



Specialist Engineering Contractors Group

CONSTRUCTION PROCUREMENT

- Is Local Government
Applying Best Value?

A Report to:

*Minister for Local
Government and
the Regions: Office
of the Deputy Prime
Minister*

Scottish Executive

Welsh Assembly

*Northern Ireland
Office (Dept of the
Environment)*

September 2003

Voice of the Specialist Engineering Contractor



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The members of the SEC Group are:

Association of Plumbing and Heating Contractors

British Constructional Steelwork Association

Electrical Contractors' Association

Heating and Ventilating Contractors' Association

Lift and Escalator Industry Association

SELECT

(Electrical Contractors' Association of Scotland)

"The SEC Group exists to promote an efficient and profitable specialist engineering sector, comprising qualified firms and a skilled workforce, able to meet the business needs of its clients through delivering high-quality engineering systems, services, products and structures as part of integrated supply teams."

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CONTENTS

	Page
1 FOREWORD	3
2 EXECUTIVE SUMMARY	5
3 SEC GROUP RECOMMENDATIONS	7
4 SURVEY RESULTS	
Bidding for Local Authority Work – Does lowest price reign?	9
Partnering/Alliancing Arrangements	12
Payment Practices	15
Health and Safety	20
5 BACKGROUND	
Best Value – The Statutory Framework across the UK	22
Best Value – Not Lowest Price	23
Best Value Survey	24
Local Authority Procurement Practices – Access by SMEs	26
6 APPENDIX	
Questionnaire: Are Local Authorities applying Best Value?	28

1. FOREWORD

The Specialist Engineering Contractors (SEC) Group represents six trade associations that, in turn, represent firms engaged in providing a broad range of construction/maintenance services to local authorities. These include power and lighting, telecommunications, heating and ventilation, plumbing, lifts and escalators, data transmission, security systems, automation and control systems and general service and maintenance.

This Report was prompted by concerns expressed by firms working for local authorities which centred on the fact that little has changed since the introduction of *Best Value*. When *Best Value* was introduced in England and Wales in 2000 it opened up exciting opportunities for new relationships to be forged between local authority procurers and construction firms. On the eve of the introduction of *Best Value* in England and Wales, the Chairman of the CBI's Local Government Procurement Panel wrote:

*“Partnership is exactly what Best Value must be about – a partnership between councils and their communities **and with those working to deliver a service** (emphasis added). Partnership working will itself be one of the linchpins of the new regime.”*

Regrettably, in the ensuing three and a half years, there has been limited change - overall - in the relationships between local authorities and the firms that deliver their construction requirements. Similarly, there has been slow progress in developing partnering-style relationships between firms and local authorities. Outdated procurement practices that are symptomatic of the lowest price culture and the lack of trust between local authority procurers and their contractors still prevail. In this situation both local authorities and their suppliers suffer.

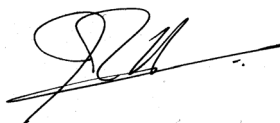
Best Value should be a catalyst for releasing the best that the private sector can offer - innovation, flexibility and greater responsiveness to local authority needs - whilst, at the same time, improving profitability for firms that deliver a value for money service. Furthermore, it should not be overlooked that the well-being of local communities is dependent upon the opportunities for employment and added wealth created by thriving local businesses.

SEC Group believes that there has to be a more concerted effort to ensure that local authorities dispense with outdated practices and work more closely with the construction supply side to secure *Best Value* solutions.

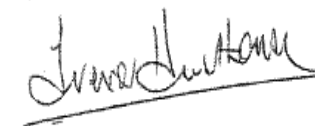
The Welsh Procurement Initiative and the introduction of a National Procurement Strategy for Local Government in England may help bring about progress. We acknowledge that there are many local authorities in the UK which are already making significant progress in transforming their relationships with the firms they deal with. But, unfortunately, they are still in a minority.

As we make clear in our Report, the expertise of the specialist engineering contractor will often be critical in the delivery of *Best Value* solutions. This early involvement in projects within teamworking and partnering arrangements will help local authorities address issues relating to whole life performance and sustainability. All this hinges upon the more general adoption of enlightened procurement approaches that fully reflect the *Re-thinking Construction* agenda.

This Report lists a number of recommendations for consideration and endorsement by the Minister for Local Government and the Regions and other Ministers having responsibility for Local Government within the Scottish Executive, Welsh Assembly and Northern Ireland Office.



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2. EXECUTIVE SUMMARY

- 2.1 This Report is based upon a survey of specialist engineering contractors working for local authorities. The survey was conducted over the period May to June 2003. There were 528 responses to the questionnaire (included in the appendix to this Report).
- 2.2 Unless there was a specific reference to the contrary, the overall trend of results in England – which, not surprisingly, produced the vast majority of the responses – was followed in Wales, Scotland and Northern Ireland. However, it is acknowledged that *Best Value* in Scotland and Northern Ireland still has to become fully established. Although in England and Wales *Best Value* is only three and a half years old, there has been a substantial infrastructure of support for local authorities to help them implement *Best Value*.
- 2.3 The overwhelming result from the survey was that local authorities across the UK were still procuring on the basis of lowest price to the exclusion of quality. This is, of course, redolent of the days of Compulsory Competitive Tendering (CCT) but should not be the mainstay of procurement within a of *Best Value* regime. 88% of respondents reported that most – if not all – of their contracts with local authorities were let on lowest price alone.
- 2.4 It is disappointing that there was little evidence of partnering/alliancing between local authorities and specialist engineering contractors. Approximately 90% of firms that responded to the survey indicated that the bulk of their contracts did not involve partnering or alliancing. *Best Value* envisages that local authorities will move away from traditional adversarial relationships (again, characterised by CCT) towards collaborative relationships that are more likely to address the needs of local authorities and the various stakeholders in the community.

- 2.5 The picture was rather more encouraging insofar as local authorities' payment performance was concerned. The Welsh experience was particularly impressive with a significantly higher percentage of specialist engineering firms in Wales being satisfied with the payment performance of Welsh local authorities. But a significant number of respondents - 18% - stated that they were having payment difficulties on either all their contracts or more than half. Furthermore, delays in the recovery of retentions remained a major problem for over half of the firms responding to the survey. This problem becomes more acute for sub-contractors working indirectly for local authorities.
- 2.6 Finally, it was revealing that a significant number of local authorities were not treating health and safety as an important factor in the awarding of contracts. 24% of respondents reported that health and safety was an important factor (in the contract award process) on only half or less than half of their contracts. A further 16% declared the health and safety – as an important factor – did not feature in the award of any of their contracts.
- 2.7 It is likely that most local authorities would consider health and safety to be an issue that was important to the qualification process and inclusion of firms on their approved lists. Many firms, however, complain that such process becomes, at one extreme, a “paperchase” or, at the other extreme, an expensive overhead as a result of having to meet the requirements of myriad vetting agencies. But, the emphasis on lowest price in the contract award process could exclude firms that can demonstrate a greater commitment to health and safety through investing in the necessary training and by having a good record of effective management of health and safety risks.
- 2.8 In order to address these matters we suggest a number of recommendations for consideration by the Minister for Local Government and the Regions, Welsh Assembly, Scottish Executive and Northern Ireland DoE.

