

Scottish Prison Service

Contract for the provision of prisoner escort and court custody services

Prepared for the Auditor General for Scotland

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Auditor General for Scotland

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Acknowledgments

We gratefully acknowledge the Scottish Prison Service's permission to use the photographs throughout this report.

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Contents

Summary

Page 2

Contract objectives
Preparing the contract

Page 3

Managing the contract

Page 4

Conclusions and recommendations

Page 6

Part 1. Introduction

Role of the Scottish Prison Service
Prisoner escort contract

Page 7

Scope of the audit

Page 8

Part 2. Preparing the contract

Strategic aims and objectives

Page 9

Scoping the contract

Page 10

Procurement process

Page 11

Tender assessment and
contract award

Page 12

Part 3. Managing the contract

Implementation controls

Page 14

Contingency plans
Monitoring arrangements

Page 15

Monitoring in practice

Page 16

Appendix 1. Contract main terms

Page 18

Summary



The Scottish Prison Service handled well many aspects of the award of the contract for prisoner escort and custody services to Reliance.

1. In November 2003, the Scottish Prison Service (SPS), an executive agency of the Scottish Executive Justice Department, signed a contract on behalf of the Scottish Ministers with Reliance Secure Task Management Ltd (Reliance) for the provision of prisoner escort and court custody services throughout Scotland. The contract is worth an estimated £126 million over seven years and covers the transport of prisoners between, for example, prisons and police stations to court, and the safe custody of prisoners while at court. In 2003/04, there were some 140,000 prisoner escorts throughout Scotland. The main terms of the contract are shown at Appendix 1.

2. The contract is based on a phased programme of implementation, with the first phase of the contract, covering prisoner escort and court custody services in the Glasgow and surrounding area, beginning in early April 2004. A further four stages were planned, leading to full implementation across the whole of Scotland by October 2004.

3. From the start of the first phase in April, the new service has been the subject of significant media coverage. This included a high profile prisoner escape and a number of other incidents of prisoners apparently being released in error. As a result, I agreed to a request from the Minister for Justice to consider bringing forward audit work relating to the procurement of the contract. My report, which I have prepared under Section 23(1) of the Public Finance and Accountability (Scotland) Act 2000, is based on a review by Audit Scotland and considers four key issues:

- Whether the SPS set clear objectives for the contract consistent with achieving value for money and whether it achieved these objectives.

- Whether the SPS properly specified and awarded the contract.
- Whether the SPS established robust and clear arrangements for managing the contract as soon as the contract period began, and for monitoring the contractor's performance.
- How well the SPS is implementing and monitoring the contract.

Contract objectives

4. Prior to the contract between SPS and Reliance, police forces were largely responsible for managing prisoners under court custody and for escorting prisoners on remand to court. The SPS was responsible for escorting convicted prisoners or those appealing against conviction or sentence.

5. There was widespread acceptance within the criminal justice system in Scotland that the previous system involved significant duplication of resources with little coordination between the organisations involved. Following a multi-agency review, in January 2002 the SPS and partner agencies decided to contract-out prisoner escort and court custody services, with the SPS being responsible for procuring an alternative service provider.

6. The overall aim of contracting out was to free up time for police and prison officers and to secure better value for money. The main reasons for contracting out prisoner escort and court escort services were:

- As an opportunity to maximise the effective use of resources throughout the whole area of prisoner escorting and court custody services.
- Existing arrangements did not provide best value for money, in that police officers and prison

officers were used to undertake duties that did not require their full range of legislative powers or skills.

- Removing the duplication resulting from the previous arrangements.
- To enable the return of the maximum number of police officers to core duties within their communities, and SPS officers to core duties within their establishments.
- To provide uniformity of service delivery throughout Scotland.
- To provide best value and enable best practice within the prisoner escort service sector.

7. The contract has yet to be implemented fully so it is too early to say whether these objectives have been achieved in practice. The SPS, however, estimates that using Reliance to provide prisoner escort and court custody services should generate savings of £20 million over the seven-year life of the contract. It also intends to undertake a post-implementation review of the project once the phased implementation process has been completed.

Preparing the contract

8. The scope of the contract was based on the approach already adopted in England and Wales, where prison escort duties have been provided by private contractors for a number of years. The SPS made efforts to learn lessons from England and Wales and to produce a contract which was more comprehensive and demanding.

9. The SPS provided a clear specification of requirements in its tender documentation. In accordance with good practice, the invitation to tender and contract are based on what activities and services the

service provider is expected to provide (the outputs and deliverables from the contract) rather than a specification of the human and other resources required to be input.

10. In general, sufficient clear information was provided to all tenders to enable high quality bids. The invitation to tender was a comprehensive document and all bidders had the opportunity to ask questions throughout the process to clarify points and to request further information.

11. While the invitation to tender outlined indicative levels of activity on a monthly basis for each court and custody unit in Scotland, one tenderer sought a more extensive breakdown of police escort activity to identify peaks and troughs. The SPS therefore provided to all bidders activity data for Glasgow courts on a daily basis for the month of September 2002. This data clearly indicated that activity increased on Mondays and after public holidays.

12. The SPS handled the procurement process well. A comprehensive Project Initiation Document was drawn up to provide a strategic brief for the procurement process. The SPS's chief executive had overall responsibility for the delivery of the project while its day-to-day management rested with an inter-agency Escort Project Board headed by the SPS's Director of Strategy and Business Performance. A number of inter-agency teams with consultancy support were also established with specific responsibilities for scoping the restructured service and preparing the tender documentation, for the financial evaluation of bidders and their bids and for preparing the contract. These project teams were supported with a clear project plan.

13. The SPS identified risks to the achievement of the project and developed controls and processes to mitigate them. High level risks, their severity, likelihood and possible impact, together with procedures to manage them, were outlined in an Operational Risk Log. Project teams were also required to identify risks associated with their aspect of the project and to refer them to the Escort Project Board. The SPS also requested further details and assurances from the service provider on the availability of resources to deliver the contract.

14. The tendering process was undertaken in accordance with EC and SPS procurement regulations. Five companies initially expressed an interest in the contract after advertisement in the Official Journal of the Economic Communities. The Escort Project Board did not shortlist one company because it was judged not to be wholly independent of one of the other tenderers. A further company withdrew from the process prior to submitting a tender.

