Information Technology (IT) is now essential for the delivery of local authority and health services. Without it, staff could neither manage the growing demand nor indeed provide for the present level of service delivery. This paper discusses the issues surrounding the acquisition of IT facilities and is based upon research which has been undertaken at local authorities but the various points raised are thought to be applicable to health authorities, too.

In financial terms IT expenditure within local government is at present estimated at some £646 million a year and rising rapidly. However, these figures fail to indicate the impact of IT since for each pound spent directly on acquiring IT, many times this amount will be expended to establish, support and maintain the information service which depends upon IT facilities. Getting the acquisition process right is all important.

Effective management is therefore crucial if the benefits of new IT procurement are to be gained and authorities are not to fall foul of the risks and weaken the information service upon which they increasingly depend.

This is especially so in the present environment. The requirement to react to legislation and increasing public demand is forcing management to seek new solutions. Many officers will therefore turn to IT to meet their needs but may fail to provide the necessary management skills to ensure that acquisitions are successful.

Experience of the past suggests that in such times, basic controls over IT procurement are essential since they provide the framework in which IT can be planned, assessed and monitored. It is unfortunate, however, that during such times of pressure these controls are most likely to fail with requirements to determine the need and to undertake detailed specifications and evaluations taking second place to expediency.

It is also important to note that IT acquisitions have moved from being essentially an internal assessment, to one where all purchases are now in the public domain. Recent changes in European Commission (EC) legislation have strengthened the ability of the EC to impose mandatory requirements upon the public sector. Thus local and health authorities are now required to move towards the implementation of Open Systems and to the greater use of competitive tendering.

In such a volatile situation it is prudent if not essential that local and health authorities re-assess their proce-
dures for IT procurement. The present paper outlines the reasons for that assessment and offers advice on the changes that are required in order to adapt to the present environment.

1. PATTERNS IN LOCAL GOVERNMENT

IT DEVELOPMENTS

1 In past years, the acquisition of Information Technology (IT) tended to be seen as a technical rather than a corporate issue. The finance department was traditionally both principal user and provider of IT services and all decisions relating to the acquisition of computing facilities were largely in the hands of the finance function. Now many more departments are major users and increasingly IT is being created as a department headed by a chief officer and a member of the management team. This reflects the increasing acceptance of IT as a primary supporter of information systems. The creation, management and distribution of information now, and in the future, will increasingly depend upon the facilities which technology can provide and there will be a greater reliance upon corporate and departmental information being widely available through IT networks.

2 The total central IT budget for local government has been estimated by the Society of Information Technology Managers (SOCITM) to be some £646 million in 1989/90 of which around 37% was spent on computer equipment and software. Typical council budget profiles are shown in exhibit 1. To these figures has to be added expenditure by service departments, thus giving an estimated total of some £742 million.

3 This significant level of expenditure represents an increase over the previous year of around 20% and serves to reinforce the view that many local authority managers are looking towards IT as a means of providing cost effective solutions to business problems. It is expected that IT will continue to be a growth area in authorities for the next few years.

4 The most visible reasons for this expected growth are not difficult to identify:

   - Community charge legislation
   - The devolution of financial control to schools
   - Further decentralisation of computing towards the end user; and
   - The need to provide effective information systems to assist with competitive tendering.

5 In terms of end-user equipment, the Commission's survey of computing facilities in Local Government in 1985 pointed to a doubling of terminals by 1989. In fact this was exceeded within three years and is now expected to quadruple by 1992. Predictably, this growth has been followed by a similar expansion in the development of local and wide area networks.
6 Software developments have also shown a noticeable increase. Many traditional batch systems have been replaced by online alternatives and there has been considerable development of departmental systems. The latter change has been facilitated by the availability of the departmental mini and networked microcomputer. Indeed it is the move to fill a recognised gap in the information needs of local authorities that has contributed to the present growth and is helping to fuel the next wave of IT expenditure.

7 When this growth is coupled with the need to comply with new legislative requirements, it is clear that the next two years are going to see a large increase in the level of IT acquisitions. The development of the Community Charge alone has cost authorities an estimated £200 million. New systems have been developed and installed together with the additional storage capacity, telecommunications links and computer processing power necessary to run them.

