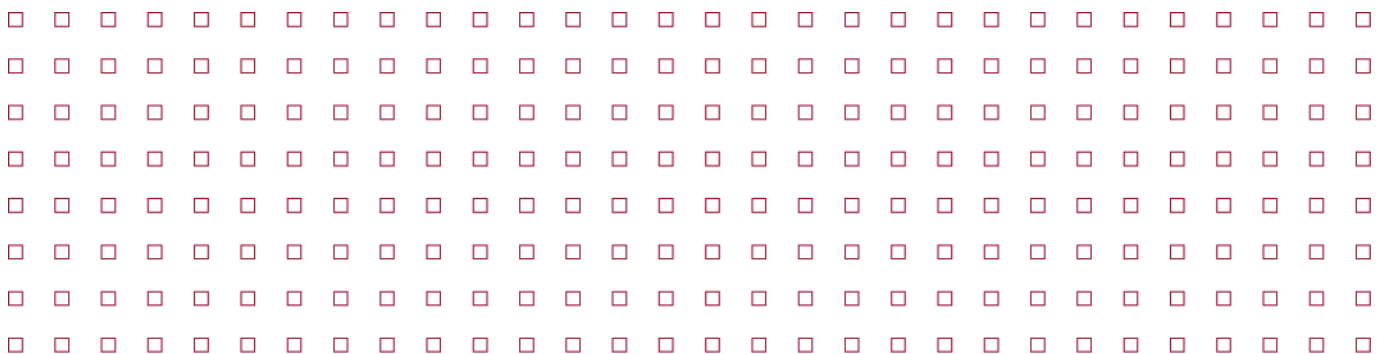




Competition Strategy for Offender Services

July 2011





Ministry of
JUSTICE

Competition Strategy for Offender Services

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Foreword by the Lord Chancellor and Secretary of State for Justice, Kenneth Clarke QC MP

Competition in offender services has come a long way since the opening of HMP The Wolds, the first privately managed prison in both the UK and Europe, shortly before I became Home Secretary nearly 20 years ago. However, while the notion of privately managed prisons is now accepted, competition across offender services is not as widespread as I would have expected.

The Government is committed to radical public service reform. Top down Whitehall based target setting will be replaced by greater choice and power in communities, increased professional discretion and diversity of supply. I firmly believe that competition is one of the key levers available to help bring about these reforms.

This strategy sets out our principles for how we will change the way we use competition to meet these aims. My approach is based on ensuring an effective balance between making services more efficient while reforming them so that they provide better outcomes for the public. In doing so, we will draw on a wide range of expertise from the private and voluntary sector, which will work in partnership with a strong, vibrant and newly empowered public sector. This strategy sets out how I propose to apply these principles to custodial services over the spending period. I intend to follow this with more detailed plans for non-custodial services in the autumn.

The guiding principle for offender services will be that competition will apply to all services not bound to the public sector by statute, rather than as a means to select providers for new services or to address poor performance. We will also use competition to focus much more on the outcomes our services achieve. The use of contracting models where providers are paid by results, such as the new arrangement at HMP Doncaster and the Social Impact Bond exercise at HMP Peterborough, will drive innovation and ensure better value for money. I am keen to apply these principles extensively and see them as essential if we are to achieve the fundamental shift in both quality and efficiency to which I am committed.

I believe that fair and open competition will benefit providers from the public, private and voluntary and community sectors, supporting them to provide services which are both more efficient and more effective at protecting communities by punishing offenders, reducing crime and tackling re-offending.

A handwritten signature in black ink, appearing to read 'K. Clarke'.



Foreword by Michael Spurr, Chief Executive Officer of the National Offender Management Service Agency

Competition for offender services is not new. Contestability in service provision was an important factor in the creation of the National Offender Management Service in 2004, and since then we have gained considerable experience both in running competitions and in managing contracts. However, the scale and way in which we use competition in custodial and community offender services is changing. This document sets out how this will happen for custodial services initially, followed by more detailed proposals for non-custodial services later in the year.

