

**NATIONAL AUDIT OFFICE**

**REPORT BY THE  
COMPTROLLER AND  
AUDITOR GENERAL**

# **Lord Chancellor's Department: Court Reporting Contracts**

ORDERED BY  
THE HOUSE OF COMMONS  
TO BE PRINTED  
31 MARCH 1994

**LONDON: HMSO  
322**

**£3.55 NET**

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Comptroller and Auditor General

National Audit Office  
29 March 1994

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# Report

## Introduction

- 1 In January 1993 the Lord Chancellor's Department let 22 new contracts for court reporting services, covering all Crown Court centres in England and Wales and the Court of Appeal and Crown Office List. The contracts were effective from 1 April 1993. They have an estimated total value of some £25 million over three years.
- 2 The new arrangements produced 24 letters from members of the judiciary expressing concern about the new levels of service and a great deal of correspondence from unsuccessful tenderers and other interested parties. In March 1993, one unsuccessful tenderer, Hibbit & Sanders, applied for a judicial review of the tendering procedures for the Chelmsford court group contract. The application was rejected by Lord Justice Rose and Mr Justice Waller on the grounds that the matter was not one of public law. However, both Judges agreed that Hibbit & Sanders had been treated 'unfairly'.
- 3 Against this background the National Audit Office examined the tendering and contract procedures adopted. The examination covered preparation of the contract specification, tendering, tender evaluation, post tender negotiation, contract letting and performance monitoring. The procedures for awarding the contracts were assessed against recommended government practice, including Treasury guidance. The Department's training arrangements for computer aided transcription were reviewed.

## Contract specification and tendering

- 4 The specification for the contract is a key document in getting the right contract, with the right supplier, at the right price. Treasury guidance requires that specifications should be clear, concise, and unambiguous; and they should enable the offered service to be evaluated against clear criteria, by examination or test.
- 5 The Lord Chancellor's Department produced a specification according to Treasury guidance and on the basis of research carried out into the reporting requirements of the courts. In September 1992 the Department sent invitations to tender to prospective contractors. The Department did not restrict or pre-qualify potential tenderers — all those firms who wished to tender were invited. Sixty-six applications were received and all were sent the contract specification and invited to bid.

## Tender evaluation

- 6 Tenders were evaluated by a Board of three officials of the Lord Chancellor's Department, against four main criteria:
  - **present performance** — based on the views of chief clerks, circuit administrators and Criminal Operations Branch in the Department's headquarters;
  - **past performance in producing transcripts** — based on court records for producing transcripts on time and to an adequate quality;

- **capability of providing the service required** — to be determined by examination of two years' accounts of each firm, examination of tender documents, bank references, interviews with the firms, proposed staffing and checks with credit reference agencies;
  - **price** — the Department made it clear they were seeking good value for money, not necessarily the lowest bid.
- 7 To distribute the business more widely, the Department decided that no single firm should be awarded the whole of a circuit, or all of London. The Department also placed a limit (25 per cent) on the number of court sitting days that any one tenderer could secure. These limits were applied in evaluating the bids and were not disclosed to the tenderers.
- 8 Thirty-one firms submitted tenders, many tendering for more than one group of courts. Tenders were opened in accordance with laid down procedures and evaluated by the Board against the criteria in paragraph 6, with the following results:
- most tenderers had difficulty complying with one or more of the tender requirements and the Board therefore decided to consider all tenders;
  - to ensure that the bids were compared on an equal basis, each tenderer's unit prices were multiplied by workload estimates (assigned to each contract in the invitation to tender) to arrive at an annual estimated cost for each bid;
  - six firms appeared to meet the criteria and offered the lowest prices for the contracts they were bidding for. The Department interviewed the firms to ensure they could cope with the workload and to confirm what their price would be if they secured the contract(s). As a result of the negotiation, some prices fell, some increased, and some remained the same;
  - however, six firms could not in practice cover all the courts without breaching the 25 per cent limit, or the rule that no single firm should be awarded the whole of a circuit or all of London, and the list of firms considered was therefore extended to include some of the other tenderers. The additional tenderers considered were those whose original bids were within about £250,000 (over the three year period) of the most competitive tender for each group of courts. These firms also had to be capable of undertaking the workload. By shortlisting in this way the Department intended that only the most competitive and capable of the original tenders would be considered. In effect the higher price tenders were eliminated at this stage;
  - the financial information submitted by tenderers was examined to ensure that the firms were financially viable;
  - the Department estimated that they would save about £3 million a year on the previous contracts. Most of these savings arose from the increased competition and the economies of scale resulting from a reduction in the number of contracts from 72 in 1988 to 22 in 1993;

- the Board recommended that nine tenderers should be awarded contracts. The recommendations were accepted by the Head of the Criminal Business Division, the Head of the Court Service and the Accounting Officer. The successful and unsuccessful firms were notified in January 1993.