ACQUISITION ARRANGEMENTS

8 It is within this fast changing scene that basic controls over computer and software acquisitions are most crucial. It is unfortunately also true that during such periods these controls can, and do, fail. The need to 'strike the best bargain' and sign contracts may take precedence over the requirements to prepare detailed specifications and undertake thorough technical and financial evaluations.

9 Clearly there has to be a balance struck between the scale of investment and cost of failure. "Paralysis by analysis" may well result from over-specification and over-evaluation in those areas where the risk of failure is small and where scarce resources could be better applied elsewhere. There is an opportunity here for better information exchange between authorities on hardware, software and services to help avoid the re-invention of the wheel in comparing those facilities which are common to many.

10 Securing the benefits from IT investment is important for all organisations, but can prove to be difficult in practice. In some cases this has been due to products failing to meet the requirements of the organisation but there are many examples where the cause of the failure was due to the organisation itself and research by the Commission's computer auditors has revealed the following typical reasons for such problems:

- failing to have Information Systems and IT strategies in place, as discussed in an earlier Audit Commission Management Paper 'Preparing an Information Technology strategy: Making IT happen';
- failing to define accurately the requirements and to plan the implementation;
- not allocating appropriate and experienced staff to the project;
- buying a package and then 'over-customising' it so that very expensive systems result and a high ongoing maintenance cost is incurred in supporting them;
- increasing the authority's computer capacity based upon a misconception that they were short on power. (in one instance, if this had been allowed to happen it would have unnecessarily have increased capital costs by £1.7 million);
- not keeping staff and users informed of the decision to change or the timetable of change;
- not setting deadlines and allowing projects to 'evolve' rather than follow defined procedures;
- insufficient commitment from senior staff;
- failing to test the product before and after signing the contract; and
- providing insufficient training in the use of the equipment or software so that the systems are either badly run or staff are unaware of the facilities offered by the package.

2. MANAGING THE ACQUISITION

ORGANISING THE PROCESS

11 Some may argue that delaying investment will enable the organisation to benefit from tomorrow's promises and avoid being locked into today's products. Business decision must be made, however, on the best available information and here authorities may need to buy in specialist assistance to advise upon IT developments and to provide an independent view of the market-place. Without effective procedures for managing the acquisition of IT the investment can be put at risk. Senior management should be aware of the problems associated with IT and the serious effects that inappropriate acquisitions can have. Failure to manage IT can seriously degrade the service offered to the public or can give rise to escalating costs.

12 Chief officers and members must therefore define the procedures required to manage IT. Without such a clear statement, IT is unlikely to
achieve the benefits expected of it and may well reduce the authority's ability to meet its commitments. It is important, therefore, that authorities have adequate procedures for IT procurement and that these include:

- establishing the need for the acquisition
- undertaking feasibility studies
- specifying detailed requirements
- appraising suppliers' proposals
- ensuring that financial procedures are followed
- determining whether contracts are in the best interests of the authority
- conducting post-implementation reviews.

13 When viewed against the estimated expenditure for acquisitions this could mean that in this financial year, over £100 million may be being expended without adequate procedures to ensure that the expenditure was necessary and that it achieved value for money. Furthermore, of the estimated expenditure over the next two years some £300+ million is potentially at risk.

14 If an authority is to obtain the full benefit from its investment in IT then it will need on the one hand to ensure that the needs of the authority are matched with the appropriate acquisition of hardware and software, but also that the appropriate management structure is in place to monitor and control its installation. Without this structure, acquisitions may have insufficient justification; be inappropriate for their requirements; lack compatibility; and are likely to be unco-ordinated and out of step with the authority's IT strategy.

15 For IT investment to achieve its objectives requires leadership from both chief officers and members as well as partnership between those directly charged with providing IT and staff within the service departments. Successful use of IT depends largely upon a committed management with a full understanding of the potential which IT offers. The British Computer Society's recommendation for 'hybrid managers' with a balanced mix of business and IT Skills should help here in ensuring the economic, effective and efficient application of IT in organisations. Both IT and user management must ensure that adequate time is committed to defining the need, evaluation, selection, implementation, training and development. The precise arrangements will vary according to the management framework within each authority and to the nature of the IT investment but an example of a Management Arrangements Model is suggested in Exhibit 2.