In using competition, we are committed to delivering better outcomes for the taxpayers for less. The processes and specifications that underpin offender services will move away from focusing on how providers deliver a particular service, and will increasingly concentrate on what outcomes are required from a particular service. By specifying the outcome to be delivered, and allowing more freedom in how it is achieved, we will help providers from all sectors to deliver services in the most cost-effective manner. In using outcome-focused competitions, we will maintain a 'provider-neutral' approach on the basis that competition will stimulate providers from all sectors to provide innovative and better value services. We will open offender services to the private and voluntary and community sectors, but also expect the public sector to continue to make a strong offer for offender services provision.

Competition will be embedded in the commissioning practices of the Agency. Competition will be used to drive quality of service, value for money, innovation and market development in a series of offender services competitions through the Spending Review period. We will apply payment by results principals to services to focus providers on outcomes, giving them the freedom to offer new approaches to service delivery. Competition is a tool that the Agency will use to enable us to meet our core objectives - protecting the public and reducing re-offending - with increased efficiency and effectiveness.

This strategy provides a clear direction for the Agency and will help us to deliver better value services to the public.

Michael Spurr

A strategic approach to competition in Offender Services

1. The Ministry of Justice Business Plan¹ commits the Department to creating a functioning market in the provision of legal aid, offender management and rehabilitation, with the aim being to ensure that justice services are provided by whoever can most effectively and efficiently meet public demand. The Business Plan also commits the Department to publishing a competition strategy for adult offender services, with the first round of competitions completed in 2012.
2. The Competition Strategy for Offender Services sets out our ambition for encouraging greater involvement of the private and voluntary sectors in the rehabilitation of offenders to cut re-offending to improve outcomes and efficiency. We will do so by inviting private and voluntary organisations and local communities to provide services where they can do so effectively and at a lower cost. The public sector will remain a key provider of services. Competition will encourage the ongoing reform of public sector providers, enabling them to build on their strengths and remain competitive. The Ministry of Justice has committed to only provide new rehabilitation services directly if they have been tested to see if the voluntary or private sectors can provide them more effectively and efficiently. Over the next four years this strategy will contribute to the experience and understanding necessary to meet this commitment.

A new approach to competition

3. Competition can provide commissioners with the means to secure new services, improve existing service delivery, encourage innovation and drive value for money. In addition, competition in Offender services has been shown to be effective at encouraging the management and workforces of existing and future providers to improve outcomes, drive efficiency and deliver more innovative models of service delivery. As such it is a powerful tool for commissioners of Offender services.

¹ www.transparency.number10.gov.uk/transparency/srp/view-srp/38

The Office of Fair Trading² has summarised the benefits of competition as a driver that can:

- place downward pressure on costs;
- force providers to be more focused on meeting customer needs;
- lead to more efficient allocations of resources between providers;
- act as a spur to innovation.

The OFT's 'Commissioning and Competition in the Public Sector' study (March 2011) argues that having an open, transparent and competitive tender process is not enough on its own to ensure that public services markets are open and contestable. Achieving effective competition in public services must also involve: reducing barriers to entry and exit; encouraging a diverse supplier base; ensuring suppliers have the right incentives to make efficiency savings, to raise quality and to innovate.

