

joint procurement or procuring jointly

a 4ps Project Information Briefing and Guidance featuring the London Boroughs of Enfield and Newham Collaborative PFI Schools Project and Newcastle City and North Tyneside Borough Councils' Joint PFI Street Lighting Project



project support
project support

Acknowledgments

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Section One

Introduction

- 1.1 Local authorities collectively spend approximately £40billion per year on acquiring goods, supplies and services to discharge their functions. From the acquisition of furniture, stationary and software through to the development of new capital infrastructure (including schools, community centres and transport networks) and back office corporate systems, authorities regularly and routinely engage in contractual commercial activities. Since the source of such funding is essentially national and local taxes, authorities have a statutory duty to demonstrate that such resources are being used economically, efficiently and effectively¹.
- 1.2 The procedures governing the award of public contracts are largely designed to ensure authorities enter into such commercial arrangements following a fair and transparent process which allows them to obtain the most economically advantageous solution. Such procedures can often be resource intensive with some particularly complex contracts taking on average 18 months to reach contract award.
- 1.3 Given the emphasis on improving the quality of public services, use of innovative approaches alongside traditional forms of procurement such as the Private Finance Initiative, partnering and framework contracts, public sector consortiums, the Local Improvement Finance Trust initiative and more recently the Building Schools for the Future programme have sought to assist authorities in meeting this objective. More recently the efficiency agenda has given a renewed impetus for authorities to find more economical ways of discharging their functions since their ability to do so will be assessed in financial terms on an annual basis.
- 1.4 Working in partnership with other local, regional or national public sector partners as well as with commercial and voluntary sector partners is one way in which local authorities can meet such challenges. Before authorities engage contractors or service providers, they should ensure they are making the most of existing opportunities offered through greater collaboration with their local, regional or national public sector partners. Existing practice throughout the UK demonstrates the gains which are capable of being made by authorities sharing their respective expertise and pooling purchasing power, whether amongst neighbouring authorities or regionally. Given the need for authorities to produce tangible efficiency savings, there is every reason why authorities should be examining opportunities for collaboration before they approach the market.
- 1.5 As well as providing an overview of the legal and policy framework driving authorities to identify efficiencies and improvements in public service, this procurement briefing examines some of the current collaborative or collective approaches with other public sector partners available to authorities. In particular we focus on two examples, one used by Newcastle and North Tyneside Councils for their street lighting PFI and the other used by the London Boroughs of Enfield and Newham for their schools PFI project – both of which highlight how simple partnership working amongst authorities offers the potential to deliver significant benefits. Increasingly such approaches are being emulated by other local authorities with the London Boroughs of Enfield and Barnet embarking on a collective procurement for the appointment of a street lighting PFI service provider as just one current example.
- 1.6 Further information concerning anything contained in this project information briefing can be obtained from 4ps (www.4ps.gov.uk).

Section Two

Government policy

- 2.1 The legal and policy framework within which local government operates has undergone significant changes over the past 8 years with local authorities being required to deliver more efficient, cost effective and high quality public services, which are responsive to the needs of service users. In this section we examine the policy context which encourages authorities to consider partnership working.

Modernisation and Best Value

- 2.2 Through the publication of a series of white papers in 1998 (Modern Local Government: In Touch With The People), 1999 (Local Leadership, Local Choice) and 2001 (Strong Local Leadership – Quality Public Services)² the Government set out its vision for modern and strong local leadership in the form of accountable local authorities enjoying the flexibility and freedom to deliver high quality, cost effective and accessible public services closely aligned to the needs of service users.
- 2.3 A key element of this vision was the requirement for authorities to make arrangements to secure continuous improvement in the way in which they exercise their functions, having regard to the need for economy, efficiency and effectiveness (the duty of best value³) as measured against national and local standards.
- 2.4 There was a recognition that many of the national and local standards set for improved service delivery could only be achieved by “central government, local councils and other organisations work[ing] together as effectively as possible to secure tangible improvements in the services that matter most to local communities.”⁴ Government also acknowledged the need to remove restrictions which constrained the ability of authorities to develop innovative local service delivery solutions.
- 2.5 Some of these additional flexibilities and freedoms were introduced in the Local Government Act 2003, including:
- a new capital finance regime, allowing authorities to borrow funds for the purposes of capital investment without obtaining central government approval, provided such borrowing is prudent and affordable;
 - the ability to charge for discretionary services; and
 - the ability to engage in function-related commercial purposes with a view to making a profit (i.e. trade).
- 2.6 Having equipped authorities with the necessary powers to engage in innovative approaches, the Government has recently reinforced the need to deliver quantifiable and tangible benefits through its efficiency agenda.

² Copies of all white papers can be found on the ODPM website at www.odpm.gov.uk

³ Section 3 of the Local Government Act 1999

⁴ Annex B of the ODPM's Guidance to Best Value Performance Indicators for 2003/04

Efficiency

- 2.7 In August 2003 Sir Peter Gershon was commissioned by the Government to identify how public resources could be channelled more efficiently into front-line services. The recommendations⁵ of this review identified approximately £20billion of auditable efficiency gains capable of being realised across the public sector. The Spending Review 2004 required local government as a whole to deliver at least £6.45billion of savings by 2007/8, at least half of which must be cashable (i.e. gains capable of allowing resources to be reallocated elsewhere).
- 2.8 The ODPM⁶ requires authorities to demonstrate a 2.5% per annum saving from their 2004/5 baseline expenditure in 2005/6, 2006/7 and 2007/8 respectively. Such savings may derive from revenue or capital spend as well as the better use of assets but should be delivered by raising productivity and enhancing value for money through one or more of the following ways:
- reducing resources (i.e. people, money, assets) used to deliver services at existing levels;
 - reducing costs (e.g. procurement, labour) associated with delivering the existing level of services;
 - obtaining improved quality of services for the existing level of resources; and
 - obtaining a proportionately higher quality of services in return for an increase in resources.
- 2.9 The ODPM has identified the following cross cutting local authority areas in which savings could be made:
- **Corporate Services** e.g. in the discharge of an authority's finance, human resources, ICT, legal, facilities management and communications services;
 - **Procurement** e.g. in acquiring commodity goods and supplies and technical and professional services at more competitive rates;
 - **Increasing Productivity of Front Line Staff;**
 - **Transactions** e.g. changing the way in which council tax and non domestic rates are collected and the administration of housing benefit is undertaken by combining activities or moving from manual to electronically processed systems.
- ODPM has also acknowledged that efficiencies can also be made in service specific areas with " more collaborative working, new technologies and different ways of working will all lead to further efficiency gains"⁷ .
- 2.10 The introduction of an overall efficiency target for Local Government, as opposed to targets for individual service areas, stems from an appreciation that authorities have strengths and weaknesses in different areas. To ensure such expertise and best practice across all areas is disseminated across local government, the ODPM's Regional Centres of

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

⁶ Delivery Efficiencies in Local Services (2004)

⁷ Page 13 of the ODPM's Delivering Efficiency in Local Services (2004)

Excellence (RCE) have been tasked with assisting authorities to meet their efficiency targets in the cross-cutting areas identified at paragraph 2.9 above. Use elsewhere in the public sector of bulk purchasing for certain commodity goods and professional services is being replicated at regional level as well as the creation and exploitation of increased opportunities for sharing services across local authorities throughout a region. The commitment to increasing regional collaboration is evidenced through the receipt by the RCE of additional central government funds to spur such innovation.