16 Where there is a large-scale investment then three broad levels of management may be involved. The first comprises members and chief officers who in their respective groups will be responsible for defining the strategy, setting the broad objectives and for monitoring adherence to that policy. The second level is concerned with the operational effectiveness of the IT function as well as the implementation of the overall strategy of the authority and may comprise deputy chief officers; is referred to as the IT Steering Group; and typically operates under the terms of reference shown in Exhibit 3.

17 The third layer of management involves departmental groups within the service departments. Where departments have budgetary discretion regarding IT investment then such groups will be responsible for the specification of requirements through to the final implementation. They will also be responsible to the authority's IT Steering Group in order to satisfy it that the departmental use of IT accords with the authority's overall IT strategy. There has been a significant movement towards the control and development of IT by service departments but, without effective management, many of the mistakes of the past are likely to be repeated. If departmental autonomy is to be increased so must the degree of management supervision to ensure that projects are brought to a successful conclusion.

18 In practice, while many councils have set up member and deputy chief officer groups, fewer have put departmental groups in place and so the move towards autonomy has not al-
Exhibit 3
MODEL TERMS OF REFERENCE
The IT Steering Group will typically operate under these terms of reference...

- agree, review (and amend, as appropriate) recommendations on the council’s information systems & technology strategy
- identify and prioritise the resources required to implement the strategy
- promote awareness of, and interest in, the potential of information technology to assist the effective delivery of service provision
- monitor the implementation of the strategy and measure performance in meeting agreed targets
- ensure that users of systems are properly consulted
- produce and maintain guidelines for the evaluation and acquisition of information technology products and services
- enhance the co-ordination of departmental initiatives
- produce an annual report on computing performance for members

ways been met with the structure and procedures which match this responsibility. It also means that the one area where IT has been seen to improve the service to the client may also be the least geared to the provision of that service.

19 Authorities must ensure that they are using a clear, logical and understandable set of procedures and that they have appropriate management arrangements to monitor and control the acquisition process. Exhibit 4 suggests a framework for an acquisition methodology.

20 During the assessment of IT facilities it is crucial to include the effect of new technology on staff. Experience suggests that while benefits from new technology may be substantial, some projects founder because of organisational problems. Indeed the movement towards decentralisation has often encountered problems both of a rigid centralist establishment unable or refusing to adapt to the new requirements and of departmental staff resistant to new working arrangements.

21 Problems of a structural or procedural nature should be resolved before new equipment or software is introduced. Management should ensure that all staff directly or indirectly affected are fully aware of what changes are being considered. Through discussions management may well find that alternative solutions are available. In any event, problem areas can be resolved or avoided before a high cost decision is made.

STANDING ORDERS
22 The Local Government Act 1972 requires local authorities to establish Standing Orders to control the letting of contracts, to secure fair competition and to regulate the manner in which tenders are invited. There are, therefore, essential pre-requisites for ensuring that all contracts are made in accordance with the council’s policy and that they are seen to promote value for money. They should also ensure that all contracts are fair and do not favour any one contractor.

23 Most organisations have defined the scope and responsibilities for general contracting within their Standing Orders. This usually allows some degree of departmental autonomy for the service departments while requiring that all major contracts require the agreement of the management team and members. In addition, it would be normal to find that all IT acquisitions would require the agreement of the IT Steering Group and at least have been assessed by the IT department.

24 This approach has much to commend it. All acquisitions are assessed in relation to needs and the possibility of unco-ordinated and incompatible equipment is reduced. However, it is important that procedures are not too rigid to inhibit managerial discretion. There will always be legitimate exceptions to any general rule and the purchasing policy must allow some de-
gree of flexibility. Authorities should, however, ensure that officers are fully aware of their acquisition policy and the steps that are required to be undertaken. This should be set down within the overall IT strategy and may be included within the Standing Orders of the council.

