City of Edinburgh UNISON

Submission to City of Edinburgh Council on its Consideration of the Progress of the Alternative Business Models Privatisation Programme

16th December 2010

OVERVIEW

New evidence of "grave misconduct" by bidders confirms that the ABM privatisation programme continues to be haunted by classic risks inherent within outsourcing programmes. Conversely the three public sector comparators have identified significant savings against both the current baseline and the second budget review. These savings from the in-house options are the optimum, low risk outcomes from the ABM exercise and they should be adopted within the budget proposals for 2011/12. UNISON is therefore calling on members of the City Council to stop further work and expenditure on the competitive dialogue with a view to retaining services in-house.

Business Probity

The challenges of the Edinburgh Tram project highlight the importance of sound contractual arrangements with reliable contractors founded on secure procurement processes. Unfortunately, although the council is only half way through the privatisation process, there is growing evidence of unmanaged risk and grave misconduct by ABM bidders.

Previous problems include the following:

- Elected members were not informed that the shortlist recommended to full council on 24th June 2010 contained four companies who recently received multi-million pound fines for price fixing in public sector contracts.
- The involvement of Veolia in the illegally occupied Palestinian territories was not identified to councillors when the short list for initial dialogue was recommended in June.
- Although Connaught was not shortlisted they did pass the council's finance checks a matter of weeks before entering administration.

It has now emerged that at least two short listed companies have been involved in serious misrepresentations during the privatisation process. In both cases the companies involved were retained within the competitive dialogue and permitted to progress to full evaluation of their Outline Business Case.

There is no reference to these incidents in the Chief Executive's report to full council and UNISON has reason to believe that no elected members were consulted over the initial decision to overlook these recurring transgressions.

Bidder A failed to disclose two separate issues at the PQQ stage. On two occasions Bidder A had been investigated in respect of fatal workplace accidents. Both incidents led to prosecutions and convictions with fines running to approximately £400,000. Bidder A was obliged to divulge information about these convictions during the PQQ stage – no disclosure was made.

The position with Bidder B is significantly worse. Bidder B failed to disclose at the PQQ stage that it had been prosecuted, convicted and fined following injuries to staff and members of the public caused by a leak of toxic fumes at a waste management facility. Not only did the company mishandle the toxic materials being stored but it was not actually licensed to hold that material in the first place.

After this serious misrepresentation was identified by the ABM team, Bidder A was reminded on two occasions as to the requirement for full disclosure of convictions. Despite these prompts, it transpired that Bidder B had not revealed a recent conviction and fine of £225,000 arising from the death of a member of staff.

In both cases the participation of the bidders within the competitive dialogue was reviewed, legal advice was taken and a decision was made to permit the companies to remain in the privatisation process.

Clearly there are two concerns here – the quality of workplace health and safety in these companies; and, the serious misrepresentation of the position in relation to past convictions. Of all the councils in Scotland, Edinburgh has good reason to be careful when testing the business probity of private contractors. Against that background the retention of Bidder A within the initial dialogue process is a significant cause for concern.

Scrutiny

The Chief Executive has had three opportunities to bring these issues to the attention of elected members as part of their consideration of the merit of the privatisation programme – at full council on 24th June, at Policy and Strategy Committee on 31st August or in the report to full council for 16th December 2010. It appears that a decision has been made, intentionally, to withhold that information from full council.

Various conclusions can be drawn:

1. The most favourable conclusion to be drawn in relation to the companies is that some companies are willing to take a cavalier or reckless approach when asked to demonstrate their business probity.

2. The less favourable interpretation that might be drawn is that certain companies may be tempted to conceal aspects about their performance, past or present, in order to gain access to lucrative public service contracts.

3. For whatever reason, senior officials in the council do not feel compelled to draw the attention of elected members to finely balanced decisions about the management of risk. Transparency and robust scrutiny are the most effective antidotes to risk and the privatisation programme needs an overhaul in that regard.

4. With regard to elected members, and the administration, it would appear that they were not party to the decision to retain Bidders A and B within the initial dialogue. However, the responsibility for enhanced scrutiny in future must rest with councillors and it would be prudent to suspend the dialogue process, at least on a temporary basis to enable appropriate measures to be put in place.

The Gateway Review

The good news for the ABM privatisation programme team is that the amber status from the June review has been moderated to amber/green. However, UNISON understands that the risk, transparency and scrutiny issues arising from the non-disclosure of past convictions were not addressed in full by the consultants. The amber/green status is therefore called into doubt. One logical action point from a full discussion about the non-disclosure of convictions by Bidders A & B is to ask the consultants to revisit the Gateway Review process and to conduct a "lessons learned" exercise for report to full council in January.