3. SEC GROUP RECOMMENDATIONS

SEC Group invites the Office of the Deputy Prime Minister (Minister for Local Government and the Regions), Welsh Assembly, Scottish Executive and Northern Ireland DoE to consider and endorse the following recommendations.

Recommendation 1

All local authorities should provide evidence that, in relation to the procurement of construction works including maintenance, they have developed and published transparent and auditable tender evaluation criteria that incorporates quality and whole life costs¹. **Furthermore, local authorities should insist that first line contractors adopt similar criteria when sub-letting local authority works.** This recommendation is designed to reduce the reliance upon lowest price as revealed in our survey.

Furthermore, tender evaluation criteria should clearly establish the health and safety performance expected of tenderers and such requirement given an appropriate weighting to reflect the fact that health and safety performance should be an overriding priority in the award of contracts. Again, this should be mirrored down the supply chain.

Recommendation 2

Since our survey suggests that there is little evidence of partnering or alliancing between local authorities and specialist engineering contractors, progress by local authorities in adopting such arrangements should be more closely monitored and audited. This should seek to establish whether partnering/alliancing arrangements:

- place emphasis on quality factors as well as price; and
- are inclusive so that there is involvement of the key members of the team responsible for delivery.

¹ For England there is a specific recommendation to this effect in the Byatt Report.

Recommendation 3

There should be greater transparency in relation to the payment performance of local authorities. It is suggested that there is regularly published the payment performance (ie for construction works) of local authorities by reference to a performance indicator to discharge payment for construction works within 17 days of the due payment date (reflecting para. 8(2) in Part II of the Scheme for Construction Contracts). Local authorities should be urged to take the following actions to ensure that good payment practice is applied throughout the supply chain:

- Past payment performance in respect of their supply chains should be a criterion in the selection of first line contractors.
- Payment performance of first line contractors should be monitored as the work proceeds.
- They should require in their contracts with first line contractors that interest is paid to sub-contractors in accordance with the Late Payment of Commercial Debts (Interest) Act 1998².
- They should insist that payment cycles in sub-contracts should not be more than 30 days and that they should commence from the start of any off-site works such as design, fabrication or assembly.

Recommendation 4

The progress of local authorities towards phasing out retentions should be monitored in line with the target of 2007 being set for the elimination of retentions within the public sector³. In the meantime local authorities should:

- ensure that retentions are ring-fenced for the protection of firms further down the supply chain; and
- insist in contracts with first line contractors that retentions are fully repaid on completion of work by each sub-contractor unless the work is not in accordance with the contract.

² Government procurers have already been advised to this effect by the Treasury.

³ As recommended by the House of Commons Trade and Industry Committee.

4. SURVEY RESULTS

BIDDING FOR LOCAL AUTHORITY WORK – DOES LOWEST PRICE REIGN?

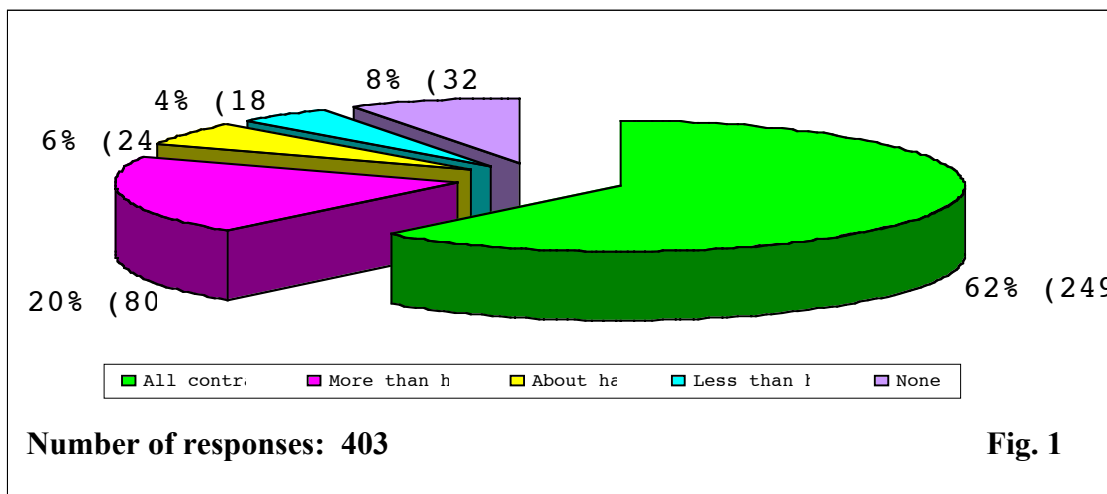
“Contracts are not awarded on any other issue other than price, EVER.”

(Lancashire firm)

- 4.1 Striking the right balance between quality and price should, of course, be inherent in *Best Value* procurement strategies. The Byatt Review recommended that local authorities should develop evaluation criteria that incorporate quality and whole life costs. Such criteria should be published, transparent and auditable⁴. In practice there is very little evidence that local authorities are applying criteria other than lowest price.
- 4.2 Almost 62% (249) of respondents in our survey (Fig. 1 at top of page 10) stated that all their contracts made directly with local authorities were let on lowest price alone. Another 20% of respondents (80) stated that more than half of their contracts were let on lowest price whilst 6% (24) stated that this applied to about half of their contracts. The remainder of respondents - 12% - declared that either less than half or none of their contracts were solely let on lowest price. **In total 88% of respondents reported that most - if not all - of their contracts were let on lowest price alone.** Overall, the returns for **Wales** were better with approximately 40% of returns indicating that either less than half or none of the contracts were let on lowest price.

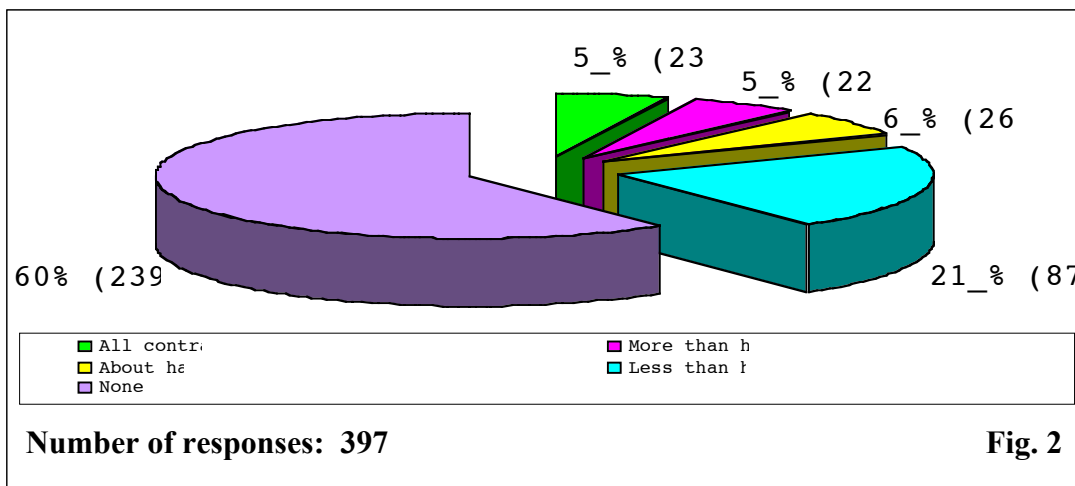
⁴ Recommendation 30, *Delivering Better Services for Citizens*, June 2001 (Report of Sir Ian Byatt's Task Force reviewing procurement skills and practices in local government in England).