25 The appropriateness of Standing Orders when related to IT issues therefore deserves careful consideration since at present there is a wide variance in the range of practices being undertaken:

- strict adherence to the traditional view of open tender;
- restricted tenders or a limited number of software suppliers;
- single tenders;
- hybrid procedures, where the authority undertakes an open or restricted tender and then proceeds to negotiate further; and
- quotations rather than tenders.

26 The situation is further complicated by the high level of competition in the computer market. This has meant that prices can be extremely volatile and a change in the marketing methods of some of the computer suppliers has resulted. Certain practices have emerged which either challenge the normal view of openness or require that Standing Orders are waived in the interest of value for money.

27 Some suppliers, for example, see the tender document purely as a starting point for negotiations and therefore quote costs which are higher than their final negotiated figures. Other suppliers have stated that the open tender arrangements incur high costs both for the authority and the supplier and that single tenders will lead to lower costs. Some authorities, however, have found that they have incurred higher costs when they have engaged in single tender contracts while others have rejected traditional tendering arrangements and have reduced original tender costs by between 30% and 50% by direct negotiation.

28 Whatever approach is adopted, it is important that the organisation is seen to be fair to all parties and that individual suppliers cannot complain that they have been adversely affected. Yet there is also a need to ensure that local authorities secure value for money from their acquisitions.

METHODS OF TENDERING

SINGLE TENDERING

29 While public procurement practices encourage full competition for all acquisitions, there may be circumstances in which value for money can best be secured by remaining with the same supplier. Good reasons for this approach might be:-

- the existing supplier 'knows' the organisation;
- staff are well acquainted with the suppliers product;
- there are high costs of re-training staff;
- users do not wish to change their systems;
- high conversion costs; and
- 'loyalty' discounts may be offered for single tender decisions.

30 Whilst each of these may be perfectly valid, the decision to remain with a single supplier must be made in full knowledge of the resulting risks and disadvantages i.e.

- it may contravene the direction of the European Commission and therefore leave the authority open to legal action;
- there may be a reduction, or complete lack of, effective bargaining power;
- the lack of competition may lead to loss of discounts;
- more effective systems from alternative suppliers may be being denied the authority;
- competitors may offer incentives such as 'free' conversion and training of staff.

31 Where authorities have a significant number of supplier-dependent systems together with staff who have limited experience there is a natural reluctance to change suppliers but the disadvantages of single supplier strategies are also significant and should not be under-estimated.

WIDER NEGOTIATION & COMPETITIVE TENDERING

32 The need to provide scope for wider negotiation has been generally accepted by local government since the Banwell Report (1964). It was also stated at that time that there were strong arguments for limiting tenders to "a realistic number of firms all capable of executing the work to a recognised standard".

33 It is also recognised that the cheapest does not always represent value for money. Within the private sector, the requirement to compete forces negotiation of the best possible contract with suppliers and so post tender negotiations or negotiations based upon quotations, are accepted practice. Indeed, the process of negotiation tends to re-inforce and clarify those
parts of the contract that are of greatest importance.

34 Competitive tendering procedures widen the scope for more effective solutions as well as obtaining the necessary competition for the eventual contract. Competition can also improve the likelihood of the contractor using the authority's own contract since, faced with the competition from other contractors, individual suppliers are more likely to accept terms which otherwise they would prefer to reject.

35 The public sector must clearly demonstrate accountability for its use of public funds and there must be a balance with the need to operate in a competitive environment. While procedures must include safeguards to preserve the need to ensure the integrity of staff, they should allow for the negotiation of contracts which are in the best interests of the authority.

36 The Commission's view on negotiations was set out in its report 'Improving Supply Management in Local Authorities (HMSO, March 1987). It concluded 'there can be no harm in pre tender discussions and they can frequently benefit the authority if undertaken intelligently.' Care needs to be taken however to ensure that no supplier is favoured with information that has not been made available to others. Equally it concluded that post tender negotiations could also be 'well worth while' as long as there are 'adequate safeguards on the regularity of the negotiating process. Controls should be introduced, and enforced, to limit the possibility of corrupt practices and to ensure that the organisation is seen to be even-handed in the treatment of all possible suppliers'.

