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cc Mr Court  
Mr A Wilson (NIO)  
Mr Hamilton (Cent Sec)  
Mr Wilson (Cent Sec)  
Mr McCartney (Legal  
Adviser)  
Mr Thompson (DHSS)  
Mr Haggan  
Mr Barnes

ASST. / SEC 20 322/10  
25 OCT 1990  
CENT SEC

Director  
ARU

COMPETITIVE TENDERING - PARAMILITARY EXPLOITATION

1. I understand Derek Hill discussed this matter with you before he left for NIO(L).
2. The proposal has been redrafted in the light of your advice. The system outlined does not include any vetting and should therefore meet Mr Hamilton's objections.
3. I should be grateful for comments by 2 November, including those of copy recipients. If agreed, the attached draft will then be submitted to Ministers.

R F MILLS

24 October 1990

1. ~~Mr Hamilton~~ 3/1X  
 you will see that  
 at focus of the central  
 or paramilitary  
 exploitation is now much  
 narrower. This reflects  
 the advice of the  
 meeting with Hill.  
 Cent. Sec. is no longer  
 a player - and  
 rightly so.  
 Hamilton

2. ~~Mr Thompson~~  
 to see file.  
 R. 31/10/90.

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DRAFT

cc. PS/Minister of State (L&B)  
PS/Ministers (L&B)  
PS/PUS (L&B)  
PS/Sir K Bloomfield  
NI Perm Secs  
Mr Burns  
Mr Ledlie  
Mr Murray  
Mr Mills  
Mr Court  
Mr Dowdall  
Mr Hamilton  
Mr Small  
Mr A P Wilson  
Director, ARU  
Mr Bell  
Mr McCartney

PS/Secretary of State (L&B)

COMPETITIVE TENDERING

1. Your minute of 21 February asked DFP to carry forward various contract-related measures to counteract the possible paramilitary exploitation of Market Testing. The purpose of this submission is to seek Ministers approval to the action we propose to take.
2. There are two ways in which paramilitaries might exploit contracting out to their advantage:
  - (a) they may extort cash or favours from companies from whom Government services are contracted out (a private company is more liable to extortion than a service remaining in the public sector);
  - (b) they might control the employment of people in contracted out enterprises; these people would be encouraged to engage in social security fraud and would pay the paramilitaries for their employment.

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In the longer term paramilitaries may also set up their own companies to win contracts by intimidating competitors, but this is not yet a major threat.

3. It would be unrealistic to think that any action could eliminate the risk of paramilitary exploitation of contracted out services in Northern Ireland. But we can take steps which may limit such involvement. We can also monitor developments in contracted out services to see whether any paramilitary involvement takes place. We have developed two sets of proposals: one aimed at the abuse of the social security system; the other aimed at paramilitary exploitation.
  
4. As far as the abuse of the social security system is concerned the DHSS already carry out a programme of investigations into possible social security fraud and are directing some of those investigations towards newly contracted out services which seem at high risk from social security fraud. We have also drafted contract conditions for use by Departments which will make it mandatory that contractors should keep clear records of their employees and the periods which they are working; that Government has the right to inspect those records at all times; and that failure to allow such a right would lead to termination. Termination of a contract would not be a practicable option in all cases; but in some areas (eg. cleaning, catering) it may on occasions be possible to terminate a contract and make alternative arrangements reasonably quickly. Investigation would not be for the Department concerned but would be carried out by DHSS. Any decision to terminate should be taken in the light of the results of this investigation. In all cases one of our principal concerns will be to protect those dealing directly with contractors. The detail is set out in the attached draft circular (see Annex A), which has been agreed with DHSS and NIO, and with the Departments concerned. It is proposed that these measures will be implemented by Departments only in relation to those contracts which result from the Market Testing Initiative. It is intended to monitor the

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effect of the measures over the next year and on the experience gained from this exercise to decide if any amendment is required and if extension to cover all contracts including those let by NDPBs is merited.

5. With regard to other types of paramilitary exploitation it is our intention to issue a separate circular (see Annex B) which outlines action to be taken by Departments which would guard against such exploitation. Firstly we will require departments to consult the ARU whenever they, or NDPB's for which they are responsible, plan to market test activities in a "high risk" area. There is no comprehensive definition of "high risk"; but high risk can be defined broadly as low skill, low paid activities taking place in areas where there is a strong paramilitary influence. If the ARU advises that contracting out is likely to lead to paramilitary involvement, it will then be for Ministers to decide whether to proceed with market testing. In every case the Department and the ARU will offer advice on whether systems might be introduced that would offer a realistic degree of protection against paramilitary intervention, and on the likely degree of risk. Activities which are not "high risk" can be market tested without reference to the ARU because we consider that the risk of paramilitary intervention is sufficiently low. But departments will be encouraged to monitor these activities and if there were evidence of paramilitary intervention it should be reported to ARU. Consideration might be given to terminating the contract (the contract conditions to prevent social security fraud might prove useful in some cases within Departments); but in many cases this is likely to be impractical either on policy or legal grounds. Similarly individuals may be prosecuted for particular offences. But we have to accept that, unless we establish comprehensive monitoring systems, not entering into contracts where there is likely to be paramilitary involvement may well be better than trying to prevent abuse once a contract has been let.

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7. As with the measures designed to combat the abuse of the social security system, the proposed measures with regard to paramilitary exploitation will be implemented for the time being only in relation to those contracts which result from the Market Testing Initiative, but will go wider to cover NDPBs. The effect of these measures will also be monitored over the next year and, on the experience gained, it will be decided if any amendment is required and if extension to cover all Government contracts is merited.
  