Number of contracts made *directly* with local authorities that are let on lowest price



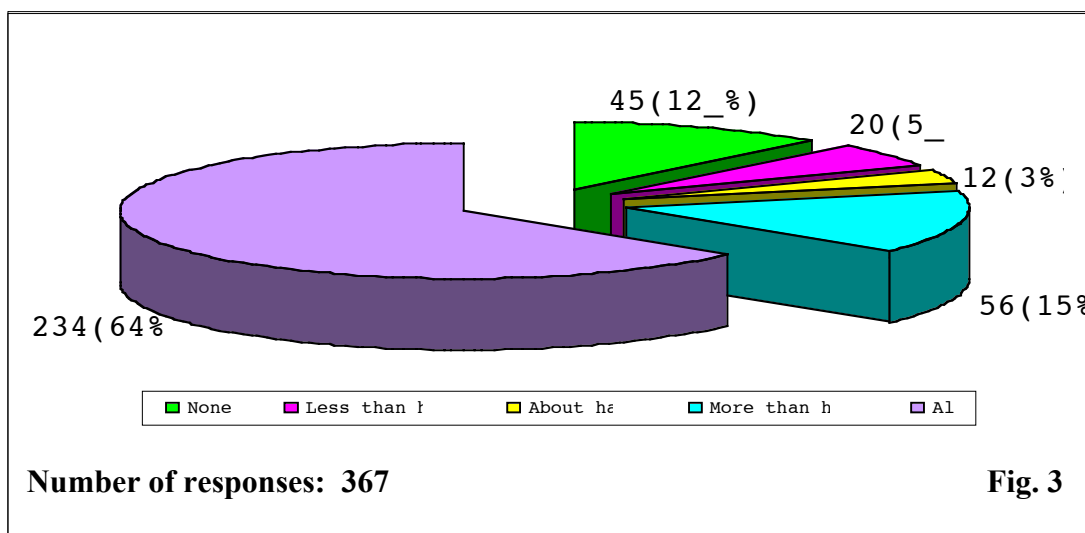
4.3 In order to establish the credibility of these answers we asked firms to indicate the number of contracts made directly with local authorities that were let on the basis of quality as well as price. There was a broad correlation between the answers to this question and those to the question just discussed. Over 60% (239) (Fig. 2 below) reported that quality had not been a factor in the awarding of **any** of their contracts. A further 21% (87) of respondents stated that quality had been a factor in less than half of their contracts and 6% (26) stated it had been a factor on about half of their contracts.

Number of contracts made *directly* with local authorities let on quality as well as price.



4.4 *Best Value* must, of necessity, be applied throughout the supply chain if significant improvements in performance and delivery are to be achieved. But, again, there was little evidence of first line contractors sub-letting local authority works other than on lowest price. In any event, it would have been unlikely that they had tendered to their respective local authorities on quality criteria as well as price. 64% (234) of respondents reported (Fig.3 below) that all their sub-contracts were let on lowest price and, additionally, over 15% (56) stated that more than half of their sub-contracts were let on lowest price⁵. In **Scotland** almost 90% of sub-contracts involving local authority works were let on lowest price.

Number of sub-contracts involving local authority works that are let on lowest price.



⁵ 12% (45) respondents declared that none of their sub-contracts were let on lowest price. However, only 5% (20) of respondents indicated that less than half of their sub-contracts were let on lowest price alone. It might have been expected, therefore, that fewer respondents (ie less than 5%) would have reported that none of their sub-contracts were let on lowest price alone. Perhaps, the reason for the relatively high figure of 12% was that this question was answered by some firms which were not involved in sub-contracting on local authority works.

PARTNERING/ALLIANCING ARRANGEMENTS

4.5 In support of the Byatt Review the Department for Transport, Local Government and the Regions (as it then was) produced a research report on the procurement practices of local authorities in England.⁶ It was revealed that exactly half of local authorities surveyed for the report used partnerships as an approach to supplier relationships and a further 9% intended to introduce them in the future. Furthermore, construction – related activity was one of the areas in which local authorities were most likely to form partnerships for procurement. “Partnership” was defined in the questionnaire to local authorities as:

“The creation of a long-term relationship with a contractor based on partnership principles such as shared objectives, trust, good communication, proactive problem solving, joint investment, continuous improvement, sharing of risks and rewards, pooling of knowledge and resources etc.”

4.6 The results of this research were not borne out by our own survey which asked firms to indicate the number of contracts made **directly** with local authorities that involved partnering or alliancing arrangements⁷. Overall the results show that the vast majority of firms have not been involved in such arrangements with local authorities.

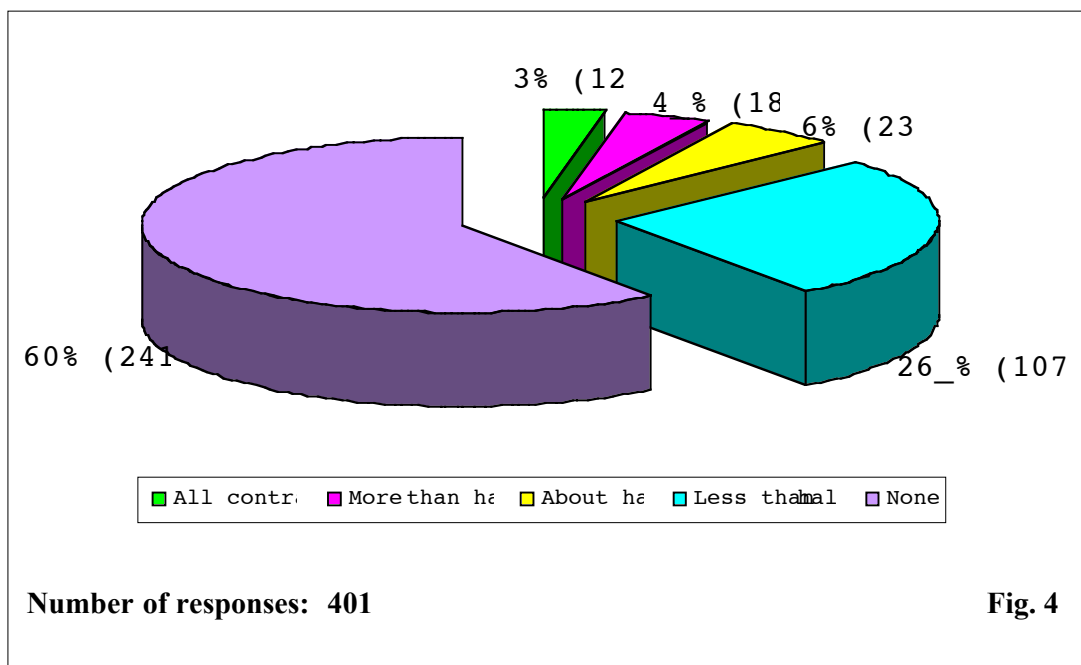
4.7 Just over 60% (241) of respondents reported (Fig 4 on next page) that none of their contracts made **directly** with local authorities involved partnering or alliancing arrangements. A further 26_% (107) reported that partnering or alliancing applied to less than half of their contracts. There were no regional differences apparent in the responses received. Rather disappointingly, a mere 3% (12) of respondents stated that partnering/alliancing applied to **all** their contracts. **In summary, approximately 90% of respondents reported that**