37 Where contracts are subject to European Commission directives the approach should be towards more open competition with the use of single or negotiated tendering reducing as the move towards open systems gains momentum. However, it would appear that subject to the costs of administering the project, even in low value acquisitions (below 200,000 ECU's) a general move towards a more open approach should be encouraged.

38 The Institute of Purchasing and Supply has issued statements on the use of post-tender negotiations and the ethical codes that its members should adopt. Authorities should follow the guidance given.

3. EC DIRECTIVES

39 Whilst the use of effective management arrangements is crucial, authorities have also to consider a number of other factors that are also affecting the acquisition process.

40 The last few years have seen a noticeable increase in the influence of the EC within public procurement policy. Various directives have been issued in an attempt to increase competition and to promote the use of IT standards. The net effect of these moves has been to bring IT procurement into the public domain. No longer is it acceptable to treat IT as a purely internal matter; each acquisition is now open to public scrutiny and reasoned arguments must be given to support such decisions.

41 Recognised standards are tending to move all procurement towards a more competitive environment. The development of common standards has been slow but continuous and has led to a situation where true open systems are now becoming a reality. This inevitably reduces the reliance upon a single supplier.

42 The movement towards standards is therefore to be encouraged and should form part of an authority's procurement policy and be incorporated in its IT strategy. The Foundation for Information Technology in Local Government (FITLOG) in its report on IT Standards in Local Government advocated that authorities should undertake to:
- plan and develop skills for Open Systems Interconnections (OSI);
- establish a procurement policy which incorporates non proprietary standards that are appropriate for the authority and demand adherence to those standards as part of the conditions of contract; and
- demand that the standard product be procured except where its functionality is demonstrably inferior.

43 With the general industry move towards standards, it is therefore not surprising that the EC has adopted and supported the move to OSI and has through EC Directive 87/95 placed a mandatory requirement on all public bodies to conform to these standards.

44 The implications of EC Directive 87/95 clearly show the EC's commitment to a standard interface between machines, thus giving organisations the freedom to exploit the benefits of standardisation (Exhibit 5 overleaf). Those benefits carry with them costs - not all suppliers' products, for example, conform to all aspects of...
Exhibit 5
CLAIMED BENEFITS OF STANDARDS
Standards are tending to move procurement towards a competitive environment

- information exchanged between different machines;
- applications no longer machine dependent;
- organisations free to choose the most appropriate machines and not tied to one supplier;
- the use of standards within normal tendering procedure reduces the risk that equipment will not be integrated;
- helps minimise implementation and maintenance costs through a defined range of standard equipment; and
- risk of future obsolescence is reduced.

standards and sound technical understanding and appropriate skills are necessary to mix different suppliers' offerings.

45 All authorities must consider how they are to adhere to the EC directives. Those authorities which cannot move immediately towards the implementation of OSI must ensure that they have produced a strategy document or long term plan that lays down why they are unable to comply. This document should also indicate a commitment to OSI, an indication of how it is to be introduced and the timescale that they are working to. Failure to provide this statement of intent may well mean that they are called to account for a direct contravention of EEC legislation.

46 It is also important that this basic information is included within all tenders or requests for quotations for IT equipment. In this way all suppliers will have less opportunity to question the intentions of an individual authority regarding OSI.

47 Whilst the implications of EC Directive 87/95 are significant, a second Directive (EC 88/295) that has been effective from January 1989 will have a far greater impact. This Directive lowers the threshold for open competitive tenders to approximately 134,000 ECUS and will be subject to greater enforcement. (Note however that if the goods are covered by 87/95 the limit is reduced to 66,000.)

48 The Directive seeks to increase competition within the EC and provides for prosecution where it considers that either the member states are allowing unfair competition i.e. failing to go to open competition or where the tendering criteria are biased. A number of caveats are also included within the Directive dealing with those instances where tendering is not appropriate. IT has, however, been seen as a strategic area, and controls to ensure that the Directive is adhered to have already been put into effect. At present all recourse is to the European Court but this is expected to be altered shortly to allow companies redress from national courts where contravention of EC directives are concerned. It may also lead to suspension of tenders where there is a possibility that EC directives have been ignored.