15. The SPS subjected all three tenders received to a technical, financial and legal and commercial assessment. The technical evaluation covered six categories and bids were assessed against a series of questions which were allocated a pre-determined weighting in order to prioritise the responses and to build a total score for each bidder.

16. In terms of the financial evaluation, the Reliance bid was the cheapest and resulted in a contract value of £126 million over the seven years life of the contract. This was £20 million less than the 'public sector comparator' developed to compare the costs of the existing method of service provision to that bid by the tenderers. Reliance's proposed staff numbers were judged to be the closest to those

currently employed by the SPS and police on prisoner escort and court custody duties.

17. Reliance was ranked in third place in respect of the technical evaluation but its bid was still assessed as offering a level of service that met the requirements of the business case. Taking all elements of the tender evaluation together, the SPS assessed that Reliance's bid represented the best value for money overall. Once Reliance was selected as the preferred bidder, a comprehensive negotiation process was entered into prior to formalisation and finalisation of the contract. The contract was signed in November 2003 and commenced in April 2004.

Managing the contract

18. During the lead up to the commencement of the contract, discussions took place between the SPS and Reliance personnel to discuss the acceptability of proposals, previous experience and issues arising. These discussions covered process and models, and included challenges to the robustness of Reliance's proposals, for example on the level of proposed resources, including staff numbers, and how these would be applied.

19. As a result of some of the problems experienced in the early stages of the contract, the timetable for its phased implementation has been revised. The implementation of phase 2(a) of the contract in July 2004 covering Dumfries & Galloway was preceded by a period of 'work shadowing' when Reliance staff accompanied police and prison officers over a two and a half week period. Prior to the start of this phase, the Chief Executive of the SPS, SPS Directors, representatives from the courts and Reliance signed an assurance that they were satisfied

that roll-out was appropriate. The police also signed their readiness to support the roll-out.

20. The SPS and agency partners have still to finalise high-level contingency plans to ensure continuity of service in the event that Reliance withdraws or is withdrawn from the contract. There are however detailed operational plans to deal with a number of identified emergencies and other events which may occur. Service level agreements between the SPS and partner agencies are also in the process of being finalised to cover temporary arrangements in the event of unplanned situations occurring, for example loss of the contractor's fleet of vehicles.

21. The contract includes a comprehensive set of clearly defined performance measures, largely based on the model already tried and tested in England and Wales (see Appendix 1). The areas covered by performance measures include delivery of service, prisoner care, the security of custody and the maintenance of good order. Two performance measures (incidents of death or suicide in custody and incidents of prisoners unlawfully at large, including release in error) result in a reduction in the sums payable to Reliance for each incidence of non-compliance when it is established it is at fault. Other measures can also attract a financial penalty based on a weighting to reflect the relative importance of a defined performance failure.

22. In general, the Escort Project Board approved the thresholds for performance measures based on its judgement on the desired standard of performance. The Escort Project Board considers that the performance standards set are demanding but achievable. While the performance standards took into account those set for prisoner escort and court custody services in England, the SPS

did not compare them with previous performance in Scotland. This was because, in its view, it was attempting to set aspirational standards of performance rather than replicate the service of the past, and because relevant, reliable historical performance data was not readily available to it.

23. Reliance is required to submit to the SPS a standard monitoring report each month indicating its performance against the performance measures stipulated in the contract. Adequate arrangements are in place for reviewing performance under the contract, and are complemented by activity and performance data generated by the SPS, the police and other partner agencies to calculate the payments due to Reliance. To date, the SPS has undertaken performance monitoring, including the calculation of monthly payments and application of financial penalties, in line with the terms of the contract.

24. Initially, a number of difficulties were experienced with the implementation of phase 1 of the contract resulting in releases of prisoners in error and incidences of late delivery of prisoners to court. On a few occasions, police officers, who remained available in Glasgow courts on a shadowing basis to assist in the transfer of responsibility for service provision, were required to carry out some of the tasks that Reliance were contracted to perform because it could not deploy its staff as flexibly as it had first planned. The contract contains adequate provision to recharge Reliance in the event that other agencies are required to undertake work which is properly the responsibility of the service provider. Reliance was, however, not required to pay the cost of these police officers because it was always intended that the police would provide actual assistance if that proved necessary during shadowing.

25. The SPS and other partner agencies have worked with Reliance to resolve and minimise the impact of these problems. Reliance has also increased its staffing levels at Glasgow courts at its own expense. While this may result in reduced profits for Reliance, discussions between the SPS and the contractor on lessons to be learned from the implementation of phase 1 have satisfied the SPS that there is no significant increase in risk to the contract from a financial perspective.

26. In the period April to July 2004, 23 prisoners had been judged to have been released in error from the Glasgow courts system since Reliance took up its duties. Reliance has accepted it was responsible for 12 of the 23 releases in error. The remaining releases in error were either the responsibility of the SPS or partner agencies or, in the opinion of the SPS, were due to a combination of circumstances which were outside the reasonable control of the service provider. A protocol has now been agreed between the SPS and partner agencies setting out the process for reporting and investigating incidents and events related to the contract, and for identifying what lessons can be learned.

27. A number of measures have been taken to help prevent recurrence of releases in error. These include the SPS recommending to Reliance that it should develop a checklist or desk instructions outlining the steps to be taken before a prisoner is released, and a review of Glasgow court procedures because the contract detail did not reflect exactly custom and practice. The Association of Chief Police Officers in Scotland has also commenced a review of the arrest warrant system with a view to simplification and avoiding prisoners being transferred between courts to answer different charges.

28. According to performance returns, when Reliance first commenced providing prisoner escort and court custody services around 78% of prisoners were delivered to court on time. During May and June 2004, however, this improved to 91% and 93% respectively. The latest figures, for July 2004, indicate that 98% of prisoners were delivered to court on time.

Conclusions and recommendations

Contract objectives

29. The SPS set clear objectives for the project, based on perceived difficulties with the existing system and consistent with achieving value for money but it is too early to say whether these objectives have been achieved. It is therefore important that SPS's post-implementation review considers the extent to which the original aims of the project have been achieved, and in particular the success of the new arrangements in releasing police and prison officers to undertake their core duties.

30. Key to the success of the project is that performance standards should be demanding and achievable and that Reliance should meet them. The lack of relevant and reliable historical data means that the performance standards and Reliance's actual performance cannot be assessed against previous arrangements when the services were undertaken by police and prison officers.