⁶ Local Authority Procurement: A Research Report, Demelza Birch, Local and Regional Government Research Unit, Department for Transport, Local Government and Regions (June 2001)

⁷ Alliancing arrangements denote longer-term relationships between businesses or organisations irrespective of the particular project(s). The businesses or organisations involved often have very similar cultures. Partnership or partnering tends to be applied to a specific project or number of projects.

the bulk of their contracts with local authorities did not involve partnering or alliancing.

Number of contracts made *directly* with local authorities involving partnering/alliancing



4.8 In an attempt to gain some understanding of whether the partnering or alliancing arrangements in place did involve a change from traditional practices, we examined whether such arrangements moved the emphasis towards value for money (ie quality and price) in the selection of contractors and away from lowest price. Since the sample for those firms involved in partnering/alliancing was very small, it is difficult to draw any reliable conclusions. Nonetheless, even with a very small sample, the results gave cause for concern.

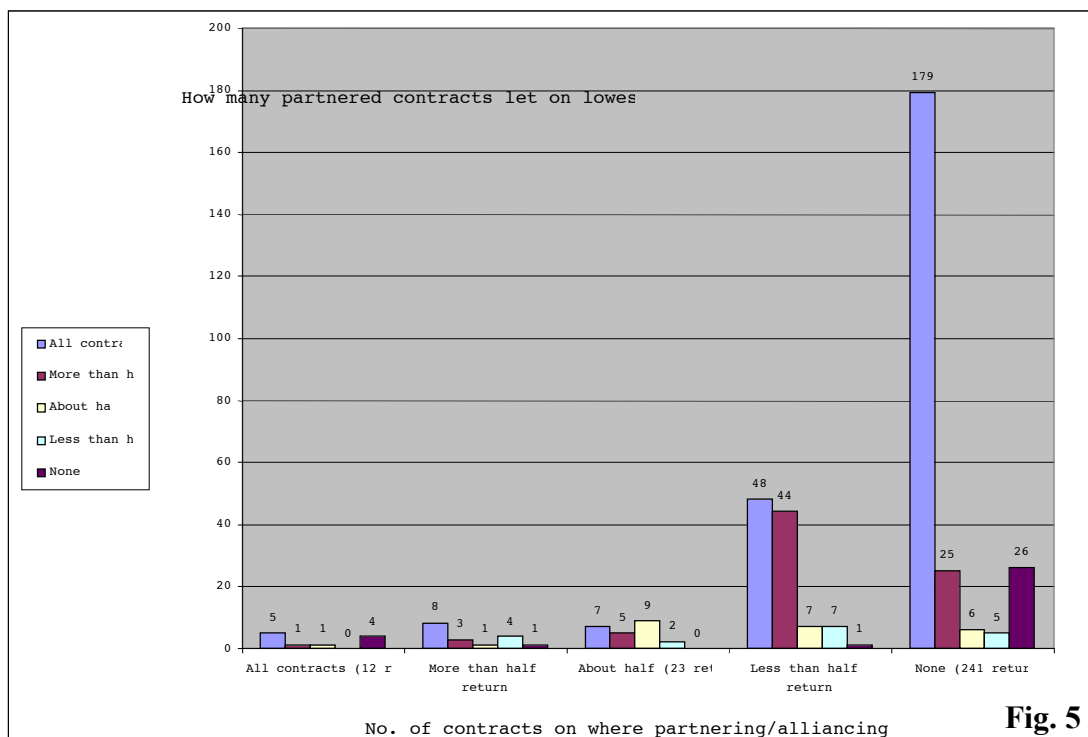
4.9 Out of 12 respondents (Fig. 5 on page 14) who reported that all their contracts involved partnering/alliancing, 5 of them indicated that all those contracts were let solely on lowest price. A further 4 reported that more than half of their contracts were let on lowest price. Out of 18 respondents who indicated that more than half of their contracts involved partnering/alliancing, 8 reported that all their contracts were let on lowest price whilst 3 respondents reported that more than half their contracts were on lowest price. A similar result applied to the situation where, out of 23 respondents reporting that half of their contracts involved partnering/alliancing arrangements, 19 indicated that half were let on

lowest price. If, in this context, lowest price is the criteria for selection, it is doubtful whether there exists genuine partnering relationships.

“Local authorities differ in their attitudes towards best value, partnering etc.”

(Cambridgeshire firm)

Number of contracts let on lowest price basis within partnering/alliancing arrangements.



4.10 Partnering and alliancing should provide the foundation for best value procurement.⁸ The inclusion of specialist engineering contractors in these arrangements facilitates their early involvement in planning and design. Such early involvement - particularly in respect of matters such as value engineering exercises and whole life performance - is critical in the process of arriving at best value solutions⁹.

PAYMENT PRACTICES

⁸ The draft National Procurement Strategy for Local Government recommends that by 2004 every council in England should have a procurement strategy that sets out the council's approach to partnering in service delivery and in construction projects. Also, by 2004, every best value review should include a "robust and challenging appraisal of service delivery models".

⁹ As well as addressing issues relating to sustainability. The draft National Procurement Strategy makes clear that in the development of their procurement strategies councils should ensure the "early involvement of suppliers and their supply chains".

- 4.11 Late payment by public sector bodies was identified in a recent review by the Better Regulation Task Force/Small Business Council as a major obstacle to SMEs accessing public sector contracts:

“We heard numerous complaints from small business about late payment from public sector bodies....Local authorities have a performance indicator to pay within 30 days from the date of receipt a percentage of invoices. The target for 2001 – 2002 was 97.5%. We looked at the performance of all the London Boroughs against this target. No one met it. Their payment rates varied between 60.2% and 88.14%. Late payment can have a devastating effect on a small company.”