4. Offender services comprise people-facing services delivered to offenders (those sentenced by the court), defendants (those awaiting trial, either remanded in custody or provided bail accommodation), courts, victims and communities. Responsibility for commissioning services for adults (aged 18 years and over) sentenced or remanded in custody by the courts in England and Wales rests with the National Offender Management Service (NOMS). As an Agency of the Ministry of Justice, NOMS is funded to provide specific services on behalf of the Secretary of State as set out in statute and which contribute to its aims of punishing offenders, protecting the public and reducing re-offending while delivering the sentence of the courts.
5. The use of competition in Offender services dates back to 1992 with the opening of the UK's first privately managed prison, HMP Wolds. The role of the private sector in running prisons is now well established, with 11 prisons currently managed by private sector providers. A further two prisons – HMP Birmingham and the planned new build HMP Featherstone – were awarded to the private sector as a result of the recently completed competition. As a result, this strategy is able to set out clear proposals for how we propose to apply competition to custodial services over the spending period.
6. The market for non-custodial services, however, is much less developed. We will develop our approach to using competition for probation and other non-custodial services in the context of our wider work to consider the future shape of probation services. This work is being taken forward to improve outcomes and achieve better value for money. We will set out our approach in the autumn.

² Choice and Competition in Public Services, A guide for policy makers, A report prepared for the OFT by Frontier Economics, March 2010, OFT1214

7. The Competition Strategy for Offender Services will build on the positive outcomes already delivered by competition:
 - efficient and affordable increases in prison capacity, through the PFI prison building programme;
 - increased value for money in the national delivery of three services - Prisoner Escort and Custody Services, the Bail Accommodation and Support Service, and Electronic Monitoring;
 - competition has been used by commissioners to find the most suitable providers to deliver services in both custody and the community, including services for health, substance misuse and offender learning and skills;
 - competition has also been applied to offender employment support services through the European Social Fund with £142m of services covering all of England having been competed to date. The successful bidders cover a broad mix of service providers from all sectors who meet particular local market conditions.
8. The public sector currently delivers the vast majority of our Offender services. It has a wealth of experience, expertise and commitment to bring to bear on the challenges we face and will remain an essential provider of services. However, to achieve the required step-change in value for money, service reform and innovation, we will work with both existing and new providers from the public, private and voluntary sectors, with contracts awarded on the basis of whoever is best placed to deliver our strategic objectives.
9. Competition in Offender services will draw on the strategic principles that the Ministry of Justice will apply to competition proposals in all its business areas:
 - competition activity should be focused on achieving mid to long-term savings, not finding the cheapest solution at the expense of quality;
 - competition should be used to deliver public sector reforms, ensuring providers are more effectively held to account for the outcomes they deliver;
 - providers should be involved early to identify where efficiencies could be realised in national or process-based functions through competition;
 - small and medium sized enterprises (SMEs) and the voluntary and community sector (VCS) should be encouraged to participate to drive innovation; and
 - competition should be widely applied, with public sector providers allowed to bid where we are competing localised services and robustly held to account where successful.

10. As a result competition in offender services will no longer be limited to selecting providers for new services or as a means of dealing with poor performance. Competition will instead become central to our approach to commissioning and delivering based on the required outcomes and the demand for our services.
11. As a key element of our approach to competition, we are particularly keen to continue to develop and expand a range of models where providers are paid based on the results they achieve. This will allow providers both to innovate and to ensure that value for money is achieved. Providers will be encouraged to put forward innovative models to focus more effectively on rehabilitation, building on the Payment by Results (PBR) pilots already launched.
12. NOMS has a key role in ensuring that the market for Offender services operates efficiently. This will include ensuring that:
 - the differences between providers in the public, private and voluntary sectors are recognised and valued;
 - we provide a mix of opportunities that encourages investment and capacity building in the market;
 - competitions are run and regulated fairly; and
 - providers work with each other to deliver the best outcomes for communities.

Driving quality and value for money

13. One of this Government's key priorities is to secure the best possible value for money in our services.
14. We recognise that competition in Offender services is about delivering savings and service reforms in the medium and long term. This will not always mean the cheapest options. The competitions we run will use outcome-focused service specifications with agreed minimum acceptable service quality. This will deliver lasting value rather than short-term cost cutting.

Improving efficiency

The recent round of prison competitions generated around £22m of savings in the Spending Review period and £216m overall when compared to current cost. Competitive pressure led to savings at all of the establishments competed including HMP Buckley and HMP Doncaster, where contracts were retained by the existing providers.