Preparing the contract

31. The SPS's specification and award of the contract to Reliance was handled well. The procurement process was well-controlled and there were good risk management processes in place. The SPS undertook the tendering process in accordance with EC and its own

procurement regulations, and it established clear criteria for evaluating tenders. While there was scope to improve the level of indicative activity data included in the invitation to tender, the SPS and partner agencies have subsequently provided Reliance with activity data and discussed proposed staffing numbers for each phase of contract implementation. It is important that, to ensure a seamless transfer of duties, similar exchanges take place in the remaining courts where the contract is still to be rolled-out.

Managing the contract

32. The SPS discussed with Reliance the resources required to deliver prisoner escort and court custody services during the run-up to Reliance starting operations. It has also taken steps to ensure that Reliance can deliver the services required prior to the further implementation of the contract. However the SPS should finalise as soon as possible its high-level contingency plans to ensure continuity of service should there be a default in the contract. There is also a need to finalise those service level agreements documenting the relationship between the SPS and other agency partners which are still outstanding.

33. A key strength of the new arrangements is that Reliance is required to report regularly on a range of performance information to the SPS. The performance measures are clearly defined in the contract and are used to levy financial penalties on the contractor when it is established that it is at fault resulting, for example, in a prisoner being released in error. 12 out of the 23 prisoners released in error since April 2004 in the

Glasgow area have been attributed to Reliance. In accordance with the agreed protocol, it is important that the SPS and partner agencies identify clearly the reasons for the other incidents of releases in error in order to prevent recurrence.

34. Despite the releases in error for which it was responsible, there are signs that the performance of Reliance is improving. The appointed auditors will continue to review how SPS monitor and report on the performance of Reliance.

Part 1. Introduction



Role of the Scottish Prison Service

1.1 The Scottish Prison Service (SPS) is an executive agency of the Scottish Executive Justice Department. The Scottish Ministers have overall responsibility for the SPS and determine the strategic, policy and financial framework within which it operates. Scottish Ministers also set the public expenditure provision for the SPS and the key targets for the delivery of objectives. The chief executive of the SPS is responsible and accountable for operational and contractual matters involving the agency and is directly answerable to Scottish Ministers.

1.2 The SPS operates under the Prisons (Scotland) Act 1989 and the Prisons and Young Offenders Institutions (Scotland) Rules 1994 and is obliged to accommodate all prisoners sent by the courts, whether on remand or conviction. In Scotland there are currently 15 prison establishments, including HMP Kilmarnock which is privately managed by Kilmarnock Prison Services Ltd under contract to the SPS.

1.3 The aims of the SPS are to:

- keep in custody those committed by the courts
- maintain good order in each prison
- care for prisoners with humanity
- provide prisoners with a range of opportunities to exercise personal responsibility and to prepare for release.

1.4 The cost of the SPS in 2003/04 totalled £259 million. The average cost per prisoner place was £33,244 compared to a target of £33,800.

Prisoner escort contract

1.5 In November 2003 the SPS, representing Scottish Ministers, and Reliance Secure Task Management Ltd Reliance signed a contract worth £126 million over seven years for the provision of prisoner escort and court custody services. The contract covers the transport of prisoners between, for example, prisons and police stations to court, and the safe custody of prisoners while at court. In 2003/04,

there were some 140,000 prisoner escorts throughout Scotland. The main terms of the contract are shown at Appendix 1.

1.6 Although the SPS is the 'contracting authority' on behalf of the Scottish Ministers and the 'lead' authority for other partner bodies, the contract also includes services provided to:

- The Scottish Court Service which administers and manages the Supreme, High and Sheriff Court premises throughout Scotland.
- District courts managed by local authorities.
- All eight Scottish police forces with custody unit premises throughout Scotland.

1.7 The contract is based on a phased programme of implementation, with the first phase of the contract covering escorts to and from courts in Glasgow and the surrounding area beginning on 5 April 2004. A further four stages are planned, leading to full implementation across the whole of Scotland on 11 October 2004.

1.8 From the start of the first phase in April 2004 the new service has been the subject of significant media coverage, particularly with regard to a number of prisoners being released in error and a high profile prisoner escape. As a result of some of the problems experienced in the early stages of the contract, further roll-out is on a revised timetable and subject to an assessment of the company's readiness to provide the service. Phase 2(a) of the contract, covering Dumfries & Galloway, commenced on 22 July 2004.

Scope of the audit

1.9 In light of the concerns expressed about the performance of Reliance, in May 2004 the Minister for Justice requested that I bring forward audit work relating to the procurement of the contract. I agreed to do so and asked Audit Scotland¹ to review four key issues:

- Whether the SPS set clear objectives for the contract consistent with achieving value for money and whether it achieved these objectives?
- Whether the SPS properly specified and awarded the contract?
- Whether the SPS established robust and clear arrangements for managing the contract as soon as the contract period began, and for monitoring the contractor's performance?
- How well the SPS is implementing and monitoring the contract?

¹ Audit Scotland is the appointed auditor of the Scottish Prison Service under Section 21(4) of the Public Finance and Accountability (Scotland) Act 2000. The Auditor General for Scotland appointed Audit Scotland to undertake the review under Section 23(8) of the 2000 Act. The auditors reported the results of their examination to the AGS under Section 23(9) of the 2000 Act.

Part 2. Preparing the contract



2.1 The SPS issued the invitation to tender for the contract in September 2002, with tender evaluation between December 2002 and April 2003. Negotiations with the preferred bidder, Reliance Secure Task Management Ltd, took place between May and October 2003 resulting in the signing of the contract in November 2003. The audit review considered the extent to which:

- clear objectives for the contract were established, consistent with promoting and achieving value for money
- the contract was adequately scoped to reflect those objectives and provide tenders with clear information to enable high quality bids
- a robust strategic brief for the procurement process was drawn up
- the competition was well planned
- the contractor selection process was conducted fairly and in accordance with good practice

- the award of the contract was conducted fairly and in accordance with good practice.

Strategic aims and objectives

Clear objectives were set for the project, based on perceived deficiencies with the existing system

2.2 Under the previous system, the respective police force largely undertook the work of managing prisoners within court custody suites. The SPS was responsible for escorting convicted prisoners or those appealing against conviction or sentence. The police assisted in this work under various local arrangements around Scotland. The police were also responsible for escorting prisoners on remand to court.

