

UNISON Critique of Alternative Business Model Programme

February 2010

SUMMARY

We say that an OJEU advert inviting organisations to participate in a competitive dialogue should be preceded by various actions including:

- A detailed and robust Business Case based on accurate and impartial reporting of the likely benefits to be gained from procurement. For the reasons set out below we do not believe this condition has been met. In particular we allege that the reports underpinning the ABM programme lack detailed specification, place inappropriate reliance on POWERPOINT pictures and present a biased and misleading account of the experience of procurement in other local authorities
- An options appraisal in which the possible benefits of procurement options are compared to completed Service Improvement Plans. We remain concerned about the decision to run SIPs and option appraisal in parallel to the competitive dialogue.
- More detailed consideration of equalities, workforce, human rights and environment issues.

Given the procedural problems, the doubts about the evidence presented in support of projected savings and the lack of specification in the draft OJEU we repeat our call for more time to spent in preparatory work ahead of any decision to start competitive dialogue.

1. The Evidence

1.1. Case Studies

- 1.2. On the 29 September 2009 the PSC received what the Chief Executive later described at the crucial meeting of the full Council Meeting on the 17 December as *“a significant body of research on the application of alternative business models in other authorities, the cost savings achieved and possible advantages and disadvantages of their adoption”*¹
- 1.3. The Report to the PSC stated that the most common alternative business model used across the UK is the joint venture or strategic partnership approach. It claimed a range of “potential” benefits but provided none of the detailed evidence required to support this claim.
- 1.4. The case studies used were chosen *“as those most directly comparable to Edinburgh.”* The key information for members was set out in the section of the report that described the benefits achieved or planned for each of the examples listed.

¹ City of Edinburgh Council 17 December 2009 - Item 8.2 Report: Alternative Business Models Programme (para. 2.3)

1.5. Few of the authorities cited can be described as “comparable” to Edinburgh, but more importantly in the majority of the eighteen contracts listed in the report there is no evidence of any benefits being achieved. A brief response to the case study examples provided is set out below:

1.5.1. Bedfordshire County Council - the report fails to mention that the Bedfordshire County Council terminated its £250m contract with HBS as a result of poor performance after just 4 years. The Council paid HBS compensation of £6.75m. Over 500 staff were transferred back to the Council in 2005 following termination of the Strategic Partnership. The contract was dogged by complaints of poor performance and the Council made it clear that it had ended the agreement in order to “improve quality and performance and work towards our goal of excellence”.

It is ironic that the HBS / Bedfordshire CC Strategic Partnership was originally a Pathfinder and was hailed as a model that was delivering on 99% of its KPIs

1.5.2. Liverpool City Council – the report fails to mention any of the recent problems with the Liverpool Direct (LDL) contract run by BT. 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.

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.

1.5.3. Birmingham City Council – the report to members simply refers to a target saving of £1bn over 10 years but provides no information whatsoever on the performance of the contract and whether the savings are being achieved. Recent reports indicate that as much as £12m of savings from the Birmingham Transformation Programme for this financial year are at substantial risk of not being achieved. Some estimates put the figure higher.

1.5.4. Sheffield City Council – the seven year contract commenced just 12 months ago (January 2009) and there is no independent, verifiable performance data available. However there is evidence of slippage (in the Council’s MEC programme) which could have a significant impact on the savings anticipated.

1.5.5. South Tyneside Borough – is the smallest metropolitan borough in England so it hard to see how it can be described as “comparable with

Edinburgh". The 10 year SSDP with BT commenced in October 2008 and one of its principal targets was to create 750 jobs over the 10 years of the contract, with 250 created by the end of year one. It fell well short of its target in year one, creating just 146 jobs.

1.5.6. Essex County Council – the contract was awarded to IBM in December 2009 and there is unlikely to be any verifiable performance data for some time.

1.5.7. Somerset County Council – known as South West One (SW1) this JV was established in 2007 by the County Council, Taunton Deane District Council, Avon & Somerset Police, and IBM. The 10 year contract worth £585m has attracted considerable publicity and criticism. There have been multiple problems with the implementation of SAP.

Although over 30 public bodies in the regions signed the framework agreement in 2007 none have so far used it to obtain services from SW1.

In 2009 SW1 was criticised by the then Conservative opposition on the County Council and the local MP as “shambolic” and “secretive”. In 2009 one of the architects of SW1, Alan Jones the County Council’s Chief Executive, who was locked in a series of rows with the Council opposition and the local MP, left his post following criticism of the role he played. And in November Richard Jones the Chief Executive of South West One also announced that he was stepping down.

In 2009 SW1 was fined for the late filing of its accounts, and in November announced a pre tax loss of £2.5m. The same month the new County Council leader said he wanted an enquiry into the deal signed by his predecessor. And recently there have been complaints from police officers employed by the Avon & Somerset Constabulary that IBMs SAP system introduced as part of SW1 is not fit for purpose and is causing time to be wasted that could be better spent on the street policing communities.

1.5.8. Bridgend, Merthyr, Tdfil, and Rhondda Cynon Taf Borough Councils – this is a 15 year consultancy contract worth £75m. It is also hard to see how these authorities can be described as “directly comparable to Edinburgh”. This is a small joint venture that was only established in October 2008. It aims to achieve significant savings and is “expected” to create 130 new jobs over the next five years but there is no verifiable data available

1.5.9. Sefton Council – the Council awarded two contracts with effect from October 2008 and only limited performance data is available. However the Council faces a £25m deficit and the promised 500 new jobs have not yet materialised.