In addition to this a contract was let for HMP Featherstone II, a new 1605 place prison, which will provide places at the lowest operational unit cost in the estate at £11,000 per prisoner per year, against an average of £27,400 per prisoner per year. This low cost does not come with an impoverished regime – the specification for the prison requires standards as high as those in our existing prisons.

Following the recomplete of the Prisoner Escort and Custody Services we expect to release gross forecast cashable savings of around £30m (18%) in year one and £260m (20%) over the minimum seven year contract period.

15. We will embed competition into our day-to-day business practices and expect our providers to respond accordingly. Previously, competition was targeted at particular establishments or services, often to correct poor performance. We will move to a model where, over time, every service will be competed unless there are compelling reasons why it should not be. We see this as a more empowering and stabilising strategy for our system that will drive improvement across a range of services.

Service reform and innovation

16. The Ministry of Justice is taking a new approach to the delivery of Offender services, which was set out in the Green Paper *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* and the Government's subsequent response³ to the associated consultation exercise. The policy proposals within the Green Paper are based on three key principles: that punishment should be punitive and challenging; that we must improve how we reform offenders if we are to cut crime; and that, wherever possible, offenders need to pay back to the communities they have harmed. Meeting these challenges will require changes to current policy and delivery models.
17. Competition will play a key role in delivering these changes. We will expect providers to demonstrate how their delivery models can meet our new requirements and will build competitions accordingly.
18. Wherever possible, we will now look to commission and pay for services on the basis of the outcomes they achieve. Where appropriate, we will aim to contract with providers on the principle that some or all of the contract value will only be paid if certain outcomes are achieved. This will incentivise providers to identify efficient methods to support offenders in turning away from crime.

Payment by Results at HMP Doncaster

HMP Doncaster has become the first prison to be contracted on a 'payment by results' basis. Working in partnership with Serco, we have developed a PBR model that meets our ambition to reduce re-offending. A proportion of the contract value will be dependent on the level of reduction in re-offending observed in offenders serving less than 12 months at Doncaster.

19. We have committed by 2015 to applying the principles of payment by results across services which reduce re-offending. This includes piloting at least six new Payment by Results (PBR) projects. We will also consider the range of innovative proposals that have been presented to us in recent months and consider where best to pilot those ideas. The pilots will inform the development of this approach and help us identify effective models, which can be further rolled out in future competitions.

³ www.justice.gov.uk/consultations/consultation-040311.htm

Further Green Paper policies that can be delivered through competition include:

Community payback	Non-custodial sentences need to be tough and demanding. The introduction of competition for the provision of Community Payback has been in development for some time. Competition will allow us to drive Green Paper priorities of making Community Payback more visible and more intensive to help offenders understand the consequences of crime both on themselves and on the community. In doing so, we will raise standards and reduce costs, including developing means of raising revenue from work undertaken to further lessen the cost to the taxpayer. A key priority will be to ensure that these services have clear local engagement and buy-in, and that small and medium sized enterprises (SMEs) and the voluntary and community sector (VCS) are integrated into the delivery chain in a sustainable manner.
Drug free prison wings	We have made a commitment to increase the number of drug free wings in prison, where increased security measures prevent access to drugs. We will invite bids for innovative ways of introducing drug-free environments and reducing drug supply into prisons.
Working prisons	Prison regimes should be purposeful and disciplined. We want to increase the amount of work done in prison so more offenders benefit from the discipline of a regular working week. Education and training in prison should be focused on equipping offenders to work, linking activities to qualifications and employment opportunities on release. Competitions will encourage bidders to focus on maximising work provision in prisons.
Electronic Monitoring	We will explore fully how the restrictive effects of Electronic Monitoring can provide flexible and cost effective punishment.