2.3 There was widespread acceptance within the criminal justice system in Scotland that the existing system involved a significant duplication of resources with little coordination between the organisations involved. There was a perceived failure to coordinate services between the police, prisons, courts and individual locations to and from which prisoners

were being escorted. As a result, vehicles could pass each other en route to their respective destinations although they had spare capacity and were serving the same court. A review began in 2001, involving the eight Scottish police forces, the SPS, the Scottish Court Service, district courts and the Crown Office and Procurator Fiscal Service. It was intended to provide each agency with an opportunity to examine their working practices and inter-dependencies.

2.4 The multi-agency review team developed a series of options for consideration, ranging from the status quo to contracting out the work to private sector providers. On the basis of the review team's findings, in January 2002 the SPS and its partner agencies decided to contract-out prisoner escort and court custody services. Having obtained Ministers' approval, the SPS then proceeded with the necessary preparations and procurement of the restructured service.

2.5 The overall aim of project was to 'free up police and prison officers, to secure better value for money through a phased implementation of a contracted out prisoner escort and court custody service throughout Scotland'. The reasons for contracting out prisoner escort and court escort services included:

- It represented an opportunity to realise and maximise effective use of resources throughout the whole area of prisoner escorting and court custody requirements.
- The existing service provision did not provide best value for money, in that police officers and prison officers were used to undertake duties that did not require their full range of legislative powers or skills.
- It removed the duplication that existed within the current provision.
- It enabled the return of the maximum number of police officers to core duties within their communities, and SPS officers to core duties within their establishments.
- It provided uniformity of service delivery throughout Scotland.
- It provided best value and made use of best practice within the prisoner escort service sector.

The potential cost of the contract was compared to the costs currently being incurred

2.6 The SPS prepared a 'public sector comparator' to compare the costs of the existing method of service provision to that bid by the tenders. This was based on detailed cost calculations for activity levels in both 2001 and 2002 for the SPS and police. The cost data and assumptions used in the public sector comparator were checked by consultants. The SPS estimated that, based on a comparison of the 'net present value' of the charges

proposed by Reliance with an estimate of the cost of current service provision, the service provided by Reliance would cost £20 million less over a period of seven years.

Proper consideration was given to the most appropriate duration for the contract

2.7 Prior to the invitation to tender, the SPS's consultants evaluated various contract lives (for example, three, five, seven and ten years) based on their knowledge of the market. The analysis covered the key cost elements of staffing, vehicles, ICT investment and other costs, and assessed the risks attached to each of these over time. The consultants concluded that, overall, a seven-year contract generated a larger transfer of risk to the contractor but also attracted a larger risk premium. A contract term of between five and seven years was expected to have the advantages of matching both the anticipated period for vehicle leases and the estimated time horizon for other changes in the criminal justice system.

2.8 Based on the consultant's findings, the invitation to tender requested bids on the basis of both a five-year and a seven-year contract. The SPS's tender evaluation subsequently concluded that a seven-year term produced the best value for money.

Scoping the contract

The scope of the contract built on the approach and issues identified from a similar exercise in England and Wales

2.9 The scope of the contract was based on the approach previously adopted in England and Wales, where prison escort duties have been provided by private contractors for a number of years. The SPS made efforts to take on board the lessons learned in England and Wales to result in a contract which is more comprehensive and demanding.

There was a clear specification of requirements

2.10 The invitation to tender clearly specified a range of activities included within the overall heading of prisoner escort and court custody (for example, police station to court escorts, prison to court, custody at court, transfers between courts, return to custody, transfers between prisons, hospital visits, etc).

2.11 In accordance with good practice, the invitation to tender and contract is based on outputs and deliverables rather than a specification of inputs. The service provider is required to ensure that staffing levels are appropriate for the full range of duties required. The invitation to tender, however, did outline indicative levels of activity, on a monthly basis, for each court and custody unit in Scotland. Both documents also outlined 'quality' requirements in terms of prisoner care, security, maintenance of good order and general contribution to the justice system.

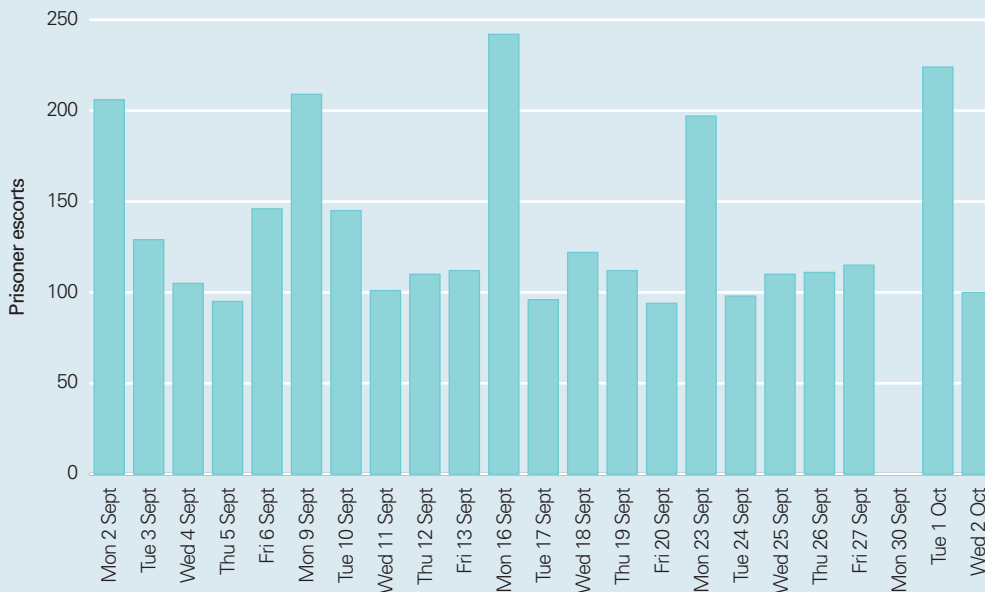
In general, sufficient and clear information was provided to all tenders to enable high quality bids

2.12 Although the invitation to tender was a comprehensive document, all bidders had the opportunity to ask questions throughout the process. Bidders used this opportunity to clarify ambiguous points and to request further information. On a periodic basis, the SPS issued to all bidders its responses to questions asked.

2.13 One bidder asked about the availability of a more extensive breakdown of police escorts activity to identify peaks and troughs. The SPS's response indicated that 'Mondays and days following public holidays would be particularly busy days'. It also supplied bidders with activity data on a daily basis for Glasgow courts for the month of September 2002. This period covered a public holiday and clearly indicated that activity increased on Mondays and after public holidays ([Exhibit 1](#)).