49 The Directive has, therefore, a number of immediate consequences for IT procurement. The first relates to negotiated tenders. Under the Directive, additional deliveries by the original supplier which are intended either as partial replacement or as an extension of existing supplies are allowable, without prior publication, where a change of supplier would cause incompatibility or disproportionate technical difficulties. The length of such a contract may not exceed three years otherwise the authority would lose its ability to claim this case for compatibility. However, while the exception exists, authorities are advised that the exception should not be used as an excuse for continued single tendering. Indeed while the three year rule would seem to allow authorities to extend the period indefinitely, this runs contrary to the general spirit of the Directive if not actually illegal. It would therefore seem likely that the EEC will close this loophole should a significant number of authorities seek to use it.

50 The Directive also requires authorities to notify the EC of their intentions where they are using open or restricted tenders or, under conditions laid down in Article 6(3), by negotiated procedures. This will subsequently be followed by a second notice detailing to whom the contract was awarded. Where this was by negotiated or restricted tender the authority is required to draw up a report justifying its use of these procedures. The report must include:
  - name and address of authority
  - value of contract
  - quantity and nature of goods
  - number of suppliers invited to tender
  - number of offers received and if applicable the reasons for rejecting the offers
  - the case for negotiated or restricted tender
EC DIRECTIVE
Summary of EC Directive 88/295

The EEC has defined three forms of tender:
- negotiated tender, where authorities are able to consult suppliers of their choice and negotiate terms of contract with one or more of them.
- restricted tender
- open tender

Directive 88/295 clearly promotes "open tender" as the preferred method of contracting but it acknowledges the existence of single tenders and states that "in order to limit (its) use" it has created the "negotiated procedure". It has defined this "new" term as one which should only be used in exceptional circumstances.

Negotiated procedures may also emanate from an open or restricted tender i.e. where the contract has already been advertised. However, the directive allows the negotiated procedure to be used without the former advertisement in the following cases:

- in the absence of tenders in response to an open or restricted tender, provided the terms are not substantially altered and that a report is communicated to the EC;
- if the product is for research, experiment, study or development;
- when for technical or artistic reasons, or for the protection of exclusive rights, the goods supplied may be manufactured or delivered only by a particular supplier;
- due to extreme urgency, brought about by unforeseen events, the time limits laid down for open and restricted tenders cannot be met (i.e. the urgency cannot be attributable to the contracting authority);
- for deliveries by the original supplier, which are intended as a partial replacement or where a change of supplier would lead to incompatibility or disproportionate technical difficulties in operation and maintenance. Note however that as a general rule such contracts may not exceed three years.

It would appear that the situations where an authority could invoke these exceptions are limited, and would be easy to challenge. The last is acceptable if it is a partial replacement but the incompatibility argument is less easily proven. Many suppliers now face direct or indirect competition thus it is likely that compatible equipment if not identical equipment would be available.

Authorities may however award contracts using the restricted tender method, if the case is justified. The EC has defined such justification as follows:
"a need to maintain a balance between contract value and procedural costs"
"the specific nature of the products to be procured"

If the restrictions placed on the above methods of tendering cannot be used public bodies are required to award contracts by open tender.

51 The report or its main factors shall be communicated to the EC at its request. To assist authorities a summary of EC directive 88/295 is included in Exhibit 6.

4. THE CONTRACT

52 It is somewhat surprising given the size of investment in IT that few organisations show concern when it comes to IT contracts themselves. This may reflect some or all the following:
- IT contracts can be complex and the implication of some of the clauses are not readily understood by users;
- many organisations 'do not have the time' to contest the suppliers insistence on using their contracts or incorporate alternative terms .
- the lack of understanding that the use of standard contracts may not reflect the needs of an organisation or the particular equipment or software that is being purchased.

"...few organisations show concern when it comes to IT contracts themselves."

53 The importance of crystallising the needs of the organisation is normally accepted as a prerequisite for the successful purchase of IT equipment or software but it is evident that the level of analysis undertaken to assess the viability of the purchase is not always matched by the concern over the contract itself. Indeed within some organisations there would appear to be little or no assessment of the contract.
The predominant reason for this stems from the belief that the contract proffered by the supplier is not negotiable but this is often not the case and abdicating responsibility for defining the contractual terms carries the risk that the contract may exclude a significant degree of supplier responsibility, thus placing the risk firmly in the hands of the purchaser.