- 2.11 This commitment to delivery efficiency means local authorities are required to prepare a self assessment Annual Efficiency Statement (AES) detailing their strategy for securing future cost savings as well as a retrospective analysis of their performance against anticipated savings for the past 12 months. All single tier and county councils (other than authorities with CPA ratings of excellent) are also required to submit a mid-year self assessment detailing their progress towards achieving their specified targets. It is envisaged that the Audit Commission will include an assessment of the AES as part of the CPA regime.
- 2.12 Economies of scale, pooling purchasing power, sharing information and complementing individual expertise are all ways in which savings can be realised, not least in the area of procurement. Indeed, the joint ODPM and LGA National Procurement Strategy for Local Government 2003-2006 requires all authorities to:
- set out their approach to collaboration (including purchasing consortia, joint procurement and commissioning shared services) and how they intend to use the new trading powers by 2004;
 - identify opportunities for collaboration with neighbouring authorities for the shared commissioning and delivery of services by 2005; and
 - obtain greater value for money by collaborating with partners at local, regional, national and European levels by 2006.
- 2.13 In Section 3 some practical approaches suggested by the Strategy to help local authorities meet the requirements of the efficiency agenda are explored.

Section Three

Options for collaboration

- 3.1 Collaboration is defined in the National Procurement Strategy for Local Government 2003-2006 as the description given to “ various ways in which councils and other public bodies come together to combine their buying power to procure or commission goods, works or services jointly or to create shared services. Collaboration is a form of public-public partnership. Its major benefits are economies of scale and accelerated learning.”
- 3.2 The Strategy goes on to suggest that authorities should at least be considering use of the following to obtain better value for money:
- procuring or commissioning work jointly;
 - sharing services;
 - using purchasing consortia and e-Marketplaces; and
 - developing open framework agreements.

Procuring Work Jointly

- 3.3 Procuring or commissioning work jointly is already extensively used in the health and social care sector with local authorities commonly embarking upon partnership arrangements under Section 31 of the Health Act 1999, to pool resources and discharge functions collectively with local primary care or health trusts. Such an approach makes strategic and economic sense. Most authorities and health care providers have similar service delivery targets (for example, to improve services for the elderly or make health services more accessible to hard to reach groups in society), thereby preventing the duplication of resources and focussing limited resources on specific needs. There is a growing tendency to use such an approach in other areas.
- 3.4 The Department of Education and Skill's Building Schools for the Future (BSF) programme envisages collaborative working amongst local public sector educational bodies (including the local education authority, learning and skills councils, schools, early learning centres, sure start schemes and colleges of further and higher education). Its counterpart in the primary health care sector the NHS Local Improvement Finance Trust initiative (LIFT) seeks to encourage general practitioners, strategic health authorities and mental and ambulance care trusts to work with primary care trusts and local authorities in discharging their community health and social services functions (see the 4ps web site for further information www.4ps.gov.uk).
- 3.5 Even where authorities do not come within designated BSF or LIFT areas, there are a number of different ways in which authorities can procure or commission work jointly and two of these are considered further in Sections 4 and 5. In this project information briefing we distinguish between the following two approaches:
- **Joint Procurement** which involves two or more authorities embarking upon a joint procurement exercise to advertise for, evaluate, select and negotiate a contract with a preferred bidder. The process however culminates in each authority entering into a separate but often largely identical contract (save for project specific elements) with the contractor (i.e. single contractor – two contracts). The relationship and joint working between the authorities ceases at contract award;

- **Procuring Jointly** which involves two or more authorities embarking upon a joint procurement (as described above) but this time their joint working relationship lasts throughout the term of the contract. Such authorities individually or through a special purpose vehicle (representing them collectively) will enter into the contract with the contractor and will be responsible for discharging both authorities' obligations in the contract on a collective basis (i.e. single contractor, single contract).

3.6 Section 4 of this project information briefing considers the experiences of the London Boroughs of Enfield and Newham who undertook a joint procurement for their respective schools PFI project. Newcastle and North Tyneside Councils procured a street lighting PFI contractor jointly and their experiences are considered in Section 5.

3.7 Although the use of a collaborative procurement exercise necessitates the consideration of additional issues peculiar to the nature of the parties, any such issues are not insurmountable provided they are addressed early within the process. Guidance on some of the issues which may arise together with how they can be addressed are discussed in Sections 4 and 5 of this project information briefing. As authorities undertaking joint procurement or procuring projects jointly will testify, the potential savings available from a collaborative procurement exercise are significant.

Sharing Services

3.8 Authorities are increasingly seeking to identify ways in which they can effectively deliver services to one another, especially since some authorities have greater expertise in delivering certain services whilst others have strengths in other areas. For example, some authorities provide audit services for other authorities since this is more economical than the latter providing such services in-house or obtaining such services separately from the private sector. Kent County Council for example is providing expertise and personnel to assist Swindon Borough Council improve the delivery of their social services functions. Any such partnerships, however, must be compliant with the public procurement rules and authorities are advised to explore the availability of the new trading and charging powers⁸ which offer additional scope for the extension of sharing services amongst local government.

3.9 There are a number of ways in which authorities can legally structure the sharing of services/resources:

- **Delegation** – authorities may delegate the performance of certain functions to committees and joint committees under Section 101 of the Local Government Act 1972. Section 101 also allows the delegation of the performance of certain functions to other local authorities as well as organisations designated as “public bodies,” (whether under an order passed under the Deregulation and Contracting Out Act 1994 or otherwise). For example (as in Kent and Swindon), an authority may ask another authority to discharge its social services functions provided such delegation is approved in accordance with the external and internal governance arrangements of the authorities concerned and provided this option can be shown to deliver best value.

⁸ The power to charge for discretionary services is available to all authorities whilst the power to trade is only available to authorities with a CPA rating of excellent, good or fair

- **Local Authorities (Goods and Services) Act 1970** – authorities can also use the Local Authorities (Goods and Services) Act 1970 to provide certain services to each other, including the supply of goods or materials, the provision of administrative, professional or technical services, use of vehicles, plant or apparatus (and any person employed in connection with such vehicle, plant or apparatus) and the carrying out of works or maintenance services. Whilst the 1970 Act has commonly been used by authorities to share facilities and make better use of resources, there remains some uncertainty over the extent to which it can be used to generate a profit. Although the opportunity for obtaining “public body” designation under the 1970 Act remains, given the introduction of the trading powers, the extent to which central government will approve future designations is unclear.
 - **Trading** – Section 95 of the Local Government Act 2003 allows authorities with a CPA rating of excellent, good or fair to trade through a company (i.e. undertake for a commercial purpose any function-related activity). This allows them to make a profit in return for the services they provide. Therefore, authorities to whom this power is available should consider how they might use this power not only to provide services to themselves and other authorities but to third parties as well.
 - **Charging** – authorities to whom trading powers are not available may instead charge for certain discretionary services (i.e. services which they may provide but do not necessarily have to provide) under Section 93 of the Local Government Act 2003 since this power is available to all authorities. Unlike the trading power referred to above, Section 93 only permits authorities to recoup their costs in providing such services.
- 3.10 Increasingly authorities are also considering whether existing arrangements with service providers can be expanded or amended to allow service provision to other authorities. For example, if a contractor provides a revenue and benefits system to Council A, can the contract be amended to enable the contractor to also provide similar services to Councils B and C? There are a number of contractual and procurement constraints which need to be addressed before this route is contemplated, not least ensuring the OJEU notice leading to the selection of the contractor is specifically wide to encompass the possible range of authority partners. Legal advice must be sought before considering the amendment and/or extension of existing arrangements since the extent to which this will be feasible will depend on the particular circumstances of each case.

Purchasing Consortia and e-Marketplaces

- 3.11 Throughout the UK, many authorities have set up their own local or regional purchasing consortia for acquiring commodity goods and supplies. For example the Yorkshire Purchasing Organisation seeks to purchase goods on behalf of its member authorities at competitive rates on the basis of their bulk purchasing power. On a national scale, organisations like NHS PASA and OGC buying.solutions undertake similar activities on behalf of the health sector and the public sector respectively. Directive 2004/18/EC introduces a new mechanism specifically permitting bulk purchasing by central purchasing bodies, and it is highly likely that the number of such bodies or the scope of existing bodies will increase in the future.