Exhibit 1

The number of prisoner escorts at Glasgow courts during September 2002



This exhibit shows that prisoner escort activity is highest on Mondays and after public holidays (Monday 30 September 2002 was a public holiday in Glasgow)

Source: Scottish Prison Service

Procurement process

A comprehensive Project Initiation Document was drawn up to provide a strategic brief for the procurement process

2.14 The SPS prepared a comprehensive Project Initiation Document (PID) at the start of the process to define:

- what the project was aiming to achieve
- why it was important to achieve it
- who would be involved in managing the process and what their responsibilities would be
- how and when the project would be progressed and the outcomes monitored.

2.15 The PID identified key stakeholders and indicated the responsibilities of those charged with ensuring the project fulfilled the needs and expectations of all related parties.

Inter-agency project teams were established to provide effective control over the procurement process

2.16 The management of the project was clearly defined. The chief executive of the SPS was designated as the project sponsor. The SPS's director of Strategy and Business Performance was designated as the project executive and headed an inter-agency Escort Project Board with the role of ensuring that the overall strategy of the project and timescales were fulfilled. The Escort Project Board also comprised other representatives from the SPS, the Association of Chief Police Officers in Scotland (ACPOS), the Scottish Court Service, the Crown Office and Procurator Fiscal Service and the Scottish Executive Justice Department.

2.17 The SPS also established further inter-agency teams which were supported by consultants:

- An operational team was responsible for scoping the restructured service, shaping the tender documentation, resolving security related matters, developing proposals for the evaluation of bids and outlining proposals for performance management.
- A finance team was responsible for evaluating the most economic contract duration and the long term financial viability of bidders, assessing the financial element of bids and providing an analysis of the commercial sector cost comparisons against the cost of the existing provision.
- A legal team developed, negotiated and prepared the conditions of contract.
- An administration team coordinated communications to ensure confidentiality, control of data systems and scheduling of business performance dates.

A clear project plan was in place, including arrangements for monitoring progress

2.18 The SPS developed a comprehensive project plan which highlighted key tasks at all stages of the project timeline, monitoring and review times and objectives. The Prince2 methodology, a highly regarded project management tool, was used to manage the project.

Risks to the achievement of the project were identified, with the controls and processes to mitigate them

2.19 The PID included an Operational Risk Log which outlined a number of high level risks to the achievement of the project, the severity and likelihood of the event occurring, the impact of the event occurring and the procedures in place to manage the risk. Project teams were also required to outline the risks associated with their aspect of the project. Risks emerging during the development of the project were referred to the Escort Project Board. The SPS also maintained a detailed Failure Log, listing all potential project failures, their warning signs and effects, together with contingency plans and processes to mitigate the risks of these occurring.

2.20 In some cases, meetings were held with tenders to clarify issues or potential risks. For example, a risk was identified that Reliance may overstretch beyond its capacity to deliver. Reliance subsequently provided further details on their resources and assurances that it was not currently pursuing other contracts in England and Wales and would be concentrating solely on the Scottish prisoner escort project.

Tender assessment and contract award

The tendering process was undertaken in accordance with EC and SPS procurement regulations

2.21 The value of the prisoner escort contract exceeded the threshold for a number of EC directives and regulations requiring, for example, advertisement of the contract in the Official Journal of the European Communities (OJEC). The auditors' review of tendering documentation indicated that the process was undertaken in accordance with relevant EC regulations and also internal regulations as outlined in the SPS Procurement Manual.

Shortlisting of bidders was based on clear, pre-determined criteria

2.22 Prior to invitation to tender, interested parties were required to complete a pre-qualification questionnaire covering financial, economic and technical capacity. Five companies initially expressed an interest in the contract after advertisement in OJEC. The Escort Project Board did not shortlist one company as it was judged not to be wholly independent of one of the other tenderers. A further company withdrew from the process for their own strategic reasons prior to submitting a tender. Three companies, therefore, ultimately submitted a tender. Given the specialist nature of the service being tendered, the SPS considers that three bidders represented a good competition.

There were clear criteria for evaluating tenders, including consideration of both cost and quality

2.23 The SPS subjected all three tenders received to a technical, financial and legal and commercial assessment. The technical evaluation covered six categories: service delivery, prisoner care, secure custody, maintain good order, contribute effectively and management/human resources. Each category included a number of questions which were allocated a pre-determined weighting in order to prioritise the responses and to build a total score for each bidder.

2.24 In terms of the financial evaluation, Reliance's bid was the cheapest and resulted in a contract value of £126 million, some £20 million below the 'public sector comparator'. In some circumstances, a bid of this magnitude below the cost of the 'public sector comparator' could call into question the planned quality of service. The SPS, however, considered the balance between cost and quality as part of the tender evaluation process. Its comparison of charges for similar services in England and Wales also showed that the prices being offered were within an acceptable range.

2.25 Reliance's proposed staff numbers were assessed to be the closest to those currently employed by the SPS and police on prisoner escort and court custody duties. Proposed staff numbers were the subject of discussion between the SPS and Reliance during the subsequent post-tender negotiation and pre-contract implementation stages (paragraphs 2.27 and 3.3-3.4).

2.26 The SPS ranked Reliance third in terms of the technical evaluation, although it was still assessed to offer a level of service that fully met the requirements of the services requested in the business case. A report to the Escort Project Board concluded that, although there were some weaknesses in the Reliance proposal, it was basically sound and capable of correction without too much difficulty. Taking all elements of the tender evaluation together, the SPS assessed that Reliance's bid represented the best value for money overall.

Extensive post-tender negotiations took place between the SPS and Reliance prior to finalisation of the contract

2.27 Immediately after the submission of tenders, the SPS communicated with all bidders to clarify issues arising from review of the submissions. Once Reliance was selected as the preferred bidder, a comprehensive negotiation process was entered into prior to formalisation and finalisation of the contract. These discussions took place between May and October 2003 and included a wide range of issues concerning implementation plans.

Part 3. Managing the contract



3.1 After signing of the contract in November 2003, phase 1 commenced in April 2004 covering courts in Glasgow and the surrounding area. Thereafter, the contract required a phased roll-out leading to full implementation on 11 October 2004. As a result of some of the problems experienced in the early stages of the contract, the timetable for roll-out has been revised and is now subject to an assessment of Reliance's readiness to provide the service. All partner agencies are now required to sign an assurance that further roll-out is appropriate.