While it is accepted that suppliers may not welcome negotiation of terms, scope for negotiation exists both for alteration of the supplier's contract and for use of the purchaser's own contract. The degree of leverage is normally influenced by the following:

- Major hardware suppliers are often reluctant to concede any change to their contracts. A growing number of authorities do, however, use their own contracts or utilise the Institute of Purchasing and Supply Model Form of Contract.
- The smaller hardware and software suppliers are generally more amenable to the alteration of their own contract or use of the purchaser's contract. In these cases the supplier is more interested in securing the contract than ensuring that the contract gives them maximum security from legal action.
- The monetary value of the contract or where the hardware or software is at the leading edge of technology, therefore involving a greater degree of risk to the purchaser.
- Contracts for software development, where there is a need to ensure that the product fits the requirement.
- The seniority of staff undertaking the negotiations; in general it is advantageous for senior officers to be involved with the purchase as this shows the commitment of the authority and is normally met by an increase in the commitment and status of the staff on the suppliers side.

There is a general feeling that suppliers who are well versed in the supply of IT equipment and software are better placed to construct a fair and equitable contract. Unfortunately vendors' contracts generally contain more detailed information about how the contract is to be performed and the degree of commitment and associated risk is normally firmly planted on the purchaser. A number of important clauses are worth consideration.

‘...the cost of failure is significant and far outstrips the contract sum.’

It is normal within most negotiations, for the full scope of the purchase to evolve rather than be defined specifically at the start of the process. This is inevitable as new areas may emerge during the negotiations or there is a need to further define aspects of the purchase. Thus a two way flow of information will exist up to the final signing of the contract. Most purchasers will rely heavily on these discussions and to a major extent they may influence which of the competing suppliers will eventually obtain the contract.

Unfortunately, most contracts contain a clause which may seek to reduce or render this process worthless. The exact wording may change but the effect is normally the same e.g.

‘this document sets out the agreement between the parties and supersedes all prior discussion between the parties and all statements, representations, terms, conditions... (etc.), either given by or on behalf of the company and whether oral or in writing in respect of the subject matter of the contract’

It is accepted that some of these clauses may have no legal effect and others may be challenged as misrepresentation. However, it is preferable that they are removed or that all significant factors relating to the contract are included within or referenced by the contract. These may include details of the specific equipment or software to be supplied together with any further guarantees offered by the supplier or agent.

All meetings with suppliers should therefore be minuted and agreed. Written confirmation should follow all telephone conversations which involve specific performance obligations.

The computer industry is well known for the number of potential sources of equipment and software. This large market of suppliers is in one sense a benefit, but can cause problems when the product required is in reality the joint product of a number of organisations. For example a central computer may be purchased from one supplier who also contracts for the software to be provided by a number of sub-contractors. In some cases the
supplier may be a distinct third party. As far as the contract is concerned it is important that responsibilities are clear and that the purchaser has the right to effect a repair of the damaged goods should some element of the purchase fail to operate.

61 There can also be a problem if the supplier is allowed to re-assign the contract to a third party without the purchasers agreement. In local government this has happened in a number of cases involving packaged software. Without some protection a purchaser can find that many of the rights negotiated with the original contractor are lost on assignment. It is therefore important to consider the implications of such a clause and if possible delete or amend it to ensure protection.

WARRANTIES & PENALTIES

62 The risks of a failure concerning IT are well known and extend much further than the mere loss of a particular piece of equipment or software. Organisations have for many years geared their overall procedures and controls around the computer, with the machine becoming crucial to the provision of the service or product. In such cases the cost of failure is significant and far outstrips the contract sum. There are examples of contracts which contain references to consequential losses though the penalties are invariably confined to the overall value of the contract and thus fall far short of the full costs of rectifying the situation.

63 This factor can be clearly illustrated by reference to the problems associated with the development of Housing Benefit Systems. A number of authorities were seriously disrupted by the late arrival of software or were affected by the reluctance of certain suppliers to further support the product. In such cases, the consequential loss can be significant.