- 3.12 Electronic purchasing mediums are also becoming widely available with the IDeA's e-Marketplace being a prime example. It is essentially an electronic catalogue from which authorities can purchase commodity goods and services at cost effective rates. E-procurement tools are becoming increasingly popular due to their flexibility, convenience and capacity for offering competitive commodity prices and reducing administrative costs.

Open Framework Agreements

- 3.13 Authorities should also consider entering into open framework agreements in accordance with the procedure laid down in Directive 2004/18/EC. For example, a number of authorities may collectively decide to establish a new legal entity to which they will each delegate certain functions. New authorities could delegate powers to the entity over time so that the entity could discharge functions for an increasing number of authorities over time. This entity could embark upon a procurement exercise (on behalf of a class of authorities) leading to the appointment of a private sector partner, who would be able to provide a range of services to any authority who came within the class specified in the OJEU notice.
- 3.14 New authorities could benefit from this arrangement, because of an in-built mechanism for "additional projects" within the original awarded contract which would enable authorities to "call off" work as and when required. Hence the open nature of the framework agreement.
- 3.15 As this brief synopsis demonstrates, there are various ways in which authorities can collaborate with their public sector partners to deliver efficiencies and provide better quality public services. In any options appraisal conducted by an authority each of these options, together with others of which they might be aware, should be considered alongside traditional methods of procurement. In Sections 4 and 5 we proceed to examine the use of joint procurement and authorities procuring jointly through the experiences of the London Boroughs of Enfield and Newham and Newcastle and North Tyneside Councils.

Section Four

Joint procurement

The London boroughs of Enfield and Newham

- 4.1 Joint procurement essentially involves a procurement exercise being run by two or more authorities at the end of which each authority enters into a separate contract with the successful contractor on terms which are largely identical. The only terms within the contract which may differ will relate to technical project-specific details which may include, for example, the identity and specification for each school (in a schools project). Such an approach was recently followed by the London Borough of Enfield (Enfield) and the London Borough of Newham (Newham). Key issues emerging from their experience are set out below for authorities considering embarking upon similar approaches.

Enfield and Newham Schools PFI Project

- 4.2 Having previously undertaken separate schools PFI projects, Enfield and Newham decided to combine their strengths to advertise a project which involved:
- the development of a new secondary school in Newham,
 - the extension and enhancement of a secondary school in Enfield,
 - the development of a new primary school in Enfield; and
 - the rebuild of an existing primary school in Enfield.
- 4.3 This combined project was supported by £66.5million of PFI credits from the Department for Education and Skills. The OJEU advertising the project was issued in June 2002, preferred bidder appointed in March 2003 with contractual award taking place in September 2003.

Impetus for Collaboration

- 4.4 Enfield and Newham had both successfully completed procurement exercises for their respective first schools PFI schemes and were in the process of applying for further funds for additional schools, requiring capital investment. At the time, PFI was the only feasible option for meeting their capital investment needs since there was no prospect of either authority raising the necessary funds to enable it to develop the required facilities on its own. This may no longer be the case since introduction of the new capital finance regime⁹, means authorities now enjoy greater flexibility to raise funds themselves for capital investment.
- 4.5 The project manager for the first Enfield schools project knew his counterpart at Newham, and having discovered that they were both seeking to embark upon similar projects at the same time, they decided to combine their expertise and resources to improve their chances of obtaining central government approval. The Government was very keen to support proposals containing innovative measures for undertaking procurement exercises which offered the potential for a significant reduction in the costs and resources associated with PFI procurements.
- 4.6 Internal discussions took place within both authorities, and due to the powerful support within each authority to obtain new and refurbished educational premises, both councils obtained the necessary approvals to proceed with a joint project. Both councils were at

that time run by Labour administrations who believed both authorities could work effectively together to procure a joint schools PFI contractor. It is worth noting however, that even after a change of administration at Enfield to Conservative control during the project, the relationship between the two authorities worked equally well. Authorities should appreciate however that in some circumstances, political changes, either at the inception of a project or arising during the course of a project, may make it more difficult for authorities to work together. Consequently, even if a decision has been made to work together initially, authorities should ensure they retain the ability to exit from the arrangement, without having a detrimental impact on the project, if such action was necessary though any such exit should be restricted to extreme and unforeseen circumstances.

- 4.7 The proximity of Enfield and Newham had a large role to play in their decision to work together and it is easier to see such a common interest arising between neighbouring (or near neighbouring) authorities as opposed to authorities who are not close to each other geographically. However, location should not in and of itself prevent joint working between authorities as demonstrated by the relationship between Kent County Council and Swindon Borough Council referred to in paragraph 3.8.

Why Joint Procurement?

- 4.8 Enfield and Newham were already aware of the resource and cost requirements associated with undertaking a large scale procurement exercise. For this reason, they were keen to capitalise on the internal expertise within both authorities as well as ensure any external advice and assistance was restricted to the amount necessary to complement internal expertise and complete the transaction. As a result, the councils jointly appointed legal and financial advisors.
- 4.9 Since the interests of both councils were aligned they considered that it was highly unlikely there would be a conflict of interest between the two authorities requiring separate legal and/or financial advice but the authorities agreed a mechanism for dealing with such conflicts if they arose. By appointing a single set of legal and financial advisors the authorities made significant savings. The appointment process for both sets of advisors was agreed by representatives from each council and the selection process was undertaken by panels comprising of equal numbers of representatives from each authority. By having a joint selection team, there was also a saving of resources and time internally within each authority.
- 4.10 The authorities decided to issue a joint OJEU notice with Enfield and Newham being named as awarding authorities. The OJEU together with the other procurement documentation (for example the pre-qualification questionnaire, invitation to negotiate, output specification, payment mechanism and standard project agreement) was drafted by a working group comprising of appropriate representatives from each authority. Both councils were keen to control the input into this group from each authority so as to achieve the right balance.

- 4.11 This working group became the main group responsible for evaluating responses, issuing clarifications, undertaking site visits as well as undertaking negotiations with the short-listed bidders. Although the authorities were not certain at the outset whether the contractor would enter into a single contract with both councils or would insist upon a separate contract with each council, their preference and the presumption was to run a single procurement process at the end of which separate contracts would be entered into between each authority and the contractor on identical terms save for project specific details such as the identity of transferring employees and particular site issues.

Central Government Approval

- 4.12 Having decided to procure jointly, the councils set about considering in detail how the arrangement would work. They knew the anticipated advantages for the bundled project would only materialise if both councils were aware of their respective obligations and they could convince the market and the DfES that their proposal was thorough and deliverable. It was important for them to demonstrate to the market that having a number of contracting authorities would not result in protracted negotiations.
- 4.13 The project managers from each authority jointly developed their respective submissions for central government support for their individual requirements. Although each submission detailed the specific requirements of each authority, each submission also made clear the expressed intention of both authorities to jointly procure a single PFI contractor for all their respective requirements and set out the benefits of such an approach to both authorities and private sector bidders. Both submissions for support were endorsed by the Project Review Group mainly as a result of the innovative nature of their joint procurement proposals.

Going Out to the Market

- 4.14 As mentioned above, the OJEU notice advertising the project was issued in June 2002¹⁰ by both councils specifying:

“ the councils wish to contract for the design, build, operation, maintenance and financing of a number of schools in Enfield and Newham.....The councils are looking for a single provider for all works and services but reserve the right to award the contract in lots.....the councils may require the provider to enter into separate contracts with each council or one contract with one or both councils.”