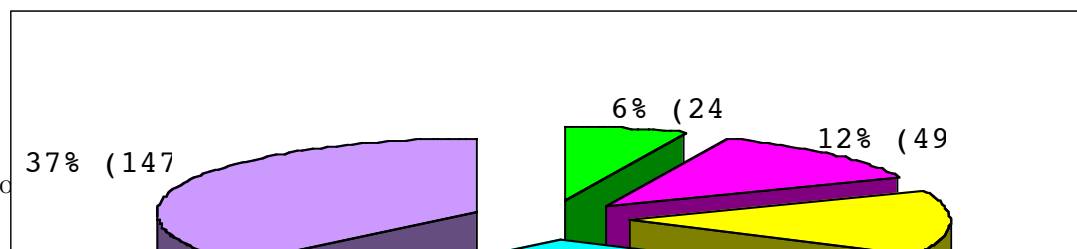
- 4.12 The respondents to our survey were invited to indicate the extent to which they experienced payment difficulties on contracts made **directly** with local authorities. In the questionnaire “*payment difficulties*” were listed as including payment delays, lengthy payment cycles (in excess of one month) and regular use of set-offs.

“We do very little work for local authorities as we have found they pay slowly and there is too much paperwork.”

(Essex firm)

- 4.13 The responses were encouraging. Over 67% of respondents (Fig. 6 on following page) declared that either they did not experience payment difficulties or, if they did, it was in relation to half or less than half of their contracts. In **Wales** this figure rose to approximately 80%. Nonetheless, there remains scope for considerable improvement. Over 18% of respondents declared that they were experiencing payment difficulties either on all their contracts or on more than half of their contracts.

Number of contracts made *directly* with local authorities where there were payment difficulties



4.14 The survey did not address the problems of payment between first line contractors and sub-contractors involved in local authority work. This was because there are available general statistics on the payment performance of main contractors in relation to sub-contractors. However, local authorities do have a vital role to play in ensuring that first line contractors adopt best payment practices towards their sub-contractors. This was a key recommendation of the review carried out by the Better Regulation Taskforce and Small Business Council.

4.15 If the focus is to be on achieving *Best Value* in performance and delivery, it is vital that this aim is not undermined by first line contractors adopting longer payment cycles or other forms of payment abuse in respect of their supply chains. **In our view, when selecting first line contractors, local authorities should ensure that past payment performance is a criterion in their selection.** This would accord with a recommendation in the Better Regulation Taskforce/Small Business Council review:

“Public sector procurers should ensure that prime contractors pay sub-contractors on time and that when paying progress payments to prime contractors the payments flow down through the supply chain.”¹⁰

4.16 A further question on payment related to retentions. Firms were asked to indicate the extent to which they suffered delays in recovering outstanding retentions. The burden of retentions falls on SMEs and is exacerbated by the

¹⁰ Recommendation 9.

often substantial delays in recovering retentions and other forms of retentions abuse. In its report, *The Use of Retentions in the UK Construction Industry*, the House of Commons Trade and Industry Committee recommended that public sector bodies – including local authorities – should phase out retentions by the end of 2007¹¹.

“Given the doubtful benefits and the clear disadvantages of retentions, it would obviously be in everyone’s interest for such an inefficient – and frequently harmful – practice to disappear.”

- 4.17 The Committee concluded that the practice of retentions was not a best value solution in dealing with issues of quality and performance.¹²

The Better Regulation Taskforce/Small Business Council review also highlighted the iniquities of the practice of deduction of retentions:

“The main contractor can easily go out of business and leave retentions unpaid. It very often contributes to a cash flow problem and restricts important activities such as training.”

- 4.18 The removal of the burden of funding retentions would enable SMEs to invest more in those resources, such as training and IT, that would help to improve the quality of their performance. **In its broadest sense *Best Value* should be concerned with promoting the health and performance of SMEs and not perpetuating practices that present an obstacle to achieving this aim.**

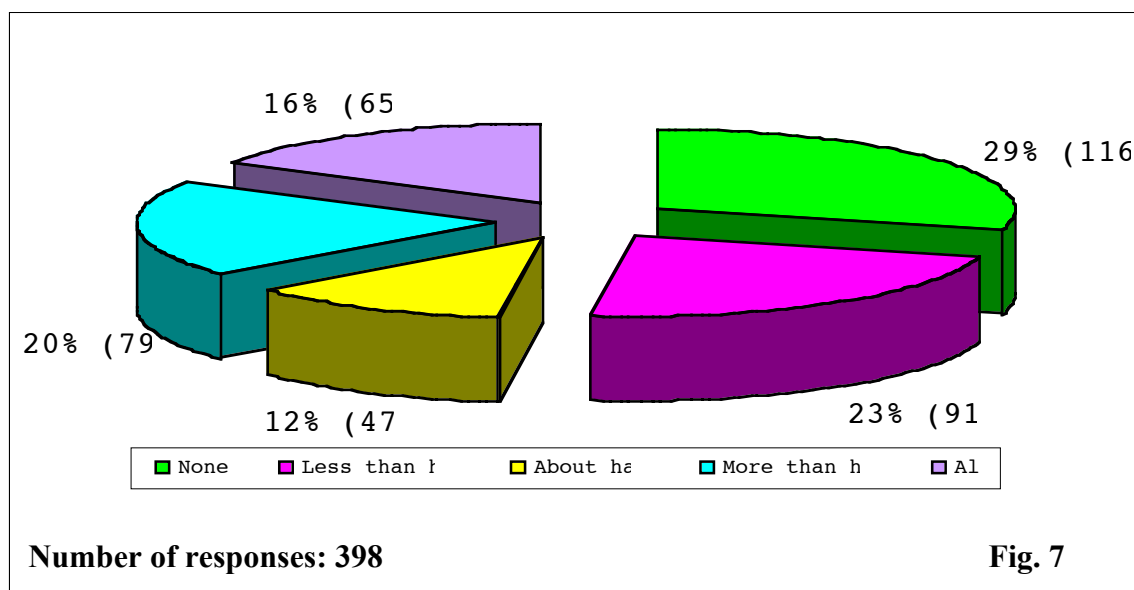
- 4.19 The results of the survey reveal that there was roughly an equal split between those respondents who suffered delays on at least half of their contracts/sub-contracts and those who had suffered delays on less than half of their contracts (Fig. 7 below). A significant number of respondents – 12% (47) – declared that they had suffered delays on recovering retentions on about half of their

¹¹ Second Report of Session 2002-03, HC 127.

¹² In a further report on retentions, *Retaining Retentions? Comments on the Government’s response to the Committee’s Report on the use of retentions in the UK construction industry* (Fifteenth Report of Session 2002-03 HC 976) the Select Committee has urged the Government to eliminate retentions “as soon as possible” to “set an example to other public sector construction procurers...”

contracts. Approximately 75% of respondents in **Wales** were experiencing delays on at least half of their contracts/sub-contracts. This seems to be at variance with the statistic for payment difficulties showing that, overall, Welsh local authorities had a better payment record. However, it is possible that many of the retention delays could be at the level of sub-contracts.