64 As a consequence of such experiences with Housing Benefits, some authorities included penalty clauses within suppliers or their own contracts for Community Charge systems. Additionally performance measures and the use of Bonding has been considered. This movement is not unexpected and is to be commended. Where penalties have been included within contracts there has been a noticeable increase in the leverage that organisations have over the supplier. In such circumstances regard needs to be had to delays caused, for example, by late changes to regulations.

MODEL FORM OF CONTRACT

65 The initial work was undertaken by the Institute of Purchasing and Supply who produced four main contracts:

- For the Supply and Installation (Purchase) of Computers
- For the Servicing (Maintenance) of Computer Equipment
- For the Hire and Servicing (Maintenance) of Computer Equipment.
- For the use of computer software products

66 These have been subsequently reviewed by the Confederation of European Computer Users Association and are being adapted as the Model Forms of Contract for the European Economic Community. It is understood that there is some opposition to a form of ‘standard’ contract. However a number of suppliers and the Computer Services Association, for example, are known to have negotiated with the CCTA to produce the standard contract for Government Procurement (CC88).

67 The present model forms of contract should be seen as a framework that can be varied depending upon the circumstances of the contract, i.e. by the deleting or addition of clauses. Thus they provide guidance for users to define their own contracts and redress the present one sided contracts of some of the principal suppliers. The effectiveness of this move will only be achieved if authorities refuse to purchase unless their own contracts are used or their own clauses included within the manufacturers contract.

68 The advantages stated for the Model contract are as follows:-

- brevity of documentation, requiring only that the Model form is quoted plus/minus any specific clauses
- equality - both sides are protected
- extraneous clauses within manufacturers contracts do not have to be evaluated
- time - the user has only to know their own contract and does not have to spend time assessing the contracts of a number of manufacturers.

69 Opinions vary as to whether a true ‘standard’ contract is feasible but many organisations would appreciate a common form that reduced the need for significant legal work. It would therefore appear to be of value for a joint venture between representatives of the local authorities and the major suppliers to agree a common framework which provides a fair distribution of
the risk. This should reduce both the costs to authorities and suppliers alike and lead to a better understanding of the needs of both parties.

70 It should however be borne in mind that the effectiveness of the contract cannot replace the primary need for the purchaser to specify correctly the product or service to be provided. If the user fails to determine or specify his/her requirements then naturally it will not matter which contract is used as it cannot be the responsibility of the manufacturer or supplier to provide a correct product to an incorrect specification. Thus both time and resources must be allocated to ensure that the correct product is defined. However, once defined, the processing of the contract must be undertaken in parallel with the project and not left to the final stages of acceptance.

CONCLUSION

71 The procurement of IT is a complex and time consuming exercise. Without thorough evaluation and appropriate management the benefits of investment can easily be lost. It is therefore important that officers and members assure themselves that such risks are identified and removed.

Many failures are related to the organisation rather than the technology itself and sound management practices can minimise problems and associated high costs.

72 Once needs have been identified and the appropriate management structures installed, authorities should ensure that their procedures are geared to achieving the best value for money given the existing market conditions. Authorities should therefore:

– invite sufficient firms to tender so as to ensure competition but without incurring an undue administrative burden;
– encourage new suppliers to contact the authority;
– ensure that contracts are for periods which will result in maximum competition;
– ensure that the contract includes reference to expected upgrades/additional software and that the fact is reflected in the size of discount, warranties etc. that are offered by the supplier; and
– ensure that all tenders are properly evaluated and are in accordance with the requirements detailed in the specification.

73 Local authorities must make all staff aware of the importance of adhering to EC directives. This is most important in relation to directives EC87/95 on Open System Interconnection and EC88/295 on tendering arrangements.

74 A specific procurement policy should be drawn up and should be reflected within the councils IT strategy and Standing Orders.

75 Authorities should ensure that IT contracts are in the best interest of the authority. There would be merit in the production of a common form of contract for IT acquisitions. This may be best achieved through a joint project between the major suppliers and the local authority associations.