- 4.15 Given the innovative nature of this project, the councils did not want to restrict themselves by requiring the contractor to enter into a single contract or two identical contracts since they were unclear whether bidders, and more importantly their funders, would be willing to accept either or both approaches. Retaining this flexibility by expressly stating both approaches in the OJEU notice ensured that both options remained viable and available.

- 4.16 In all other respects the OJEU notice and the procurement documentation were largely identical to standard procurement documentation used for schools PFI projects.

Reaction of Private Sector

- 4.17 The reaction of the private sector to this first ever jointly procured bundled schools project was very positive. The bundling of projects (i.e. one large project delivering, for example, four capital assets as opposed to two single projects delivering two capital assets each) has become very popular within the health sector through approaches such as batching and LIFT and is now being adapted for the schools sector by way of the Building Schools for the Future initiative. However, a number of authorities jointly procuring a schools project or indeed any other project other than street lighting PFI is still quite rare. A key reason for the bundling or grouping of projects is the greater appeal to the market of projects with a capital value in excess of £20million. Following the presumption by HM Treasury that projects with a capital value of less than £20million do not provide value for money if procured through the PFI, for many authorities seeking to procure the development of relatively small schemes, bundling projects together with other authorities might be the only way in which to develop their proposals through the PFI.
- 4.18 Ten compliant pre-qualification questionnaires were submitted and, given the consolidation of the education PFI market by 2002 which had left a number of big players in the sector who were becoming increasingly selective about the kinds of projects for which they bid, such a response demonstrated the appetite within the market for bundled schemes. More importantly, it demonstrated that the existence of more than one contracting authority did not necessarily scare potential bidders away. Enfield and Newham invited four bidders to submit full ITN bids.
- 4.19 All four bids were sent to each Council for analysis by key personnel within each authority. All clarifications/queries were pooled as were responses and, since all negotiations concerned a single set of documents, all queries related to both authorities.
- 4.20 The preferred bidder was selected in March 2003, largely due to its willingness to engage with both authorities in a co-operative way as well as to provide a solution that offered greater value for money than its competitors. From the appointment of preferred bidder the project took 6 months to reach financial close.

Project Management

- 4.21 In terms of mechanics, the project was led by a project team, comprising the project managers from each authority, with the Service Directors, Lead Members and other professionals becoming involved as and when necessary, so as to ensure the detailed knowledge of the educational needs of each authority were represented throughout the project. The nominated project manager for each authority attended all meetings to ensure all documents and information were shared by each authority and a uniform approach adopted for steering the project forward.

- 4.22 To support this project team, Enfield had its own internal structure for decision making whilst Newham adopted a slightly different approach. Enfield established its own project board comprising the Lead Members and officers from relevant departments, to which the project manager reported regularly every six weeks. In addition and as appropriate, reports were presented to Cabinet committees for approval at key points throughout the period leading to contract award.
- 4.23 Newham on the other hand obtained all the requisite authority including delegated power for further specific decision making for the Directors of Education and Finance from their Cabinet at an entry stage in the project. As a consequence, they were only required to report periodic progress to Cabinet and apart from the initial authorisation the only other time formal prior approval was required was in relation to the execution of project documents just before contract award.
- 4.24 The latter approach offered more flexibility for Newham, and with the benefit of hindsight saved the project considerable time merely by enabling personnel who would otherwise have needed to spend time attending regular meetings being allowed to spend far greater time on dealing with the progress of the project on a daily basis. The difference in approach by both authorities did not necessarily impede the project but required the different reporting requirements to be factored into the overall project timetable.

Partnership Working Between The Authorities

- 4.25 Throughout the project, no insurmountable differences or conflicts of interest arose between the authorities. Obviously issues peculiar to each authority did arise. For example, one of the Newham sites was unregistered land and therefore required considerable additional due diligence. In respect of Enfield, the Council was particularly keen to explore with bidders how existing facilities could be upgraded to ensure they complied with industry standard guidelines as opposed to being demolished and re-built.
- 4.26 Perhaps surprisingly, Enfield and Newham did not enter into any formal agreements or documents detailing the manner in which they would work together throughout the procurement process and thereafter if required. Both authorities considered and revisited the issue of whether they needed to formalise their relationship at various points throughout the project and decided against the need for any document or heads of terms. Since they decided that each authority would enter into a largely identical contract with the contractor at contract award, the authorities did not owe any direct obligations to each other following contract award and therefore there was no pressure from the preferred bidder to formalise the arrangements since they would cease at contract award. The obligations of both authorities to co-operate and work together in developing their joint submissions for central government support, work out how each authority would contribute to the drafting of documents, seek clarifications, evaluate bids and their stance in negotiations was based on a practical incremental approach adopted throughout the procurement process.

4.27 Essentially the relationship worked on the basis of commercial goodwill and a common objective amidst a culture of openness and transparency – something that cannot always be taken for granted! It is worth noting the comments of officers at Enfield who were involved in the project who indicate that:

“ at no time was it felt that an additional contractual “ obligation” upon both councils during the procurement process would have assisted both councils since right from the start both authorities knew they had to act in their best interests and this relationship was a marriage of convenience.”

4.28 However, authorities should be very wary of entering into a joint procurement process without any formal documentation or even an agreed set of principles or heads of terms guiding partners during the process. In many cases it will be advisable to consider issues such as how any cost overruns or cost savings will be apportioned, how evaluation criteria will be determined and the role of each authority in the clarification and negotiation process to avoid unnecessary disputes or disagreements emerging later in the process, which could have the potential to disrupt the project timetable and turn away potential bidders.

4.29 The extent to which an agreement, principles or heads of terms regulating the conduct, obligations and expectations of each party during the procurement process will be needed in a project will be dependent on the working relationship between partner authorities. Some authorities such as Newcastle and North Tyneside Councils have a long history of working in partnership together and therefore there might be less reason to seek a formal agreement, whereas authorities who have no previous experience of working together will probably find it beneficial to discuss such arrangements and put them into writing during the initial stages of a project.

4.30 For any authority, it is advisable, at the very least, that even if a full detailed contractual agreement is considered unnecessary, to agree a set of principles or heads of terms to assist the project team in implementing the project on a daily basis although it is accepted that such principles will need to be flexible to accommodate unforeseen circumstances. Any such agreement or terms should also deal with procedures/policies concerning the allocation of costs and the sources from which such costs will be met, together with any monitoring or reporting requirements in relation to such costs. Whilst the incremental and good faith approach adopted by Enfield and Newham worked well in their case, authorities should not assume this will be a workable approach in all instances. Authorities should ensure there are sufficient protections and assurances in place, to enable them and their partners to achieve a practical solution to achieving the mutual benefits available from partnership working as well as enabling all partners to act in their respective best interests.

- 4.31 The table below sets out some of the key issues which should be addressed in any heads of terms or guiding principles for authorities considering entering into joint procurement arrangements with other authorities.

Joint Procurement - Heads of Terms or Principles

Issues to be addressed should include:

- identity of partners
- key objectives, both individual and collective, of the project and the partners
- principles in accordance with which the partners will work together
- how such partners will work together and their respective inputs at the various stages of the procurement process (e.g. who will draft the OJEU notice, where the project office will be based, how and by whom procurement documents will be drafted, clarifications responded to and negotiation meetings conducted). The different stages should cover initial project scoping, the issue of the OJEU notice to appointment of preferred bidder and appointment of preferred bidder to contract award
- the criteria in accordance with which such partners will jointly decide upon short-listed bidders and the preferred bidder (which should address how any differences between the partners will be resolved)
- whether the partners will be jointly and severally liable for any liabilities which may arise during the procurement process
- how and by whom any costs/savings arising from the procurement process (eg external advisers fees) will be met, together with the sources for funding any cost overruns
- how and by whom external advisers will be appointed
- procedures for monitoring performance of external advisers and the project team
- if any partner wanted to exit from the arrangements at any point, would the remaining partners be able to continue with the procurement process and what actions or consequential changes if any would be required as a result
- dispute resolution mechanism

Key Lessons

- 4.32 There are a number of key lessons emerging from the experiences of Enfield and Newham as well as some general issues which are worth bearing in mind by authorities considering use of this approach:
- there must be a sufficient common interest among all partner authorities to participate and work with their fellow contracting authorities during the procurement process.
 - each authority must be willing to be open, reasonable and co-operative with the other partners throughout the process, since this will significantly assist the process.

