proposal was initially contained. They may also be required to confirm to the relevant department when the relevant Lease Plus Agreement is signed as well as provide evidence of any matters which have changed since the Outline Business Case was presented.
1301. If there are a number of different parties leasing certain parts of a larger facility, Authorities should consider the issues considered elsewhere within this Procurement Pack concerning the integration of service delivery and operational requirements so that it is clear who will be responsible for cleaning the whole building, dealing with security,, post etc. Depending on the nature of close working between partners occupying a large facility, it may be appropriate to document the principles in accordance with which all partners will work and co-operate or if the level of engagement is far greater, enter into heads of terms or an agreement setting out comprehensively the roles and responsibilities of each partner and LIFT Co, to teh extent relevant.