Developing provider capacity and capability

20. Developing a diverse market of potential providers of Offender services is vital to improving our outcomes. The market must be capable of attracting sustained investment and properly incentivising providers to drive efficiency and innovation. Government has a key role in promoting a functioning market which recognises the different strengths of different providers, whether they are from the public, private or voluntary and community sector.
21. The most important element in ensuring a diverse market for Offender services is ensuring that all participants are confident that we will run fair and transparent processes. We will follow best commercial practice in our competitions, ensuring that all bidders understand what we require of them and how we will assess their bids. Wherever possible, we will commission services by outcome. Bids will be judged on quality, price and fit with our broader policy objectives. Where particular exceptions are required, such as adjustments to public sector bids to reflect the full direct and indirect costs of providing the service, we will publish these in advance of the competition.
22. In order to maintain investment, encourage capacity building and attract new participants, the market needs to be provided with regular opportunities to compete. Each year, following the publication of the annual NOMS Business Plan, we will give an update on the competitions we are running and will provide a high-level overview of the offender services that we plan to compete in the following twelve months. This will support providers in their business planning and investment decisions.

Prisoner Escorting and Custody Services (PECS)

The recent re-competition of PECS contracts set out to encourage new as well as existing providers in the Offender services market to bid. As a result of this strategy GEOAmey, a new entrant to this market was able to mount competitive bids against incumbent providers and was successful in winning three out of four regional contracts.

23. We recognise the value in making the best use of the innovation, capacity and diversity of voluntary and community sector (VCS) and small and medium sized enterprises (SMEs). We will continue to work to reduce the barriers faced by these organisations to participation in the Offender services market. For example, the refreshed Compact on relations between Government and the VCS also includes undertakings to help level the playing field.

24. Where used, the prime provider model has the potential to allow more SME and VCS organisations to deliver services. Larger scale prime contractors provide the bidding and business logistics required to win large service contracts and then sub-contract with smaller organisations to provide niche delivery. Codes of conduct, such as the Merlin Standard being developed by the Department for Work and Pensions, can ensure the fair allocation of risk between primes and sub-contractors and that the supply chain is managed fairly and equitably. We will set out how we expect bidders wishing to act as primes to demonstrate they have open and constructive relationships with sub-contracted organisations at the launch of each competition.

European Social Fund allocations

NOMS has awarded regional contracts for European Social Fund allocations of £142m for offender employment support services. Predominantly, agreements are delivered via prime contractor or consortium models, which allow the lead contractor to use any number of specialist sub-contractors or partners to deliver effective services. This contracting model simplifies the process for SME and VCS organisations to become involved with delivery more locally while still realising the efficiencies of commissioned services.

25. We will support the use of alternative delivery models, such as joint ventures, social enterprises and public sector mutualisation. Work is currently being carried out in the Ministry of Justice to assess the potential for different forms of mutualisation, including allowing public sector staff to 'spin out' to form mutuals or employee-owned enterprises in areas where this would add value and where there is currently no viable market for provision. Development of these models will help increase understanding of where services can be provided more effectively and efficiently outside the public sector.
26. NOMS Agency acts both as a commissioner of services and as a provider through HM Prison Service. In this type of situation, it is important that appropriate 'ethical walls' are in place to ensure fair treatment for all providers. The Agency has been restructured on functional lines and has established a discrete commissioning function which operates with the Ministry of Justice Procurement Directorate to manage all commissioning and competition activity. Feedback from the competition process for five prisons which concluded in March was that the bid process operated transparently, effectively and fairly.

27. Where possible, we will look to increase the value of our expenditure by identifying opportunities to commission jointly with organisations seeking to achieve linked outcomes. For example, we are working with the Department of Health, Home Office and National Health Service to identify a number of pilot projects that will help develop better outcomes for offenders with mental health problems. Subject to funding approval, we also intend to pilot an additional re-offending outcome payment within the existing Department for Work and Pensions Work Programme and we already work closely with colleagues in the Skills Funding Agency (an Agency of the Department for Business, Innovation and Skills) to co-commission offender learning and skills services.