- the greater the number of awarding authorities, the more likely it is that some formal agreement, principles or heads of terms will be required to regulate the input and responsibilities of each party during the procurement process.
- authorities should ensure that if necessary, they are able to “dis-engage” from each other easily if such action is in the best interests of one of the partner authorities.
- ensure reference to a joint procurement and the procuring partners are named in the OJEU notice so that bidders are aware of the nature of the project and the identity of the awarding authorities.
- ensure there is an agreed policy for appointing external advisors and a policy for managing any conflict of interest arising between the awarding authorities.
- ensure there is an agreed policy for meeting the costs of the procurement process as well as the apportionment of cost over-runs and savings.
- it is advisable for all contracting authorities, so far as possible, to have similar internal approval structures, although it is accepted that these will necessarily need to reflect the particular structure and standing orders of each authority.
- lead project managers for each authority should enjoy a close working relationship and have sufficient delegated authority to lead, steer and run the project to a successful and timely financial close.
- authorities should consider the impact on their relationship, if any, on a change in administrative or other unforeseen political circumstances.

Section Five

Procuring jointly Newcastle and North Tyneside

- 5.1 Procuring jointly takes the concept of joint procurement one stage further. Not only do the parties embark upon a joint procurement process by issuing a joint OJEU notice, drafting procurement documentation, dealing with clarifications, evaluating bids and negotiating a single contract with the preferred bidder on a collective basis, but the process concludes with the contractor entering into a single contract with all participant authorities. Therefore, the joint partnership relationship between partner authorities lasts during the contract term as well as during the initial procurement exercise.
- 5.2 This approach has been used by Newcastle City Council (Newcastle) and North Tyneside Borough Council (North Tyneside) in respect of their joint PFI street lighting project which was signed in March 2004. This approach is also currently being adopted by the neighbouring London Boroughs of Enfield and Barnet for a similar scheme. Bundling or combining projects together is a viable and effective way of making projects more appealing to an increasingly sophisticated and selective private sector market. With HM Treasury's presumption that PFI does not deliver value for money for projects with a capital value of less than £20million, collaborative working may provide a useful way in which smaller individual projects can attract central government and external finance through PFI.
- 5.3 Authorities should note however, funders may be wary of this approach since participant authorities will be jointly and severally liable to the contractor for their obligations under the contract. Nevertheless, provided the relationship between the authorities and their respective obligations are clearly demarcated and documented, the concerns of funders and contractors can be adequately accommodated. By referring to the experiences of Newcastle and North Tyneside, this section seeks to highlight the key issues which require early and careful consideration by authorities seeking to procure projects jointly.

Newcastle & North Tyneside Street Lighting PFI Project

- 5.4 In November 2001, £44.4million of central government support was approved for the joint proposals of Newcastle and North Tyneside to replace over 80% per cent of the street lighting apparatus situated within the area covered by both authorities. Many lighting columns were in a poor condition, requiring replacement and significant modification to bring them in-line with current industry standards. Newcastle and North Tyneside already enjoyed a well established partnering relationship, which built upon the respective strengths of each authority across a range of service delivery areas. Therefore it was not completely surprising when they decided to procure the appointment of a service provider to replace and maintain their respective street lighting furniture.
- 5.5 Having issued an OJEU notice in March 2002, a preferred bidder was appointed in August 2003. By March 2004 the £250million contract was awarded, with work commencing in July 2004.

Procurement Process

5.6 As discussed in Section 4, authorities seeking to procure projects jointly should consider and devise a plan for how they will work together throughout the project. It is advisable that the plan should consider their respective roles and obligations during each of the following phases:

- the preliminary scoping stage of the project (i.e. before the issue of the OJEU notice);
- from the issue of OJEU to the appointment of preferred bidder;
- from the appointment of preferred bidder to contract award; and
- post contract award.

5.7 For projects procured jointly, the relationship between the authorities post contract award is critical to the success of the project since there will be many areas where the authorities will need to co-operate and liaise with each other before they are able to exercise or discharge their obligations under the Project Agreement. Although for the first three phases of their project, Newcastle and North Tyneside largely relied on the goodwill and commercial acumen of their respective officers, dealing with issues as they arose on a daily basis, it is advisable to consider formalising any agreed arrangements to ensure there is a definitive set of principles or heads of terms to act as a guide to authorities throughout the initial and procurement phases of the project, dealing with such matters as objectives for the project, who will bear the costs of the procurement exercise and the criteria for evaluating bids and selecting a partner.

5.8 Prior to the issue of the OJEU notice, authorities should consider whether they will all be named as awarding authorities for the purposes of the procurement process or whether one authority will lead the process on behalf of the others. If there are more than two authorities procuring jointly, identifying one lead authority may have practical and logistical advantages (e.g. there will be one correspondence address for all bid enquiries). In the case of Newcastle and North Tyneside's street lighting PFI project, there was no lead authority but it was made clear in the OJEU notice that all services would be provided to both authorities. The OJEU notice also contained the following proviso:

"The authorities are seeking a single provider for all services but reserves the right to award a contract in lots"¹¹

thereby enabling the authorities to divide the services into packages if for some reason bidders were unwilling or it was felt to be uneconomical and poor value for money to provide a single contract for all the envisaged services.

5.9 During the early stages of the project, Newcastle and North Tyneside developed a structure and process through which both authorities would contribute to the development and progress of the project. They were careful to ensure all contributions were proportionate, necessary and economically viable to ensure unnecessary resource or time was not spent on matters which would unreasonably delay the project and only sufficient and duly authorised personnel from each authority were involved to facilitate

¹¹ OJEU notice 2002/S 61-047894

decision-making. Legal and financial advisors were jointly appointed and information was shared throughout the process thereby enabling the project team to undertake a full evaluation of submissions in view of their collective requirements. The costs of the procurement process were apportioned equally between the authorities. Further guidance concerning this stage of a collaborative procurement process can be found at Section 4.

PFI Project Agreement

- 5.10 More significant for projects procured jointly is the nature of the contractual relationship contained in the Project Agreement and how, and by whom the respective obligations of the parties will be discharged thereunder. In general, under a PFI Project Agreement, the contractor will agree to provide the services and the authority will agree to pay for them as long as the specification for the services is met. However, authorities also have additional rights and obligations including the following:
- monitoring performance of the contractor to ensure proper deductions from the unitary charge are made;
 - granting licenses to the contractor to enable it and its subcontractors to enter into and use certain property and assets belonging to the authority;
 - transferring assets and/or employees to the contractor to assist it in the provision of the required works and/or services;
 - withholding payment if the works/services are not provided in accordance with specified requirements;
 - being able to step-in and take over the provision of the services in certain circumstances where the contractor is not discharging its obligations adequately; and
 - terminating the Project Agreement in specified circumstances due to the conduct or inaction of the contractor.
- 5.11 The manner in which, and by whom, such obligations will be discharged is relatively straight forward when there is a single authority who owes such obligations to the contractor. Any failure by the contractor or the authority to discharge their respective obligations can be enforced by the non-defaulting party taking action against the defaulting party in accordance with the terms of the Project Agreement. However, where the authority is a number of different parties acting together (as it would be in a project procured jointly), the contractor will not want to be embroiled in disputes concerning which of the public bodies was to blame, nor will it be willing to sign up to arrangements which allow a number of different public bodies to disrupt or hold up the provision of the services if there is a dispute between them as to whether or not to agree to a variation. It most certainly will not want to grant numerous rights of step-in to the various public bodies.
- 5.12 For this reason, where authorities are procuring jointly (i.e. advertising for, selecting, negotiating and entering into a Project Agreement with the contractor), partner authorities will need to ensure their relationship from the award of contract onwards is governed in such a manner so as to enable them collectively to discharge their rights and obligations under the Project Agreement. As discovered by Newcastle and North Tyneside, funders and contractors will generally insist on this as a pre-requisite to financial close.