British Telecom – the Liverpool Experience

Elected members will know that Liverpool is heralded by many as an example of good practice in the delivery of public services through Strategic Partnerships with private companies. Edinburgh councillors and officials have visited Liverpool and BT are an established delivery partner in both cities.

On 2nd of March 2010 UNISON informed Cllr Dawe that:

> "In 2009 the Council revealed that it has not been paid a penny in profit from the flagship IT and call handling joint venture set up over eight years ago. The Council also recently revealed that it had spent over £223,000 with consultants investigating the LDL contract for more than a year. A probe of the contract was launched in 2008 after an external report described bills for the LDL deal as "opaque" and "lacking transparency". A Council report claims that Liverpool Direct has failed to provide "timely and accurate financial information" despite agreeing to do so. According to local press reports the Council and BT also seem unable to agree how much investment the City has made in a contract that costs £78m a year.
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> There is also a complete absence of performance information and data for the Liverpool City Council Joint Venture with Enterprise (the second contract cited in the report). There are claims of "greatly improved service" ..... "excellent systems" ....."improved management of risk" ...."significant investment" but none of these are sourced or independently verified.

Our observations were then confirmed on 30th June 2010 when an internal council report into the BT partnership in Liverpool revealed that

- The council has been overcharged by £19 million
- The cost of the contract could be cut by £10 million
- The council could save £23 million annually by taking the work in-house
- There were problems with transparency and governance

UNISON recommends that councillors review their thinking about the merit of Strategic Partnerships as a delivery option in light of these findings. The full report is available at http://blogs.liverpooldailypost.co.uk/dalestreetblues/2010/09/the-damning-report-into-liverp.html

The In-House Option

The trade unions have limited access to information about the progress of the in-house options because the work is protected by confidentiality agreements. However, we understand that all three proposals are in good shape. In addition to offering continuity with the councils existing service improvement plans, the evaluation process reveals that the in-house proposals capture much of the innovation on offer from the private options. No one is defending the status quo – the in-house bids are creative plans for the transformation of council services.

Significantly, the in-house options also deliver on price. Each of the in-house bids delivers savings against the current baseline and against the second budget review. UNISON understands that the in-house option on Corporate and Transactional Services (CATS) is streets ahead of the private option on quality, price and risk management.

The private companies bidding for CATS are being asked to re-submit their outline business plans because there are issues of transparency, clarity and risk. We say there is no need to spoon feed solutions to the private companies if the in-house option meets the council's demands. The prospectus was clear – the council wants step changes in quality and price. Only the in-house option has delivered.

Public Sector Reform

Privatisation makes no sense outside the boardrooms of the bidding companies. It certainly makes no sense to the people of Edinburgh. But it also rubs against the grain of wider Scottish public service policy where all roads lead to the Christie Review and an inevitable move to shared public services.

Geographical and service boundaries are set to tumble as the number of public bodies is radically reduced. Shared service initiatives are springing up across the country – everywhere except Edinburgh. Those who favour privatisation would have you believe that the ABM privatisation programme model will provide a discount warehouse from which Edinburgh can hawk cheap services to the wider public sector.

If that were the case then any interested parties would have put their name to the framework element of the OJEU advert. However, examination of the advert reveals that only Lothian Police and Lothian Fire and Rescue are interested in buying into the Edinburgh hub. And the likelihood is that both these organisations will be told to seek efficiencies by merging with neighbouring police and fire authorities rather than with councils.

So Edinburgh sits alone with a private product that no one wants to by. It is time for a change of plan.

Trade Union Engagement

Finally, elected members may recall that the trade unions were unhappy that we only received the PQQ data on a CD ROM while entering the city chambers on the day of the full council meeting on 24th June 2010.

The position has improved since that time. Although we have limited access to documentation we agree with the ABM programme team that the engagement meetings are an open and useful forum which engages with its business in a constructive fashion. Both parties have had occasion to re-arrange or cancel a small number of meetings but attendance rates are generally very high, the meetings are positive and constructive and the ABM team are supportive of the principles set out in the Section 52.

Unfortunately the Chief Executive's recommendations to council were written without any trade union input. We were unable to evaluate all the bids in the three allocated days. In order to avoid conflict around trade union engagement we agreed a scaled down proposal where bidders would provide anonymous summaries of the employment implications of their bids for the unions to comment on. Sadly that information was not forthcoming from the bidders and, consequently, the evaluations proceeded without trade union input. But we should stress that, so far as we understand, it was the bidders rather than the ABM programme team who failed to provide the required data.

Conclusion

The ABM privatisation programme is a high risk option. The lull in the CATS dialogue is a risk management issue and the grave misconduct of two bidders is further evidence of the point. It is true that the council requires new service delivery models which take efficiency to a new level. Only the in-house options meet that requirement. UNISON is therefore calling on members of the City Council to stop further work and expenditure on the competitive dialogue with a view to retaining services in-house.