Our programme for the spending period

28. Our Offender services competition programme for the Spending Review will produce better outcomes for the public. By achieving a balance of value for money, public service reform and provider development, our Offender Service competitions will act as a key driver of the Government's approach to justice. We will look to apply competition wherever practical to ensure that the benefits of competition will be clearly felt.
29. Our intention is to publish an annual update of our competition programme. This update will follow the publication of the NOMS Business Plan. It will include both existing commitments and all planned new opportunities, which should launch within twelve months of the date of the publication of the update. In this way, we aim to provide greater visibility and transparency for offender service competitions by providing a high level forward look for both current and potential providers. Adopting an annual update on our rolling programme will help to produce competitions that are well-balanced to deliver our priorities and tailored to market conditions at the time.
30. In future, details of new prison competitions will be formally announced two to three months ahead of the issue of a notice in the Official Journal of the European Union, which marks the start of a competition. This will allow providers interested in bidding to focus their resources on the new opportunities. We hope this will both strengthen the quality of the subsequent competitions as well as allowing us to reduce the length of time taken to run each live competition. This strong focus on preparatory work will ensure that we run competitions that will produce strong outcomes and meet our reform priorities.
31. We recognise that careful engagement and consideration is needed before competitions are chosen. We will learn the lessons of each competition to find what works best, and adjust our ambitious and rolling programme accordingly.

Custodial Services

32. We have extensive experience in running competitions for prisons over the last two decades. We know that the market of potential providers is mature and able to deliver strong results and we will continue to seek opportunities to attract credible new market entrants from around the world. Competition has driven many innovations in the sector, the most recent example being the payment by results model offered by Serco, working in partnership with Catch 22 and Turning Point, as part of their bid for HMP Doncaster. Prisons will be selected for competition, balancing the need for efficiencies, the desire to implement new policy models and encourage innovation, and the operational concerns of running a large dynamic system. In addition to the programme for the first year, which we set out below, further ambitious prison competition packages will be announced via the annual update.

Non-Custodial Services

33. We are also committed to using competition to improve non-custodial services. The starting point here is different, as the use of competition in delivering core probation services is far less developed, as is the market for providing those services. However, we believe that we can learn from those areas of non-custodial work where we have more experience in using competition, and where there is a market, including electronic monitoring, and bail accommodation and support services.
34. We are currently developing wider proposals for improving non-custodial services and, alongside this, will consider the best model for delivering them. We will then develop our detailed competition proposals for non-custodial services, and will set them out in the autumn alongside those broader proposals.

Re-competition of Offender services

35. Services in both custody and the community which have previously been subject to full and open competition and where the contract or Service Level Agreement (SLA) is due to expire will be included for re-competition as part of the rolling programme of competition announcements. Re-tendering will take place in good time to ensure that a new contract or SLA is in place to allow for a managed handover in the event that a different provider is successful.
36. We will in future identify services for competition based on the business principles outlined in this strategy. These replace all previous competition methodologies, including the programme of Best Value in Probation as well as the practice of internal market testing of under-performing Public Sector Prisons. There are a number of services currently provided by the Public Sector under SLAs as a result of different competitive methodologies introduced by previous administrations. In future we will re-compete these services only where they satisfy the priorities set out in this strategy and provide a sensible competition package. This will better ensure that competition is used to deliver our desired outcomes.