5.13 Authorities can address this issue in 2 ways;

- set up a Special Purpose Vehicle (SPV) (which may be a company or a limited liability partnership in which partner authorities will be constituent members/shareholders) and with whom the contractor can enter into the Project Agreement; or
- establish a Joint Committee which will be responsible for discharging their collective obligations. Joint Committees are essentially administrative arrangements between authorities, which do not have a separate legal identity (i.e. joint committees cannot acquire or dispose of assets nor discharge obligations under contracts). Project funders will therefore still insist on the participating authorities entering into the Project Agreement in their own names, even though their respective obligations will be discharged by a Joint Committee.

5.14 NCC and NTBC opted for the latter approach since this did not necessitate the establishment of a separate legal entity and the existing good working relationship between the authorities meant devising appropriate rules governing the operation and conduct of the Joint Committee was a relatively straight forward process. We consider below some of the key issues that will need to be addressed by authorities when using a Joint Committee.

Joint Committee

5.15 Authorities are generally familiar with using joint committee arrangements for the discharge of their functions. They have commonly been used by authorities for developing local or regional purchasing consortia.

5.16 The key issues to be determined by participating authorities seeking to use a Joint Committee arrangement can be summed up through the following questions:

- what will it do and for how long? (functions, duration)
- how will it do it? (delegation of authority, vires)
- how will it be funded and resourced? (secretary, treasurer, administrative capital and ongoing costs); and
- what will happen at the end of the Project Agreement?

5.17 Once answers to such questions have been devised they should be documented in a Joint Committee Agreement.

5.18 Existing legislation concerning the use of Joint Committees should generally be sufficient for the requirements of authorities procuring jointly, and a number of the main enabling provisions used by Newcastle and North Tyneside are listed below for ease of reference:

- Sections 101 and 102 of the Local Government Act 1972 allow two or more authorities to establish a joint committee for the discharge of any of their functions jointly, with or without restrictions;
- Section 20 of the Local Government Act 2000 allows two or more authorities with functions subject to executive arrangements to appoint a joint committee for the discharge of any of their functions jointly with or without restrictions;

- Section 136 of the Local Government Act 1972 allows two or more authorities to make arrangements for defraying any expenditure incurred by one authority in exercising the functions exercisable by the other authorities or all of them jointly; and
 - Section 113 of the Local Government Act 1972 allows an authority to enter into an agreement with another authority for the placing at the disposal of the latter for the purposes of their functions employees of the former.
- 5.19 In addition to the above, authorities should ensure they have adequate powers to delegate the performance of the relevant functions to the Joint Committee and the individuals conducting the affairs of the Joint Committee. Any Joint Committee will be subject to scrutiny by any relevant authority select committees, and therefore its procedures and policies should ensure there is an adequate audit trail and accounting records of all its affairs.
- 5.20 Once appropriate powers have been identified and approved by each authority, the constitutional rules governing the operation and conduct of the Joint Committee together with details of its constituent members and their powers should be determined. By way of example the Newcastle and North Tyneside Joint Committee was comprised of and operated in the following way:
- **Composition** – there were 4 members of the Joint Committee, 2 appointed by Newcastle and 2 appointed by North Tyneside. Such members were responsible for electing a chair from amongst themselves, who would have a casting vote in the event of a deadlock;
 - **Role** – the role of the Joint Committee was to administer, maintain and develop the street lighting PFI project as well as undertake all necessary action to facilitate its development and operation;
 - **Proceedings** – the Joint Committee would meet at least 4 times a year, in addition to all other times when required to do so by individual members. It could establish sub-committees as required, and meetings could be called by either member giving appropriate notice. Decisions were taken on the basis of a simple majority but the quora for meetings was at least 1 North Tyneside member and 1 Newcastle member, thereby ensuring both authorities would equally be represented in any decision that was made;
 - **Administration** – the Head of Legal Services and Chief Finance Officer of North Tyneside was appointed to be secretary and treasurer of the Joint Committee respectively for the first three years of its duration after which time such posts would be occupied by Newcastle. Newcastle and North Tyneside were responsible for contributing to the revenue costs of the Joint Committee equally but capital costs would be incurred by the party within whose administrative area the assets formed a part; and
 - **Accountability** – the procedures and policies which the Joint Committee would need to comply with to satisfy the standing orders of each authority were also taken into account when developing the constitution of the Joint Committee. For example, what approvals would be required from Newcastle and North Tyneside respectively for any budgets allocated to the Joint Committee as well as to whom the Joint Committee must report and at what intervals?

5.21 These operational requirements of the Joint Committee should be documented in the Joint Committee Agreement together with the way in which the specific obligations placed on the authority in the Project Agreement would be discharged by the Joint Committee. These provisions are considered below.

Joint Committee Agreement

5.22 In addition to covering the general formation and operational issues considered above, Newcastle and North Tyneside concluded that any Joint Committee Agreement should generally also address the following PFI Project Agreement specific issues:

- if the contractor will be acquiring new assets during the operation of the Project Agreement, who will own such assets (given that the Joint Committee cannot acquire or dispose of assets in its own name)?
- the procedure in accordance with which the Joint Committee will enable the authorities to exercise their step-in rights under the Project Agreement;
- how the Joint Committee will pay the unitary charge to the contractor, deal with any payments received from the contractor and agree to any deductions from the unitary charge;
- how any uninsurable risks will be dealt with between the authorities;
- how any variations to the Project Agreement or the Joint Committee Agreement can be made and by whom, and the apportionment of any financial consequences of such variations;
- the procedure for determining when and how the Joint Committee will decide whether to exercise the right to terminate the Project Agreement;
- if one authority causes an Authority Default, whether the other authorities will be liable to contribute to any compensation for termination to be paid to the contractor as a result;
- the extent of the authorities' joint and several liability under the Project Agreement, together with any indemnities to be provided from each authority to the others;
- whether the authorities should be able to request variations to the Project Agreement which would materially adversely affect the interests or assets of the other authorities; and
- how any disputes concerning the Joint Committee Agreement or the Project Agreement will be resolved.

5.23 Authorities who decide to use an SPV will also need to address similar issues, although in this instance since the SPV has a legal identity of its own, assets, finance and contracts can be owned and entered into by the SPV on behalf of partner authorities. The authorities will usually take a shareholding or membership in the SPV (equal or otherwise) and determine between them how the board of directors will operate, with the contractor usually entering into the PFI contract with the SPV and not the individual authorities.