8. Subject to the Secretary of State's views, I intend to issue the attached circulars to Government departments.

**J L SEMPLE**

**October 1990**

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DAO /90 ,

**COMPETITIVE TENDERING  
ABUSE OF THE SOCIAL SECURITY SYSTEM**

1. Consideration has recently been given by Ministers to contractual measures which might be taken to discourage and counteract the possible exploitation of public sector contracts arising from market testing by means of social security fraud. There is no complete answer to the problem of the abuse of the social security system; but there are certain steps which can be taken to discourage such abuse and to counter any problems which may arise in practice.
2. The measures which are contained in the following paragraphs should be implemented by Departments in relation to those contracts which result from the market testing initiative. It is intended to monitor the effect of these measures over the next year and, on the experience gained from this exercise to decide whether any amendment is required, whether extension of the measures to cover all contracts is merited and whether they should cover NDPBs.

The measures to be applied are as follows:

- i. model contract conditions (attached) have been drafted with the assistance of the DFP Solicitors Department which make it clear that contractors should keep detailed records of their employees and the periods which they are working; that

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Government has the right to inspect these records at any time; and that failure by a contractor to permit such a right will lead to a termination of the contract. Departments are asked to ensure that clauses on these lines appear in all contracts which are let by Departments and which result from the market testing initiative;

- ii. the Fraud and Prosecution Branch of DHSS should be advised of any contract let as a result of the 1990-91/1991/-92 Market Testing Programme. The Government Purchasing Service should also be advised of the details of such contracts;
  - iii. if abuse of the Social Security system is suspected once a contract is let then the Fraud and Prosecution Branch of DHSS should again be contacted and advised. Any particular fears or suspicions should be noted.
3. Staff should not be expected to take any action which might put them at personal risk. No suspicions should be revealed to contractors. Any investigation would be for the Fraud and Prosecutions Branch DHSS which will be very mindful of the risk to those dealing directly with contractors in any investigations. DHSS has a routine survey programme so that DHSS investigations would not of themselves create undue suspicion.
  4. In some circumstances, when fraud is uncovered, it may be appropriate to use contract conditions to terminate the contract. Any decision to terminate should involve DHSS, Government Purchasing Service and legal advisers, and would of course need to take into account both policy and legal considerations.

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- i. The Contractor shall not employ any person who he knows or ought to know is by reason of his employment engaged in any unlawful procurement of social security benefits or tax exemptions and the Contractor shall not make, facilitate or participate in the procurement of any unlawful payments whatsoever, whether in the nature of social security fraud or evasion of tax or otherwise.
- ii. The Contractor shall prepare and maintain such records of his employees and all other persons engaged in performance of this agreement by the Contractor as the Department may from time to time require.
- iii. Without prejudice to paragraph (ii) the Contractor shall forthwith on demand by the Department furnish the Department with the names, addresses and national insurance numbers of all persons employed by him under the contracts of service and shall forthwith on demand furnish the Department with the names, addresses, periods of employment and exemption certificates of all persons employed by him under contracts for services.
- iv. The Contractor shall permit the Department its servants or agents at all reasonable times to enter on any premises of the Contractor for the purpose of inspection and investigation of the employment, social security and tax records of any person employed by the Contractor or engaged by him to carry out any works under the Contract.

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## PARAMILITARY EXPLOITATION OF PUBLIC SECTOR CONTRACTS ARISING FROM THE MARKET TESTING INITIATIVE

1. DAO [ ]/90 indicated that consideration has recently been given by Ministers to contractual measures which might be taken to counteract the possible exploitation of public sector contracts arising from market testing by means of social security abuse, and outlined certain measures which were to be taken by Departments to combat the abuse of the social security system.
2. There is also the problem of possible paramilitary involvement in contracting out, and there are two ways in particular in which paramilitaries might exploit contracting out to their advantage:-
  - (a) they may extort cash or favours from companies from which Government services are contracted out (a private company is more liable to extortion than a service remaining in the public sector);
  - (b) they might control the employment of people in contracted out enterprises; those people would be encouraged to engage in social security fraud and would the paramilitaries for their employment.
3. It would be unrealistic to think that any action could entirely eliminate the risk of paramilitary exploitation of contracted out services in Northern Ireland. Steps can however be taken to limit such involvement.
4. Departments are required to undertake the following additional steps when they are market testing, or an NDPB for which they are responsible intends to market test.
  - (a) First, Departments should consider whether the activity is high risk or low risk. It is impossible to give precise definitions; but any activity which involves primarily low

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paid or low skilled employees, and which has a substantial presence in an area dominated by paramilitaries may be at risk.

- (b) If an activity is low risk, market testing should proceed as planned.
  - (c) If the activity seems high risk, or there is doubt as to its classification, ARU should be consulted. If the ARU advises that there is a strong likelihood of paramilitary involvement if a service is contracted out, the Department should consider with ARU what steps should be taken to mitigate this risk (eg. close monitoring of those employed). It would then be for Ministers to consider whether market testing should proceed. DFP Supply and Government Purchasing Service should be consulted on any proposal not to proceed with market testing.
  - (d) If ARU advises that the area is not high risk, market testing should proceed.
5. All contracts let as a result of market testing should be reported to ARU once a contract has been let. Departments should also, as part of their routine monitoring, be alert for any signs of paramilitary involvement (although in the case of low risk activities we consider this danger remote). If there are suspicions, they should be reported to ARU. If there is evidence of paramilitary involvement, the Department should consider with ARU and legal advisers whether any action might be taken.

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