Our programme for the first year of competitions

Custodial competitions

37. We will hold a competition for contracts to run the services and works at eight prisons not previously subject to competition. In addition to these competitions, we will re-compete HMP Wolds in this period as the current contract is due to expire. The nine prisons to be competed this year are:
 - a) HMP/IRC Lindholme
 - b) HMP/YOI Moorland
 - c) HMP/YOI Hatfield
 - d) HMP/YOI Onley
 - e) HMP Coldingley

- f) HMP Wolds
- g) HMP Acklington
- h) HMP/YOI Castington
- i) HMP Durham

38. We believe that this number of establishments represents an ambitious yet manageable volume in terms of our ability to run open and fair custodial competitions, in addition to the other services being competed. We also believe this responds to what bidders have told us about their ability to respond to and invest in new opportunities. The structure of the lots and programme for mobilisation will support the most effective model for matching market capacity and our objectives. We believe that this package also offers the potential for the HM Prison Service to offer strong, innovative and competitive bids.
39. These prisons have been chosen using robust criteria. They form a balanced package that meets our competition priorities. We expect to obtain savings from each of these prisons, which will help NOMS meet its revised budget for the Spending Review period. However, individual prisons within the package also offer the potential for service innovation, particularly in developing the Working Prisons concept and drug treatment regimes. Each of the establishments will be competed as a separate lot, offering opportunity to both established and new market entrants. The potential also exists for a number of the establishments to be grouped under single bids, enhancing the potential for innovative delivery models and economies of scale. We will work with the market to determine how we can enable providers to focus more effectively on reducing re-offending including through payment by results mechanisms.
40. The Green Paper Consultation Response sets out how we are keen to explore how we deliver a payment by results pilot in a public sector prison. We have received some innovative proposals and will consider, as we decide which prison to select for a pilot, what the process for commissioning external partners will be.

Community Competitions

41. While we develop our programme for non-custodial services we will continue with the competitions we have already launched or to which we have committed. The learning from these competitions will inform the development of our broader programme. The existing competitions include:
- i) Community Payback
 - ii) Further payment by results pilots in non-custodial services
 - iii) Electronic Monitoring

Community payback

42. We will continue to run the competition for community payback services in London. The competition was launched on 24 June and will be run under the Framework for Community Payback / Unpaid Work services that was established in August 2010.

Community PBR pilots

43. We are considering a number of PBR pilots for non-custodial services. The pilots will seek to incentivise improved re-offending outcomes for offenders managed on community sentences and those released on licence. Those delivered in the community will be developed in line with our broader programme for non-custodial services, which will be published in the Autumn.
44. The public sector has a number of statutory barriers that prevent them being able to participate in delivering PBR pilots under current arrangements. Therefore, in order to participate fully, it is likely that they will have to work in partnership with the private and/or voluntary sector.

Electronic Monitoring

45. We will hold a competition to replace the existing Electronic Monitoring services contracts due to expire in March 2013. The re-competition of these contracts offers the market an opportunity of significant scale (based on current spend, the total contract value is likely to be in the region of £1bn). The expected reductions in the unit cost of delivery are likely to provide significant opportunities for both savings and service improvement. This will also provide opportunities for greater involvement for SMEs - in this case, companies offering innovative tagging technology. Encouragingly, some thirty companies, including the incumbents, have expressed interest in involvement. We will ensure that the competition develops in a way that supports the broader strategic approach which we will set out in the autumn.

Annex – Offender services to be competed in the first year of our programme

i. Prisons competition

Nature of Competition	Planned Competition Launch
a. HMP/IRC Lindholme b. HMP/YOI Moorland c. HMP/YOI Hatfield d. HMP/YOI Onley e. HMP Coldingley f. HMP Wolds g. HMP Acklington h. HMP/YOI Castington i. HMP Durham	Autumn 2011

ii. Payment by results pilots

Nature of Competition	Competition Launch
Initial phases of competition to participate in the payment by results pilots in public sector prisons and the community.	Summer 2011

iii. Community Payback

Nature of Competition	Competition Launch
Restricted competition for management and delivery of Community Payback Services in London (restricted to providers already appointed to the Framework competed in 2010)	24 June 2011

iv. Electronic Monitoring

Nature of Competition	Planned Competition Launch
Open re-competition to replace expiring contracts to manage Electronic Monitoring service contracts in England and Wales	Autumn 2011