Key Lessons

- 5.24 Authorities considering using this approach are advised to consider the experiences of Newcastle and North Tyneside as well as take note of the following issues before commencement:
- procuring jointly involves significantly more commitment from partner authorities than joint procurement since the relationship between partner authorities will not only last for the duration of the procurement exercise, but throughout the contract term also.
 - early in the process, authorities should check with bidders (and their funders) the extent to which they will be willing to enter into arrangements with a number of partner authorities.
 - before determining whether to use an SPV or joint committee solution, authorities should ensure they have the requisite vires to enter into such arrangements.
 - authorities should ensure they explore how the initial set up, resourcing and operational costs of any SPV or joint committee will be met and should factor such costs into any OBC options appraisal for the project.
 - partner authorities will need to agree carefully how they will exercise any rights or obligations they have under the Project Agreement and the documentation of such conclusions should be expressly set out in some form of contractual agreement. It may be necessary to seek separate legal and financial advice before agreeing the terms of any such agreement.
 - in the event any partner needs to exit from the arrangement there should be a clear mechanism enabling such an exit whilst enabling the other partners to continue receiving the services from the contractor.

Section Six

Partnerships for the future

- 6.1 As outlined in the introduction to this project information briefing, one of the current challenges for both central government departments and local government is to respond to the recommendations of the Gershon Review 2004 *Releasing resources for the frontline: independent review of public sector efficiency*. The review says that:

“efficiency in the public sector involves making the best use of the resources available for the provision of public services”

and specifically recommends that Government requires spending departments to consider how to improve the value for money of procurement activity in related areas of local authority spend.

- 6.2 This section looks at current trends in procurement and collaborative working in local government including the centrally led initiatives in the health and education sectors known respectively as the NHS Local Improvement Finance Trust initiative (LIFT) and Building Schools for the Future (BSF). It also examines how such approaches might be adapted or considered in other fields of local government activity to meet the Gershon efficiency agenda.

Size of Scheme

- 6.3 All procurement is expensive. Local authorities need to find ways of maximising cost efficiency from each procurement opportunity either through reducing costs or by sharing costs with other local authorities who may be pursuing similar objectives.
- 6.4 At the same time local authorities should be thinking of ways of legitimately increasing the size of schemes coming forward to make the contracting package as attractive as possible to potential bidders, to harness economies of scale and meet the HM Treasury guidelines contained in 'PFI – meeting the investment challenge 2003'. This report recommended that the minimum size of a PFI project should be £20m¹² due to disproportionate transaction and bid costs which are involved for all involved in such projects. This 'guideline' has now crystallised into Government policy as local authorities will find as they come forward for PFI funding approval to sponsoring departments via the PRG¹³.
- 6.5 4ps is currently working with local authorities, central government departments and other central agencies (such as Partnerships for Health and Partnerships for Schools) who are pursuing several different approaches towards the procurement of accommodation and related services. These approaches include:

- **Traditional PFI schemes** – i.e. a single project including the provision of a facility or assets and related services procured by a single local authority
- **Collaborative PFI schemes** – i.e. two or more local authorities procuring assets and services via a traditional PFI approach
- **NHS LIFT schemes** involving local authorities
- **The Building Schools for the Future initiative.**

¹² This is in capital value terms – note for non-HRA housing schemes the minimum limit is £10m

¹³ PRG is the project review group – the inter-departmental public body chaired by HM Treasury which ultimately decides the allocation of PFI credits to local authorities

- 6.6 Of these procurement approaches, traditional PFI is currently the most common approach adopted by local authorities across all service areas. This approach is now a tried and tested method of procuring capital intensive services. However, in light of LIFT and BSF there may be a way of improving on the traditional PFI approach to procurement.
- 6.7 One drawback to the traditional PFI approach is that by advertising for a bidder to supply a single project to a single authority means there is no flexibility on the part of the procuring body or the successful bidder to expand the procurement opportunity to other local authorities who might also have selected the bidder to provide similar services.
- 6.8 Similarly there is no scope for the successful bidder to supply other assets or services to the procuring authority even though that authority may have an ongoing demand for the supply of such facilities and has access to finance either through the PFI or otherwise (e.g. proceeds of sale of capital assets, grant funding or prudential borrowing) to procure such facilities. In both instances, even though the procurer and the bidder may have forged a successful partnership for the original procurement opportunity neither party can extend the relationship either to other public bodies or within the authority, without a further EU compliant competition
- 6.9 The challenges for local authorities are:
- to consider what the proper scope of demand for facilities and related services is within an authority before going out to the market;
 - to explore what demand there may be regionally for the supply of similar facilities with other local authorities (or other related public bodies such as registered social landlords for housing schemes) in the region who may be considering the procurement of similar facilities either now or in the future; and
 - to consider establishing proper, robust, regional partnerships with other local authorities, the aim being to collectively advertise via the EU process for the appointment of a prime contractor and supply chain to meet these requirements.
- 6.10 In some areas local authorities have already adopted these techniques and are looking within and across their organisations to fully scope demand and affordability of future accommodation and service requirements. This approach is expressly encouraged by recent ODPM PFI housing bid guidance which confirmed the ODPM would like to see schemes which are mixed developments with multiple outcomes offering new build, refurbishment and delivering regeneration and sustainable communities.
- 6.11 As this procurement briefing describes, some local authorities have already decided to join forces to procure under the PFI. In addition the successful schemes at Enfield/Newham and Newcastle/North Tyneside, a further collaborative PFI street lighting project is underway between the London Boroughs of Enfield and Barnet. In housing, Kent County Council are leading a collaborative procurement of extra care housing developments in partnership with all the District Councils within the county.

- 6.12 Such collaborative partnerships appear to work best when there is a corporate willingness and practical ability to work together, coupled with commonly shared strategic objectives as might be the case with geographically proximate authorities. Where authorities are not in such geographical proximity to each other, partnerships have proved very difficult to sustain over the procurement process and virtually impossible to sustain thereafter.
- 6.13 Advantages of a collaborative approach include cost savings and efficiencies generated by procuring one set of external advisers to act on behalf of two (or more) local authorities. Where local authorities procure jointly (i.e. go to the market with a single OJEU notice with the intention of attracting joint bids) the overall value of the scheme will be increased making the package potentially more attractive to bidders and resulting in economies of scale which should flow back to the procuring local authorities.
- 6.14 An example would be the procurement of residential care homes by two or more social services authorities in a region or the procurement of libraries and museums by several district, unitary or shire authorities. Another example would be the procurement of leisure centres or sports facilities by several neighbouring districts or shire authorities.
- 6.15 The establishment of regional centres for back office and transactional services (another area highlighted by the Gershon review) could also be achieved through such collaborative approaches.

Getting the OJEU Notice Right

- 6.16 One critical factor to the success of collaborative procurement is to consider who the public partners should be right at the beginning of the procurement process and to identify with sufficient precision all those public bodies who are meant to be taking advantage of the outcomes of the procurement exercise. The OJEU notice is essential in this respect and naming the public bodies in the OJEU notice is the most obvious and effective way of ensuring that they can all benefit from the results of the exercise. Unfortunately, there are far too many examples of this basic step being overlooked with the consequence that the benefits of the partnership are only available to those partners listed in the notice and other local authorities in the area cannot subsequently benefit therefrom.
- 6.17 Examples of collaborative procurement and supply chain management are emerging in local government via centrally driven procurement approaches.

NHS LIFT

- 6.18 NHS LIFT has been developed with collaboration between public bodies as a key part of the overall approach to procurement. There are over 40 LIFT schemes which have reached the end of the procurement process and are now establishing LIFT Cos and delivering facilities. In some instances, the public/public collaboration is between single coterminous health bodies and local authorities whereas in other places there are multiple public sector bodies comprising several local authorities, PCTs and other health related bodies in the region. The strategic partnering arrangements established for public sector bodies to

plan for investment in the local health economy via LIFT are in place. These partnering arrangements also provide the opportunity for schemes to be brought forward according to priorities agreed between the partners. Since all public partners will have signed up to the OJEU notice in advance they all have the opportunity of bringing forward schemes for the successful LIFT bidder via the strategic partnering arrangements.