3.2 The audit examination covered the extent to which:

- the SPS obtained assurances that adequate arrangements were in place to enable a smooth and seamless transfer of responsibility for service delivery prior to Reliance starting to provide prisoner escort and court custody services
- the SPS established clear contingency plans in the event of contractor default or quality standards not being achieved

- the SPS established adequate procedures for monitoring both the cost and quality of the services delivered
- the SPS implemented in practice monitoring procedures in the early months of operation.

Implementation controls

Detailed discussions took place with Reliance prior to the start of phase 1

3.3 The SPS maintained a comprehensive file history of the discussions and work that took place in the lead up to the commencement of the contract. Face-to-face discussions took place between SPS and Reliance personnel and operational team meetings were held to discuss the acceptability of proposals, previous experience and issues arising. These discussions covered process and models, and included challenges to the robustness of Reliance's proposals.

3.4 In common with output-based contracts, questions were asked about the level of proposed

resources and how these would be applied, but the Escort Project Board did not make directions about the level of resources which should be applied. Each tenderer was required to submit indicative staffing numbers and an explanation of the reasoning in determining these, so the SPS could make a judgement on the reasonableness of each tenderer's proposals. As outlined at paragraph 2.25, Reliance's proposed staff numbers were closest to those presently employed by the SPS and police on prisoner escort and court custody duties.

3.5 As a result of the teething problems experienced in the early days of phase 1 of the contract, the SPS are now developing a more formal approach prior to the implementation of future phases to ensure a seamless transfer. The implementation of phase 2(a) of the contract on 22 July covering Dumfries & Galloway was preceded by a period of 'work shadowing' when Reliance staff accompanied police and prison officers for a period of two and a half weeks. Prior to the start of this phase, the chief

executive of the SPS, SPS directors, representatives from partner agencies and Reliance signed an assurance that they were satisfied that roll-out was appropriate.

Contingency plans

Contingency arrangements in the event that Reliance withdraws or is withdrawn from the contract have yet to be finalised

3.6 The SPS and partner agencies have still to finalise high-level contingency plans to ensure continuity of service in the event that Reliance withdraws or is withdrawn from the contract. A 'contingency planning cell', including representation from other agency partners, is currently considering high-level contingency plans to ensure continuity of service in the event that Reliance withdraws or is withdrawn from the contract. This group intends to cover all major eventualities and will cover the contract to its conclusion or further continuation.

3.7 There are, however, detailed operational plans in place to allow the SPS to deal with a range of emergencies and other events. The SPS is also in the process of finalising service level agreements with partner agencies setting out their respective responsibilities and temporary arrangements in the event of:

- loss of prison establishments or loss of access to them
- temporary loss of the contractor's operating base and/or fleet of vehicles

- prisoners giving concern in relation to mental health or requiring the services of an interpreter.

3.8 The SPS has now finalised these service level agreements with individual prison establishments, the Scottish Courts Service, the Crown Office and Procurator Fiscal Service and four local authorities. It has still to agree service level agreements with other local authorities and all eight police forces. A Criminal Justice Inter-Agency Working Group has also recently been formed to develop a formal reporting protocol for other partners to inform the SPS of incidents or problems.

Monitoring arrangements

The contract includes a clear set of performance indicators against which actual performance can be measured

3.9 The contract includes a comprehensive set of clearly defined performance measures, largely based on the model already tried and tested in England and Wales (see Appendix 1). Two performance measures (incidents of death or suicide in custody and incidents of prisoners unlawfully at large, including release in error) attract a financial penalty for each and every incidence of non-compliance when it is established that Reliance is at fault.² Other indicators attract a penalty based on a weighting to reflect the relative importance of the indicator and after a pre-determined performance threshold has been breached. These other performance measures cover:

- Service delivery: late or non-collection of prisoners; late delivery of prisoners; late return of prisoners and; use of inappropriate vehicles to transport prisoners.
- Prisoner care: self-harm by prisoners; substantiated complaints by prisoners; failure to provide food or water to prisoners and; failure to provide a prisoner with medical services.
- The security of custody: loss of keys, failure to follow defined security procedures; failure to carry out an effective security risk assessment and; failure to gather and/or disseminate intelligence received.
- The maintenance of good order: prisoner disorder; failure to discharge responsibilities in relation to safe custody; assaults; prisoners in possession of unauthorised articles and; damage to premises.
- The effectiveness of Reliance's contribution: including substantiated complaints from officials; use of non-certificated staff; failures in performance reporting; failures to record transfers of responsibility; failures to carry authorising certificates; failure to comply with operating procedures and prison rules; failure to respond to prisoner complaints and; failure to maintain up to date contingency plans.

² Under the terms of the contract between the SPS and Reliance, the SPS is permitted to publish the contract. However, Reliance has the right to require the SPS to remove any sections of the contract prior to publication if it feels such sections contain operationally or commercially sensitive information. The SPS published the contract in May 2004 minus detailed information on charges and financial penalties payable. In June 2004, the Justice 2 Committee of the Scottish Parliament took evidence from the SPS and Reliance on prisoner escort and court custody operations in the Glasgow area. In its written evidence to the Committee, the SPS explained that it had acted in line with the Scottish Executive's 'Code of Practice on Access to Scottish Executive Information' published in July 1999 which exempts information from publication where to do so would cause prejudice or harm to, among other things, law enforcement and legal proceedings, the effective management and operations of the public sector and a third party's commercial confidences. As required by the code, the SPS considered whether any harm or prejudice arising from disclosure of the complete contract would be outweighed by the public interest in making the information available. It concluded that the public interest did not justify disclosure of information which would be in breach of the Reliance contract and which would cause harm or prejudice of the kinds which exemptions in the Code seek to prevent.

The SPS considers that the performance standards set are demanding but achievable although it did not compare them with historical performance data

3.10 In general, the Escort Project Board approved the thresholds for performance measures based on its judgement on the desired standard of performance. The Escort Project Board considers that the performance standards set are demanding but achievable. While the performance standards took into account those set for prisoner escort and court custody services in England, the SPS did not compare them with previous performance in Scotland. This was because, in its view, it was attempting to set aspirational standards of performance rather than replicate the service of the past, and because relevant, reliable historical performance data was not readily available to it.