**Audit examination**

- 9 The National Audit Office examined four contract awards in detail — for the Royal Courts of Justice, Chelmsford, Manchester, and London North East. Information on the bids and evaluation were checked and the Department's calculations re-performed.
- 10 The examination noted that:
  - two contracts were awarded to the firm that on the whole met the criteria and submitted the lowest bid;
  - the third contract was awarded to the firm that submitted the second lowest bid, the lowest bid having been excluded because it would have breached the 25 per cent limit;
  - the fourth contract was awarded to the firm that tendered the third lowest bid, because the lowest bidder would have breached the 25 per cent limit and the second lowest was not considered to have the capacity to fulfil the contract;
  - no firms were rejected on grounds other than their failure to meet one or more of the evaluation criteria.
- 11 Generally, the approach and procedures adopted by the Department conformed with Treasury guidance and the Department were always concerned to award contracts to those firms offering to provide good value for money. However, there were some matters where the Department could have handled the tender evaluation arrangements better:
  - the way the invitations to tender were worded led to bids being submitted with complex price arrangements and discounts that made it difficult to compare bids on a like with like basis. In a post contract report on procedures the Board evaluating the tenders commented that a simpler structure may be required when fresh contracts are let in three years time;
  - in the tender specification the Department asked each firm to name its court reporters. But in practice they did not enforce this requirement (i) because of complaints from some tenderers that it was simply not feasible and (ii) because the requirement would have been difficult to impose. The Department did not publicise the decision to drop this requirement and this led several firms to complain that they had been put at a disadvantage because they had based their bids on the (higher) costs of named staff. The unsuccessful tenderers also claimed that those who had submitted tenders without naming the reporters did so on the basis that, should their (lower) bids be accepted, they would then be able to persuade other firms or their staff to work for them with a cut in pay. Although it was made clear in the tender documents that it was the responsibility of each firm to submit a bid on the basis of rates of pay sufficient to attract and retain staff of the right calibre, the

failure to inform all tenderers of the change in the requirement to name reporters left the Department open to a criticism which could have been avoided;

- the Department's decision to limit the market share permitted to any one contractor to 25 per cent of court sitting days was not disclosed in the specification. And by applying the limit after the tenders had been opened the Department laid themselves open to the criticism that the limit was set at a level to suit particular contractors. This could have been avoided by declaring the 25 per cent limit at the outset.

**Monitoring contract performance**

12 The Department have implemented arrangements to monitor performance under the new contracts by requiring circuit, court and Royal Courts of Justice staff to provide regular reports on all aspects of court reporting and to indicate any problems arising and action taken to resolve them. These were initially required quarterly but are now required half-yearly with ad hoc reports as necessary. The reports cover liaison with the contractors, instructions to and provision of notetakers, use of equipment, training, and the speed and quality of transcripts.

13 After the contracts had been operating for seven weeks the Department's review of performance noted that:

- every Crown Court courtroom had the new reporting coverage in place from 1 April 1993;
- on the whole court administrators were satisfied with the performance of their reporters, although there had been some difficulties:
  - there were some initial problems in courts where there had been a change in contractor — some reporters were late for trials and some transcripts were unsatisfactory. These have since been overcome.
  - in some courts notetakers using computer aided transcription had not been able to obtain their accreditation certificates. The Department have now resolved this problem.
  - at one location the quality of some transcripts was unsatisfactory, mainly due to the lack of experience of new reporters. Chief clerks have taken this matter up with the contractor but it has yet to be resolved.

**Training**

14 The National Audit Office examination of the Department's training arrangements noted that:

- the Department placed substantial emphasis on the development of computer aided transcription in the 1988 contract round. They established targets for each contractor to increase the deployment of trained transcription staff over the contract term, and provided grants to assist firms to meet the cost of training.
- a Departmental review in 1991 found that computer aided transcription had been less effective than expected. The benefits of producing transcripts more quickly were outweighed by the extra

cost, and in preparing for the 1993 contract round the Department therefore scaled down the requirement for computer aided transcription. The Department wrote to all current contractors and interested third parties on 31 January 1992 informing them of the likely change in the transcription requirements; this was more than a year before the expiry of the contracts placed in 1988 and therefore gave early warning of the new requirements;

- though the requirements have been reduced, the current reporting contracts retain an element of computer aided transcription. In addition, the Department is considering the possibility of using various litigation support systems based on computer assisted transcription for selected cases.

## Summary

- 15 The contracts for Court Reporting were awarded on a reasonable basis, although there were some aspects that could have been handled better. When the next round of contracts is let in three years time, the Department will need to decide whether reporters should be named, whether the basis for comparing bids could be simplified and whether the limit on market share should be disclosed at the specification stage.
- 16 The new contracts are expected to save the Lord Chancellor's Department around £3 million a year over three years. This is a significant achievement in such a comparatively small market.