Number of contracts and sub-contracts for local authority works where there were delays in recovery of outstanding retentions



- 4.20 Lengthy delays in recovering retentions increase the risks upon sub-contractors. When a first line contractor becomes insolvent a local authority will always hold back payment of retentions and, in the event that they are eventually repaid, they would be paid directly to the main contractor's insolvency practitioner.
- 4.21 For sub-contractors there is also the uncertainty of the timing of the return of their retentions. This is generally dictated by some activity associated with the local authority's contract with the main contractor such as the issue of a certificate of making good defects. The majority of sub-contractors are kept waiting for their retentions even where the non-issue or late issue of the relevant certificate under the main contract is not the result of any fault on their part.

- 4.22 The upshot is that retentions tend to act as a disincentive to performance rather than an incentive. This is contrary to some early advice on *Best Value* published by the (then) DETR in June 2000:

“Contracts with the private sector should be examined to see if they permit and provide incentives for innovation and continuous improvement.”

- 4.23 The Local Government Task Force has urged local authorities to abandon the practice of retentions.

“[The Board of the Local Government Task Force] concluded that retentions were not compatible with the collaborative approach to contract relationships such as partnering, which the LGTF advocate. They concluded that authorities should be encouraged to work to a position where the parties replace retentions with robust quality control assurance systems in the partnering style.”¹³

The Audit Commission is proposing to issue advice to appointed district auditors in England on the subject of retentions¹⁴:

¹³ Extracted from a letter dated 22 March 2001 from Ted Cantle, the (then) Chairman of the Local Government Task Force to John Harrower, Chairman of the (then) Constructors Liaison Group.

¹⁴ The draft National Procurement Strategy for Local Government recommends that councils in England should “*review and revise their written procedures for procurement and contract management, including contract standing orders and finance regulations, to ensure they embody **best practices***”. (emphasis added)

HEALTH AND SAFETY

4.24 Our survey asked the following question:

“In your experience do local authorities regard health and safety as an important factor in the awarding of contracts?”

It is assumed that most local authorities will have made some basic inquiries into the health and safety record of firms that are on their approved lists or have been recognised (for health and safety purposes) by some third party. While this was not germane to our survey, the use made by many local authorities of various commercial vetting organisations has become an expensive overhead for many SMEs. Each of these organisations will have their individual schemes and procedures. They will invariably charge a fee to contracting firms which will be in addition to fees already paid by such firms to belong to the *Constructionline* list and industry generated qualification/registration schemes. **There is an overriding need to rationalise these various schemes so that firms in the industry are faced with a common set of criteria.**¹⁵

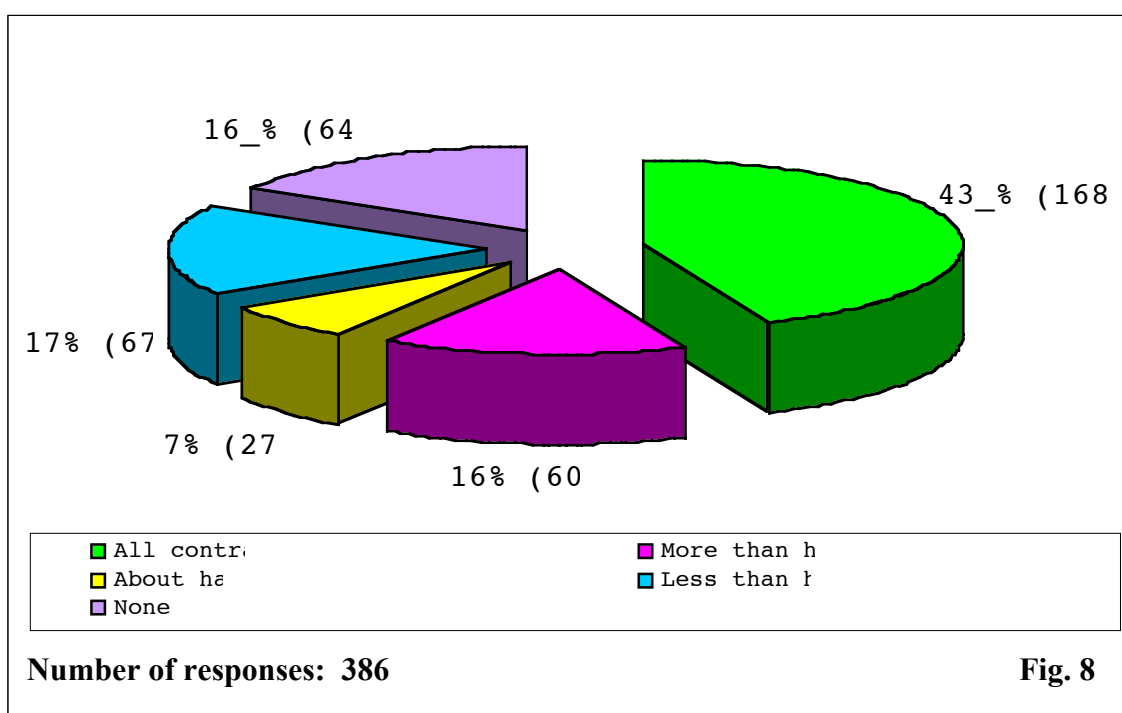
4.25 The reason for inquiring whether health and safety was an important factor in contract awards was to establish the extent to which a firm’s commitment to health and safety (demonstrated, for example, by resources devoted to training and continuing staff support) would be reflected in the contract award process. The over-preoccupation with lowest price will not, of course, favour firms that are fully committed and properly resourced to ensure that health and safety risks are minimised.

4.26 The results of the survey gave some cause for concern. 24% of respondents (94 in total) reported health and safety as being an important factor (in the contract award process) only on half or less than half of their contracts awarded by local authorities. More significantly, 16% (64) of respondents reported that health and safety did not feature - as an important factor - in the award process for any

¹⁵ We understand that the Treasury has already supported recommendation 5 in the Better Regulation Task Force/Small Business Council review. This proposes that the public sector should develop a common core pre-qualification information document for lower value contracts so that businesses do not have to put together different information in different formats to get past the expression of interest stage. The review proposes that ODPM working with the Local Government Association should develop and pilot this by Spring 2004.

of their contracts. This may confirm that less reputable firms with little demonstrable evidence of training and support for their operatives on health and safety matters are able to obtain work from local authorities (or from main contractors sub-letting local authority work) on lowest price alone. Approximately 43% (168) of respondents reported (Fig. 8 below) that health and safety was an important factor in the awarding of all contracts while a further 16% (60) stated that it was important on more than half of the contacts awarded.

Number of contracts where health and safety was an important factor in the awarding of contracts.



4.27 Further inquiry may be required to establish the veracity of these figures especially the numbers of respondents reporting that health and safety was an important factor in the award of either all or more than half of their contracts. We have received substantial anecdotal evidence that contract award procedures rarely give prominence to health and safety. Furthermore, we cannot be absolutely sure that respondents were referring to health and safety as an important factor in the contract award process rather than in the qualification process.