Adequate arrangements are in place for reporting and reviewing performance under the contract and for making payments to Reliance

3.11 The contract clearly specifies Reliance's responsibilities to report performance. Reliance is required to send a standard monthly performance monitoring report to the SPS indicating its performance against the performance measures stipulated in the contract. This information is then used to apply contract penalties, where applicable.

3.12 The SPS also generates its own daily activity data, and monthly activity data from the police, to compare against the overall activity level for setting charges under the contract. Reliance's payments under the contract are based on pre-determined activity bandings and are set annually based on the previous year's figures. In addition, the SPS receives reports from partner agencies on Reliance's

performance which are then used to compare with the monthly performance data submitted by the company.

3.13 The SPS also plans to undertake a range of operational audits to review Reliance's performance. To date these operational audits have identified some weaknesses in procedures and some performance failings, such as a lack of evidence to support the fact that prisoners have been provided with meals.

3.14 In addition to financial penalties for failure to achieve pre-determined standards of performance, the contract also contains adequate provision to re-charge Reliance in the event of failure to provide the contracted services which has required other agencies to undertake the work. This occurred during the first two months of the contract when the police had to provide the company with assistance in the Glasgow courts.

Monitoring in practice

Performance monitoring has been undertaken in accordance with the terms of the contract, including the calculation and application of financial penalties

3.15 Between the start of phase 1 of the contract in April 2004 and the completion of the auditors' review the SPS has undertaken performance monitoring, including the calculation and application of financial penalties, in accordance with the terms of the contract.

Difficulties were experienced in the early stages of the contract

3.16 There were a number of well publicised initial difficulties in the implementation of phase 1 of the contract resulting in the release of prisoners in error and incidences of late delivery of prisoners to court. On a few occasions, police officers, who remained available in Glasgow courts

on a shadowing basis to assist in the transfer of responsibility for service provision, were required to carry out some of the tasks that Reliance were contracted to perform because it was not able to deploy its staff as flexibly as it had originally planned. Reliance was, however, not required to pay the costs of these police officers because it was always intended that the police would provide actual assistance if that proved necessary during shadowing.

3.17 The SPS and other partner agencies have worked with Reliance to resolve and minimise the impact of these problems. There has been frequent contact with senior managers of Reliance to ensure timely action is taken on issues identified. Reliance also increased their staffing levels in the Glasgow courts, at their own cost, to address the problems experienced. These extra costs may reduce the level of profit which Reliance expects to make under the contract. However, subsequent discussions between the SPS and the contractor on lessons to be learned from the implementation of phase 1 have satisfied the SPS that there is no significant increased risk to the contract from a financial perspective.

52% of releases in error, to date, have been attributed to Reliance

3.18 At the time of the audit review, 23 prisoners had been judged to have been released in error from the Glasgow courts system since Reliance took over escort and court custody duties. Reliance has accepted it was responsible for 12 of the 23 releases in error. The remaining releases in error were either the responsibility of the SPS or partner agencies or, in the opinion of the SPS, were due to a combination of circumstances which were outside the reasonable control of the service provider.

3.19 In July 2004, the SPS agreed a protocol with partner agencies setting out the process for identifying responsibility for reporting and investigating incidents and events relating to the contract and the process to be followed for identifying who is responsible. Where initial investigations suggest that an incident is the responsibility of a partner agency or that there has been a failure on behalf of a partner agency as part of an incident, the protocol requires that the partner agency conducts its own internal investigation so that lessons can be learned.

3.20 Releases in error have arisen due to a number of factors, only some of which are attributable to Reliance. These factors include:

- Poor completion/interpretation of personal escort records. In some cases a prisoner has been released if the 'not to be released' box in the document was left blank, even although there were other indications on the form that the prisoner should not be released.
- Failure to record all warrants on the police national computer system.
- Custom and practice relating to court procedures which had not been formally recognised.
- Complexities inherent in the Scottish criminal justice system.

3.21 A number of steps have already been taken to improve the situation:

- The SPS has recommended that Reliance introduce a checklist or desk instructions to outline the steps which should be taken prior to the release of a prisoner.
- ACPOS has begun a review of the warrant system including consideration of the process of granting and executing warrants, the volume of warrants issued, the variety of processes that can generate warrants, and situations where warrants are not passed on by the Crown Office and Procurator Fiscal Service. The review will include consideration of options to simplify the system to avoid prisoners being transferred between courts for different warrants.
- Glasgow court procedures are under review as the new arrangements have highlighted that custom and practice has not been fully considered in the contract detail.
- The implementation of phase 2 of the contract was preceded by a period of 'work shadowing' when Reliance staff accompanied police and prison officers in the Dumfries & Galloway area.

Performance on the timely delivery of prisoners to courts has been improving

3.22 At the start of the contract around 78% of prisoners were delivered to court on time. During May and June 2004, however, this improved to 91% and 93% respectively. The latest figures, for July 2004, indicate that 98% of prisoners were delivered to court on time. Due to the absence of comprehensive historical data, Reliance's performance cannot be compared to that achieved under the previous system. According to analysis carried out by HM Chief Inspector of Prisons for England and Wales³ however, Reliance's current performance appears to compare well to the situation in England and Wales.

A post-implementation review is planned

3.23 In accordance with good practice, the SPS intend to undertake a post-implementation review of the project to ensure that lessons are learned for any similar projects in the future. The post-implementation review is to be planned and executed after completion of the phased implementation of the contract. In January 2004, after signing of the contract, the Escort Project Board and project teams also completed 'lessons learned' reports which were shared with partner agencies.

³ HM Inspector of Prisons in England and Wales 'Treatment and Conditions for Unsensenced Prisoners' December 2000. This report identified that 76% of prisoners arrived on time at Magistrates Courts and 80% at Crown Courts.

Appendix 1. Contract main terms

The contract between the SPS and Reliance is divided into six schedules.

Schedule 1: Service specification

This schedule provides information on the services to be provided and how prisoner escort and court custody operations are to be conducted. It includes Reliance's responsibilities for the secure custody and well-being of those persons transferred to its care, requirements for the recruitment and training of Reliance staff, and the management of court facilities. It defines Reliance's core court escort and custody tasks (most forms of prisoner escort and court custody) and its non-core services (mainly ad hoc prisoner escort duties, for example funeral escorts). It also sets out the rights of prisoners, for example the right of access to toilet and sanitation facilities, the availability of drinking water, and the management of prisoner healthcare.