- 6.19 To bidders, LIFT is attractive as it provides an opportunity to bid and supply not just the first tranche of schemes identified by the public procuring bodies, but also to deliver against a rolling programme of schemes which are brought forward over the period of the arrangements (20-25 years) by all the diverse public bodies acting together under the strategic partnering arrangements.
- 6.20 A major advantage of this approach is that LIFT has been designed to reduce bid costs when viewed over the lifetime of the LIFT arrangements. Further procurement exercises should be unnecessary provided that the LIFT Co and the supply chain can deliver facilities and services on a value for money basis. It also reduces the number of OJEU notices and contracting opportunities by individual public bodies who are collaborating through LIFT thereby creating further savings.
- 6.21 One down-side is that, unlike PFI, LIFT currently is not a whole-service solution. The soft facilities management element was not part of the initial LIFT package and this is causing some difficulty from a practical and value for money perspective since public sector participants have had to procure these services separately. There is, however, no legal or technical reason why the PFI approach to contracting (whole life costing, integrated supply chain, soft and hard FM etc) should not be married with the strengths of the LIFT approach to procurement – indeed PFI is one of the contractual delivery mechanisms being used under the BSF programme.
- 6.22 Overall, there are many features of the LIFT approach to procurement which are attractive and which could be applied to PFI procurement.

Building Schools for the Future

- 6.23 Another centrally driven procurement route is BSF which draws upon several features of LIFT – collaboration between LEAs and other stakeholders, joint OJEU notices, establishment of local education partnerships between the public and private sectors, minimisation of bid costs and a standardised approach to procurement. However, BSF is attempting to include a wider range of contractual delivery options and funding sources than are available under LIFT (which is predicated on a one-size-fits-all 'lease-plus' basis). This indicates the current trend, at least in the schools market, is towards a collaborative approach to procurement which encompasses a range of future delivery mechanisms all being supplied by the same bidder and supply chain appointed following a single procurement exercise. There is a difficult balance to strike between such additional complexity and the perceived advantages of this approach to procurement.

Partnerships for the Future

6.24 To respond to the challenges offered by the Gershon efficiency review, to reduce bid costs, to stand (perhaps) a better chance of awarding funding on PFI bidding rounds and possibly to improve or maintain CPA ratings, local authorities might consider the following:

- thinking wider than 'PFI' funded solutions, possibly regeneration and land development schemes which the authority may wish to undertake in future under its prudential borrowing plans at a later stage. Subject to evaluation of the skills and ability of the relevant bidder concerned to undertake such work, the intention would be that the contracting authorities would be free, through the strategic partnering arrangements and via the scope of the original OJEU notice, to bring forward wider regeneration or land development schemes without the need to re-procure but subject to the contracting authorities concerned and the successful contractor being able to demonstrate value for money.
- going out to the market with OJEU notices which provide maximum flexibility for bidders and to facilitate long term partnering (together with any supply chain appointed) – this would require contracting authorities to sign up to a commitment to 'exclusivity' for a defined period and for the supply of particular types of accommodation, subject to value for money and other constraints. This ensures the authority has the ability to explore (but is not compelled) to purchase future needs via this arrangement.
- with the help of the relevant Regional Centres of Excellence and 4ps, authorities should explore whether there are other local authorities in the region with whom they could develop either a bid for funding for similar types of accommodation and services or a future procurement based on other secured funding streams over the next 5-15 years.
- authorities might also explore the potential for developing strategic partnering arrangements with other local authorities, with a view to taking forward one OJEU notice (or at least rationalising the numbers of OJEU notices) on behalf of all contracting authorities in the region or sub-region who are intending to pursue similar types of scheme.

6.25 In this way even local authorities who are turned down for PFI funding under current bid rounds might join up with other neighbouring authorities who may have had more success and who have extracted provisional promise of PFI funding support, to select a partner. Such an authority would be able to submit an application to a future bid round for PFI funding or alternatively or additionally, may explore other funding options to pay for such accommodation e.g. through the prudential borrowing system, proceeds of sale of capital assets. The authorities would share the costs of procurement as per local agreement and the objective should be to reduce overall the expense involved in procurement.

Conclusions

- 6.26 This project information briefing demonstrates that collaboration between local authorities on procurement can bring advantages to those collaborating in terms of cost efficiency and attractiveness of schemes to the market. However, collaboration should not be undertaken lightly and careful consideration should be given to the additional complexities which will inevitably arise by joining up with another authority (or public body) to procure.
- 6.27 The procurement world is fast moving and new procurement options, such as LIFT and BSF are being developed to help reduce the costs and time involved in procuring some capital intensive services. However, post Gershon, more and more local authorities are seeking to find sensible and practical ways of collaborating to pursue more efficient ways of delivering their schemes and attracting bidders. 4ps hope this procurement briefing is useful to authorities considering embarking upon such projects.
- 6.28 4ps would like to express their thanks to the London Boroughs of Enfield and Newham, Newcastle City Council, North Tyneside Borough Council for sharing their experiences and Pinsent Masons Solicitors for assisting in the development of this procurement briefing.
- 6.29 Further information on any of the issues considered in this briefing including more information on LIFT and BSF can be obtained from the 4ps website: www.4ps.gov.uk.

Section Seven

4ps project support know how

Procurement Packs

- Highways Management / Street Scene (in production)
- Housing (published with SoPC3 compliant sector specific contract November 2004)
- Joint Service Centres ((published with SoPC3 compliant sector specific contract May 2005)
- Leisure Services (guidance published Summer 2003, updated guidance and sector specific contract currently being developed)
- Social Services (in production)
- Street Lighting (published January 2003, updated (SoPC3) sector specific contract being discussed with HM Treasury)
- Waste Management (guidance published Summer 2004, no sector specific contract)

Case Studies / Project Briefings

- Bolton MBC – Castle Hill Primary School and Joint Service Centre
- Brent London Borough – Street Lighting
- Derby City Council – Non HRA Housing
- Dorset Police Authority
- Harrow London Borough – Revenues and Benefits
- Kirklees MBC – Waste Management
- Leicester City Council – Waste Management
- Lincolnshire County Council – Corporate Services
- Liverpool City Council – Joint Venture with BT for Corporate Services ‘Embracing the Electronic Age’
- Nottingham Councils – Nottingham Express Transit Line One (in production)
- Portsmouth City Council – Highways Management (in production)
- Social Services – First Four Schemes
- Schools – Operational PFI Schools Projects
- Schools – Pocket Case Studies of Five School Projects
- Sheffield City Council – LLP with Keir
- Stoke City Council – Bentilee Joint Service Centre and Soft Market Testing
- Westminster City Council – Corporate Services

Guidance

- Achieving Quality in Local Authority Building Projects
- A Guide to Procuring Local Authority Transport Schemes and Services
- A Map of the LIFT Process (in production)
- A Map of the PFI Process
- Employee Disclosure and Consultation with Staff and Others
- Guide to the Local Government Contracts Act
- Local Education Partnerships

- NHS LIFT and Local Government - Understanding Options and Considering Opportunities
- Payment Mechanism for Local Authority Housing Projects
- Payment Mechanism for Local Authority School Projects
- Payment Mechanism for Local Authority Transport Projects
- Protections – Local Authority PFI Procurement and Contracts
- Standardisation of PFI Contracts 2004 – Local Government Supplement
- The Final Business Case
- The Outline Business Case
- Workforce Contract Guidance (in conjunction with EO/IDEA/4ps)
- Shaping Solutions for Corporate and Transactional Services
- Shaping Solutions for Corporate and Transactional Services – A Members Guide



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4ps is local government's project delivery specialist. 4ps works in partnership with all local authorities to secure funding and accelerate the development, procurement and implementation of PFI schemes, public private partnerships, complex projects and programmes. 4ps' multidisciplinary team provides hands-on project support, gateway reviews, skills development and best-practice know-how.

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