5. BACKGROUND

BEST VALUE – THE STATUTORY FRAMEWORK ACROSS THE UK

- 5.1 The procurement function of local authorities across the UK is now exercised within a statutory framework embracing the duty of *Best Value*. Under the Local Government Act 1999 (applying to England and Wales) this duty requires that local authorities secure sustained improvements through the way in which their functions are discharged.

*“Best Value will be a duty to deliver services to clear standards – covering both **cost and quality** (emphasis added) – by the most effective, economic and efficient means available. In carrying out this duty local authorities will be accountable to local people and have responsibility to central government in its role as representative of the broader national interest.”*

(para. 7.2 of the White Paper, *Modern Local Government – In Touch with the People*, 1998)

- 5.2 The recent Local Government in Scotland Act 2003 introduces a *Best Value* regime for local authorities in Scotland. The duty is expressed in rather more mandatory terms than the England and Wales legislation:

*“It is the duty of a local authority to make arrangements which **secure best value**”* (emphasis added)

(Section 1(1))

- 5.3 In Northern Ireland the Local Government (Best Value) Act (Northern Ireland) 2002 imposes a general duty of best value on the 26 district councils. There is no audit or inspection regime in Northern Ireland for *Best Value* but it is understood that the Department of the Environment is producing guidance for district councils.

BEST VALUE – NOT LOWEST PRICE

“They claim they are [letting work on quality as well as price] but strangely it always seems that lowest price wins.”

(Essex firm)

- 5.4 Good procurement should embrace the elimination of poor and outdated practices – especially the concentration on lowest price - that have become associated with traditional procurement approaches.

“In the context of a procurement process, obtaining ‘best value for money’ means choosing the bid that offers the optimum combination of whole life costs and benefits to meet the customer’s requirement. This is seldom the lowest price option and depends on local circumstances.”¹⁶

- 5.5 The Office of the Deputy Prime Minister (ODPM) and the Local Government Association, in their joint response to the Byatt report¹⁷, highlighted the Audit Commission’s concerns expressed in its Best Value review work:

“The focus of best value was always intended to be on improving services and outcomes for local people. But too often best value reviews have been processes to justify the status quo rather than focusing attention on priorities for improvement. Evidence from the Audit Commission suggests that in too many cases authorities have only looked at whether to tender or re-tender the existing service rather than focusing on how the service needed to be improved. This has often been associated with a narrow focus on cost in procurement at the expense of quality.”

“All local authority works are given to lowest bids always and to favoured contractors.”

(Hampshire firm)

¹⁶ National Strategy for Local Government Procurement in England: Draft for Consultation, 25 July 2003. (ODPM & Local Government Association)

¹⁷ *Toward a National Strategy for Local Government Procurement*, July 2002

BEST VALUE SURVEY

5.6 In recent years there has been a worrying increase in the number of complaints from firms (especially SMEs) within the specialist engineering sector relating to local authorities' procurement practices. These complaints have reinforced the Audit Commission's concerns highlighted in the ODPM's response to Byatt. They revolve around the following issues:

- Concentration on lowest price.
- Myriad approved lists and qualification procedures
- Risk averse contracts and sub-contracts..
- Lack of transparency in the selection process (firms not informed of the reasons for tenders being rejected even where they have carried out contracts for the particular local authority without any complaint about their performance).
- Exclusion from teamworking or partnering arrangements.
- Payment delays and retention abuse.

5.7 In an endeavour to establish the extent to which some of these complaints were justified, the SEC Group conducted a survey during May/June 2003 of firms within the specialist engineering sector. The survey extended to the whole of the UK¹⁸. The number of returns totalled 528 although 125 of the returns were invalid because the firms indicated that, currently, they were not carrying out any work for local authorities although they may have done so at some point in the past. Therefore 403 responses were used in the analysis of the returns although there were slight variations to this figure in the responses to the individual questions¹⁹. The responses for each of the regions were as follows:

England	-	369
Wales	-	22

¹⁸ The survey questionnaire is attached as an appendix to this Report.

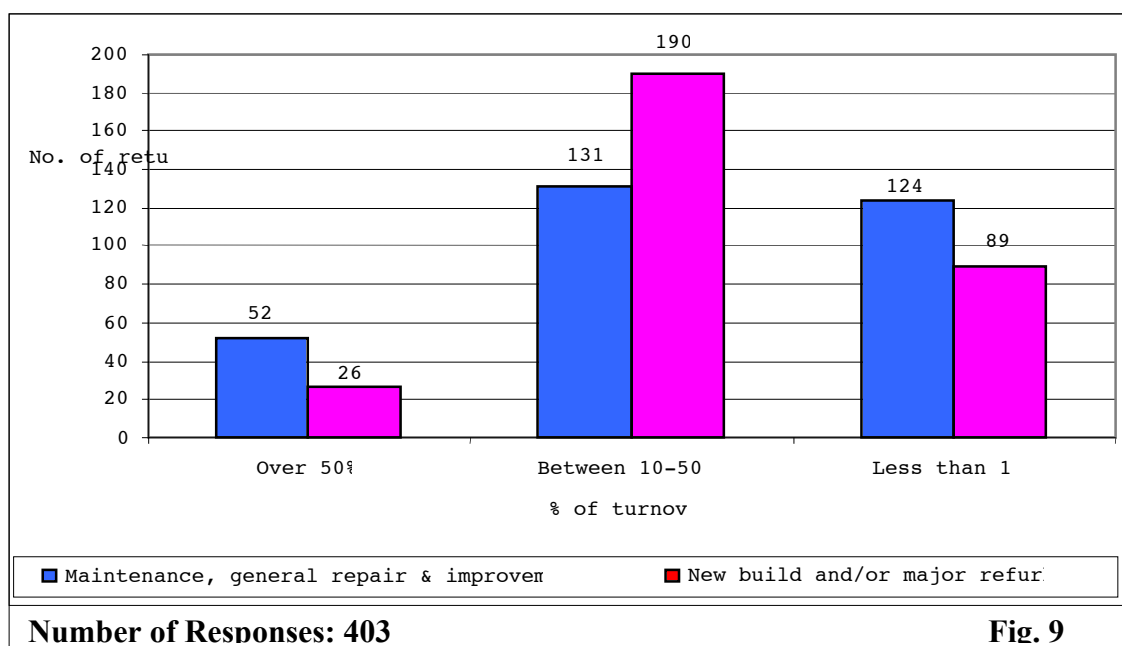
¹⁹ The number of responses to the individual questions is identified within each of the charts.