Schedule 2: Performance management

This schedule details the basis on which Reliance is to monitor and report its performance against the contract to the SPS and the method by which financial penalties in the event of non-compliance are to be calculated.

Reliance is to monitor and report its performance against a series of 33 performance measures shown on pages 20 and 21. In the case of two performance measures, incident of death or suicide in custody and incident of a prisoner unlawfully at large including release of a prisoner in error, a direct financial penalty is payable upon each and every incident. For all other performance measures a target standard and a minimum threshold standard is set. If Reliance's performance in any month breaches the target standard, further financial penalties are payable for each incident of failure thereafter until the minimum threshold standard is reached.

The value of the financial penalty per incident is calculated by first apportioning a fixed percentage of the total monthly contract charge across each performance measure according to their relative weightings. The fixed percentage of the total monthly contract charge represents the maximum financial penalty which may be payable for poor service provision. The financial penalty per incident for each performance measure is then calculated by dividing the amount at risk for each performance measure by the difference between the target standard number of incidents and the minimum threshold standard number of incidents.⁴

The SPS and Reliance regard the fixed percentage of the total monthly contract charge, the target standard and the minimum threshold standard as commercially sensitive information. See the footnote to paragraph 3.9 on page 15 for further details.

⁴ In other words, for illustrative purposes only, if the total monthly contract charge is £150,000 and the fixed percentage is 8% then the total amount at risk is £12,000. If a performance measure has a weighting of 9, then the amount at risk for that performance measure is $\frac{9}{102}$ (the sum of all weightings) \times £12,000 = £1,058.82. If the target standard for that performance measure is 4 incidents and the minimum threshold standard is 7 incidents, the financial penalty for each incident above the target standard is $\frac{£1,058.82}{(7-4)} = £352.94$.

Schedule 3: Contract conditions

This schedule provides details on the application of the terms of the contract. It includes definitions and interpretation of the contract terms, details the period of the contract (seven years but with scope for the SPS to request an extension for a further three years) and arrangements for agreeing variation of contract charges, making payments and the resolution of disputes. It also places certain obligations on Reliance regarding the employment of staff, the provision of equipment and transport, security arrangements, access to and ownership of records and the observance of other legal requirements such as health and safety regulations and the Official Secrets Acts 1911 to 1989. The schedule also contains provisions to enable the SPS to terminate the contract.

Schedule 4: Charges

This schedule sets out arrangements for the SPS to pay Reliance on a monthly basis for services provided. Charges are made payable in respect of core and non-core services based on a baseline volume of prisoner movements. The actual charge payable uses a banding system dependent on the percentage of actual prisoner movements above or below the baseline figure. These charges are to be updated annually, taking into account the Retail Price Index, earnings indices and fuel cost indices. Volume bands are also to be reviewed annually between the SPS and Reliance using the actual volume of prisoner movements in the previous year as the new baseline figure. Separate fixed payments are payable during each month that Reliance rolls-out its operations to a new area (ie, during the implementation phase).

The SPS and Reliance consider that the charges payable under each volume band, the baseline number of prisoner movements, the detailed method by which charges are to be updated annually, and the fixed implementation charges are all commercially sensitive information.

Schedule 5: Premises

This schedule details all the police custody units, courts, prisons, young offender institutions, hospitals and other locations where the service is to be provided. Over 250 premises are listed.

Schedule 6: Implementation schedule

This schedule details the basis by which Reliance is to take over responsibility for prisoner escort and court custody services. It also provides for the SPS to receive liquidated damages in the event that Reliance does not assume responsibility for service delivery in accordance with the implementation programme. The implementation programme is to take place over five phases (see table overleaf).

Contract element	Performance measure	Weighting
Service delivery	Incident of late or non-collection of a prisoner from any premise	3
	Incident of late delivery of a prisoner to any premise	10
	Incident of late return of a prisoner from any premise	9
	Incident of use of a vehicle which the SPS deems inappropriate	1
Prisoner care	Incident of death or suicide in custody	Money amount
	Incident of self-harm by a prisoner	3
	Incident of substantiated complaint by a prisoner	2
	Incident of failure to provide food or water to a prisoner	1
	Incident of failure to provide a prisoner with medical services or access to a medical officer	2
Secure custody	Incident of a prisoner unlawfully at large including release of a prisoner in error	Money amount
	Incident of loss of key or key/lock compromise	5
	Incident of failure to follow defined security procedures	2
	Incident of failure to carry out an effective Security Risk Assessment	2
	Incident of failure to gather and or disseminate intelligence received	2
	Incident of concerted prisoner disorder	6
Maintain good order	Incident of failure to discharge responsibilities in relation to the safe custody of prisoners	3
	Incident of assault against Reliance staff or others (serious)	6
	Incident of assault against Reliance staff or others (minor)	2
	Incident of assault against a prisoner (serious)	6
	Incident of assault against a prisoner (minor)	2
	Incident of a prisoner found in possession of an unauthorised article	2
	Incident of damage to any premises	1

Contract element	Performance measure	Weighting
Contribute effectively	Incident of an official complaint substantiated by the SPS	2
	Incident of non-certificated staff undertaking prisoner custody officer duties	7
	Incident of inaccurate, incorrect, late or failure to report any performance measure to the SPS	10
	Incident of Reliance failure to ensure that a prisoner custody officer is cleared by Disclosure Scotland and the SPS	4
	Incident of a member of Reliance's staff found to be in breach of duty	3
	Incident of failure to ensure accurate recording of transfer of responsibilities	1
	Incident of a prisoner custody officer not carrying authorised certificate	1
	Incident of failure to comply with operating procedures (including H&S, fire, hygiene etc)	1
	Incident of failure to comply with any prison rules	1
	Incident of failure to respond to a prisoner complaint within the prescribed timescales	1
	Incident of failure to maintain up-to-date contingency plans	1

Phase	Area	Specified start date
1	All core escorts within Glasgow & district	5 April 2004
2	All core escorts within West Scotland	24 May 2004
3	Core escorts within East Scotland plus all escorts between relevant premises in Glasgow & district and West Scotland to and from all premises in East Scotland	12 July 2004
4	All non-core escorts and police force transfers within Glasgow & district and West Scotland	23 August 2004
5	All core and non-core escorts within North Scotland	11 October 2004

Scottish Prison Service

Contract for the provision of prisoner escort and court custody services



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