

The City of Edinburgh Council

Alternative Business Models

Summary of UNISON Critique

Introduction

This is an outline summary of the main points in the UNISON critique of the ABM programme. See the full document in this pack for more details.

On 17 December 2009 the City of Edinburgh Council agreed to invite tenders from private companies for three Strategic Partnerships (SSDP) or Joint Ventures (JV) for Corporate and Transactional Services, Integrated Facilities Management and Environment Services.

It also decided to explore other areas in more detail including Cultural Services, Transport, and Legal Services. In total this could affect a fifth of the Council's workforce.

The main case for the Council's decision is that it needs to make significant cash releasing efficiency savings due to the growing financial pressures it faces. It aims to save 20%-30% in operating costs.

UNISON's view is that no credible evidence exists to support the assertions about savings.

No robust business case

The Council has decided to use the expensive Competitive Dialogue process to carry out the planned procurement. It is dedicating 20-25 staff to the process and will engage consultants with the costs estimated at £1 million but likely to be considerably more.

The Office of Government Commerce (OGC) advises that before embarking on Competitive Dialogue a contracting authority "should have a fully developed and robust business casewith clearly defined objectives."

However, to our knowledge, the Council has not produced an Outline

Business Case or carried out a detailed options appraisal.

In-house option ignored

Despite the undertaking "to report to members both the benefits of retaining services in-house and the disadvantages of outsourcing", and an Audit Commission Report recommendation, there is little evidence of any effort being put into in-house options.

Evidence fails to stand up to scrutiny

The main evidence justifying the proposal to create three strategic partnerships or joint ventures is

Audit Commission

Councils should only choose an SSP as a service delivery model if they can clearly demonstrate that it is more cost effective than 'other options to transform service delivery including reforming in-house provision'.

contained in the Chief Executive's report to the Council's Policy and Strategy Committee (PSC) meeting held on the 29 September 2009.

But the evidence fails to stand up to scrutiny and is generally based on assertions, unfounded assumptions, and examples from other authorities which in most cases show planned but as yet unachieved benefits, rather than verifiable benefits that have been realised.

Few of the 18 local authorities described as being comparable to Edinburgh actually are. Not least South Tyneside which is the smallest metropolitan borough in England.

More importantly, in the majority of the 18 contracts listed, there is no evidence of any benefits being

achieved. At least one has been severely criticised on quality, others have lost money and some services have had to be brought back in house. See the full critique for detailed examples.

Audit Commission Report – For Better or Worse

While Council reports refer to the positive aspects of the Audit Commission Report, they fail to point out that the Commission also found:-

- Examples of inadequate investment in client-side contract management, inappropriate risk allocation and poor performance management.
- That some councils relied unduly on the language or spirit of partnership, believing erroneously that contractors would pursue shared goals without incentives to do so (ie more money).
- That few councils had mastered the additional complexities of SSPs in a way that has unlocked additional benefits.

Audit Commission research shows that up to 70% of strategic partnerships in the private sector fail, with few meeting expectations.

It shows that three of the earliest councils to adopt SSPs have terminated their agreements before their term, incurring additional costs.

It adds that some SSPs have proved inflexible, hindering councils' ability to respond to changing external circumstances.

Crucially, the Report points to the need to consider 'other options to transform service delivery including reforming in-house provision'.

It concludes that councils 'should

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only choose an SSP if they can clearly demonstrate that it is more cost effective than other options and that they are well equipped to manage the large scale, long term contractual components of SSPs and the additional complexities.'

We have shown the Council has clearly failed to demonstrate that.

Care and Support Service

The Chief Executive announced that he would be carrying out a full "lessons learned exercise" from problems that arose in the Care and Support tendering.

UNISON supports this and will wish to contribute to the Review. In view of the Review's scope it would clearly be inappropriate to initiate the CD procedure for the three services proposed, particularly given their complexity and potential impact.

It should also be noted that in December 2009 a new Remedies Directive came into force and the impact of a future serious procurement breach could be catastrophic for the Council.

The OJEU advert

Other than a reference to TUPE the draft makes no reference to a variety of conditions that will apply to the contract. These include:

- the Local Government Scotland Act 2003 and associated guidance
- the specific guidance under section 52 of the Local Government Scotland Act 2003
- the Human Rights Act
- the Public Sector Equality Duties
- the Climate Change Act

Equalities

No preparatory work had been done before the advert went out. The narrow focus on Equality Impact Assessments, rather than the duty to promote equalities in the future, suggests a poorly developed understanding of how the public sector equality duties apply in a

procurement situation.

Climate Change Act

The Act places three binding obligations on the Council. In exercising its functions, the Council **MUST** act -

- (a) in the way best calculated to contribute to the delivery of the climate change targets;
- (b) in the way best calculated to help deliver any programme laid before the Scottish Parliament;
- (c) in a way that it considers is most sustainable.

• The projected savings from externalisation are based on projections from other authorities where actual returns have failed to meet inflated expectations.'

The omission of these requirements casts doubt on the rigour of the ABM process to date.

Given that all these conditions will have a direct impact on contract performance they must be embedded in the contract conditions, the dialogue process, the Gateway Review and the Award Criteria.

The omission of these conditions raises concern about the level of detailed preparation in the ABM programme.

TUPE, Section 52 Guidance, Pensions & Related Matters: Although the draft OJEU advert made reference to the application of TUPE this does not convey to private contractors an accurate sense of the workforce obligations associated with the ABM programme.

Local Government Scotland Act 2003: Imposes statutory Best Value and Equality duties and should have been given prominence in the advert.

OGC Gateway Review Process - Failure to follow

Office of Government Commerce Gateway Reviews 'deliver a 'peer

review', in which independent practitioners from outside the programme/project use their experience and expertise to examine the progress and likelihood of successful delivery of the programme or project.

They are used to provide a valuable additional perspective on the issues facing the internal team and an external challenge to the robustness of plans and processes'.

Gateway 0 is the strategic assessment

Gateway 1 confirms that the Business Case is robust.

The Council appears to recognise the value of going through the Gateway Review process BUT it does not appear to have gone through Gateways 0 and 1 (or indeed to have even developed an outline business case).

There are a number of key contract conditions specific to local authority service delivery which will only apply to private contractors when they are engaged in the delivery of public services.

Given that contractors are unfamiliar with these requirements it should have been essential that they were given due prominence in the OJEU Advert, prospectus and all contractual documentation.

Conclusion

UNISON has serious concerns that the difficulties associated with privatisation around the UK have been overlooked or concealed.

The council has developed a very selective presentation of the merits of privatisation.

The projected savings from externalisation are based on projections from other authorities where actual returns have failed to meet inflated expectations.

There is no hard evidence base underpinning the ABM project and the focus should be on delivering quality and accountable services in-house.