Scotland - 9

Northern Ireland - 3

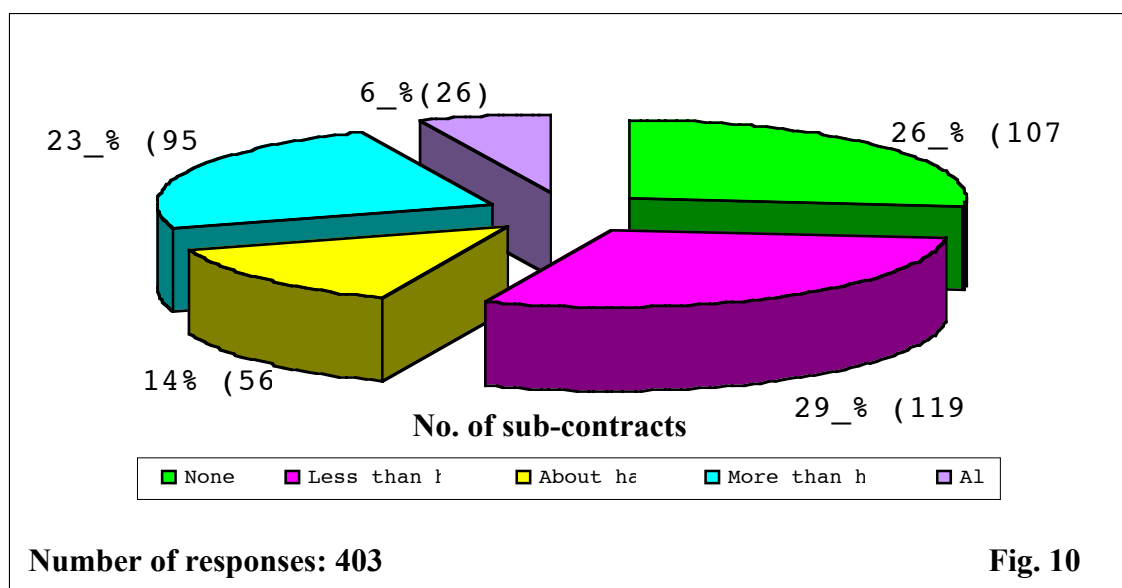
5.8 190 respondents indicated that 10-50% of their turnover was devoted to new build and/or major refurbishment works for local authorities with a further 26 respondents stating that this activity involved over 50% of their turnover. 131 respondents stated that 10-50% of their turnover was for maintenance, general repair and improvement works for local authorities whilst a further 52 respondents stated that this activity reflected over 50% of their turnover (Fig. 9 below). Therefore, the bulk of respondents signified that, overall, their involvement in work for local authorities was substantial. This of, course, lends greater weight to the responses.

Type and volume of work carried out for local authorities as % of total turnover



5.9 It is also of significance – insofar as the weight to be given to the responses is concerned – that only 6% of respondents declared that all their contracts in respect of local authority work were, in fact, sub-contracts (Fig. 10 on page 26). The vast majority of respondents - 70% - reported that either none of their contracts were sub-contracts (26%), that less than half of their contracts were sub-contracts (29%) or that half of their contracts were sub-contracts (14%). This, therefore, indicates that the responses largely reflected the experience of firms that have worked *directly* for local authorities.

Number of contracts (in respect of local authority works) that are sub-contracts



LOCAL AUTHORITY PROCUREMENT OPPORTUNITIES – ACCESS BY SMEs

5.10 The survey – upon which this Report is based – was timely since it coincided with the joint review by the Better Regulation Taskforce and Small Business Council of access by SMEs to public sector contracts²⁰. The review was a major study of the opportunities available to SMEs seeking public sector contracts. It contained eleven recommendations which were submitted to the Treasury in May this year. The key message to emerge from the review was that the public sector should ensure that good practice in relation to the commercial treatment of SMEs becomes common practice.

5.11 The review makes clear that SMEs can help public sector bodies achieve best value since they often provide innovative solutions and products, better customer care and a greater flexibility and responsiveness to changing needs. Both government and local authorities should recognise that poor procurement practices can hinder the delivery of *Best Value* because they are likely to have the effect of preventing SMEs delivering of their full potential. Although - in England - these matters will be addressed as part of the National Procurement

²⁰ The Review was titled: *Government: Supporter and Customer*, May 2003. It is available on www.brtf.gov.uk/taskforce/reports/smeprocurement.pdf

Strategy for Local Government, it is essential that progress towards achieving the necessary change is monitored and audited²¹

²¹ Recommendation 29 in *Better Value Wales* (The Review of Procurement in the Welsh Public Sector, February 2001) states: “As the biggest customer in Wales, the public sector has a duty to assist in the development of the local supply base. We therefore recommend that the Assembly, in conjunction with other key players such as the WDA [Welsh Development Agency] and the appropriate local authorities support functions, should develop guidance and support programmes for assisting SMEs to compete for business in the Welsh public sector and on how to improve their performance.”

In Scotland the advice to local authority procurers is: “That when competitive tendering, procurement procedures [should] place the minimum possible burden on suppliers consistent with the achievement of best value through effective competition.” (Draft Secondary Guidance on: THE DUTY ON ACCOUNTABLE OFFICERS TO ENSURE ARRANGEMENTS ARE IN PLACE TO SECURE **BEST VALUE.**)

6. APPENDIX

Are Local Authorities Applying Best Value?

Working for Local Authorities

Your association is a member of the Specialist Engineering Contractors (SEC) Group, which is, setting out to gather evidence on local authority procurement practices. The results will help to reinforce the efforts being made by your association and the SEC Group to improve local authority procurement practice.

- 1 Indicate the nature and volume of work you do for local authorities, as a % of your total turnover.

%	%
<input type="text"/>	<input type="text"/>
Maintenance, general repair and improvement works	New build and/or major refurbishment

- 2 How many of your contracts **made directly** with local authorities are let on a lowest price basis?

All contracts	More than half	About half	Less than half	None
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

- 3 How many of your contracts **made directly** with local authorities involve partnering or alliancing arrangements?

All contracts	More than half	About half	Less than half	None
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

- 4 On how many contracts **made directly** with local authorities do you experience payment difficulties (e.g. payment delays, lengthy payment cycles (well in excess of 1 month) regular use of set-offs)

All contracts	More than half	About half	Less than half	None
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

5 Have you tendered for contracts **directly** to local authorities that were to be let on the basis of quality as well as price?

Yes, on all contracts	Yes, on more than half of contracts	Yes on about half of contracts	Yes, but on less than half of contracts	No, not on any contract
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

6. In your experience do local authorities regard health and safety as an important factor in the awarding of contracts?

Yes, on all contracts	Yes, on more than half of contracts	Yes on about half of contracts	Yes, but on less than half of contracts	No, not on any contract
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

7. What percentage of your contracts (in respect of local authority works) are sub-contracts.

None	Less than 50 %	About 50%	More than 50%	All
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

8. With regard to sub-contracts on local authority works indicate the percentage let on lowest price?

None	Less than 50 %	About 50%	More than 50%	All
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

9 Indicate the percentage of contracts or sub-contracts for local authority works in which you suffered delays (i.e. over 12 months from date of completion of work) in obtaining your outstanding retentions.

None	Less than 50 %	About 50%	More than 50%	All
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Name.....
 Company.....
 Address.....