Capita Symonds – SSDP (10 years) Property and Highways Services

Arato Government Services – a 10 years contract to deliver Corporate & Transactional Services. Any profits from the contract will be shared by Arvato (80%) and East Riding Council (20%) – see below

1.5.10. Barrow-in-Furness Council – originally signed in 1994 the contract with Liberata has been extended to 2018. The report to members fails to mention that the Audit Commission gave the Council's Benefits Service the lowest possible rating when it was last inspected in 2009. In a damning report the service provided by Liberata was criticised for failing to deal promptly with claims; overall performance was falling behind that of other councils; the service was not designed around customer needs; has high comparative costs; and that the extension to the contract in 2005 was not subject to open competition nor supported by a robust business case and could not demonstrate value for money. The Audit Commission concluded that there had been no track record of improvement in the service over the past three years.

“The benefits service at Barrow-in-Furness is poor with poor prospects for improvement. The contract to deliver the Service has resulted in the creation of new jobs to the area but this is clouding some key performance issues in the Service and is a barrier to future improvement.”

Audit Commission Report: February 2009

1.5.11. Redcar & Cleveland Council – a 10 year Strategic Partnership for corporate and transactional services which was awarded in 2003 was terminated in 2006 and the services were returned back in-house. This decision followed a review that concluded that the contractor, Liberata was unable to achieve the cost savings required.

1.5.12. East Riding of Yorkshire – entered into a 10 year SSDP with Arvato for a range of corporate and transactional services in 2005. The PSC report to elected members' claims *“All performance targets met or exceeded since the partnership commenced.”* However in 2009 the company admitted that it had failed to hit its target to create 600 new full time jobs in the area within three years. It actually created just 176 jobs by the target date and as a result faced financial penalties. Although the size of penalties was not disclosed they are believed to be relatively small.

Verifiable performance figures for the contract have been difficult to obtain. In July 2009 the Council's Greater Prosperity Scrutiny Committee questioned the Arvato Director on the economic benefits of the SSDP. The Committee asked for further information on the company's performance and financial information but was told that this was outside its remit.

In 2008 the JVC won the contract to run Sefton Council's corporate and transactional services (see above) and East Riding Council will receive 20% of any profits.

1.5.13. Glasgow City Council – in 2008 entered into a 10 year £265m contract with Serco to deliver ICT and property services and to support service transformation. Jointly formed a LLP (ACCESS) to deliver target savings of £70m. It is too early to assess performance although the project has failed to win any contracts with other public service organisations and this will impact on the promised new jobs and any projected savings.

Target proceeds from the sale of property have also been hit as a result of a decline in property values.

2. Audit Commission Report – For Better or Worse

“It is more difficult to achieve benefits, or to know whether benefits are achieved, in multi-functional SSPs that encompass a range of services that are more difficult to specify. And many of the additional partnership benefits that are expected to materialise from SSPs have also been more difficult to realise, or to measure”

For Better or Worse: Value for Money in strategic service delivery partnerships
Audit Commission 2008

2.1. The Report to the PSC on the 29 September 2009 refers to the Audit Commission (AC) Report – ‘For Better or Worse’ – published in 2008. This reports research by the AC into the impact of SSDPs and the effectiveness of this route in producing efficiency gains for local authorities. The Audit Commission examined 14 SSDPs with individual contracts ranging in value from £50m to £425m. The report to members lists the following more positive claims in the report:

- The fourteen local authorities in their study expected cost savings of between 1% and 15% from their strategic partnerships;
- The local authorities collectively had received £100m from their service providers in infrastructure investment;
- The majority of these authorities believed that they were getting value for money from their strategic partnerships; and
- The authorities were positive about their experience of strategic partnerships, with most performance targets having been met or surpassed.

2.2. However members were not told that the Audit 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.
- That few councils had mastered the additional complexities of SSPs in a way that has unlocked additional benefits.

- 2.3.** Or the report's reference to serious drawbacks when SSPs do not succeed and that, according to the Audit Commissions research:
- Private sector experience suggests that 60 to 70 per cent of strategic partnership arrangements between companies fail, and few meet expectations
 - Three of the earliest councils to adopt SSPs have terminated their agreements before their term, incurring additional costs.
 - Even in continuing SSPs, purported benefits from economies of scale and transferred learning between sites have been slow to emerge.
 - Some SSPs have proved inflexible, hindering councils' ability to respond to changing external circumstances.
- 2.4.** The Audit Commission report said that the bundling of services can lead to its own set of problems.
- 2.5.** It also warned of the problems that could occur when councils are driven to use SSDP to access to capital investment. Whilst the longer the contract, the more affordable the pay back arrangements this does not necessarily provide value for money or flexibility for the council involved if it is locked into an SSP without a suitable 'break clause' to enable freedom from the contractual arrangements, without financial or other penalties being incurred.
- 2.6.** The AC report points to other options that can be employed to transform service delivery including reforming in-house provision and collaborative arrangements between public bodies. It concludes that 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 and that they are well equipped to manage the large scale, long term contractual components of SSPs, and the additional complexities.

3. Local Authorities Experience

- 3.1.** The following additional research findings were also reported to members in September 2009:
- 3.1.1.** It was reported that desk based research by the City Council was followed up with a series of face to face visits to councils that have adopted ABMs and that the key findings of this research were:
- Alternative service delivery vehicles working alongside the Council *"generally provides clearer lines of accountability and allows for a stronger focus for the customer"*

- ABMs were often the catalyst for *“significant positive culture change within services, including enhanced customer branding, rapid performance improvement, and increased employee engagement”*, and
 - Many staff who had transferred *“.... reported that they were significantly happier as they now had the resources required to do their jobs well.”*
- 3.2.** The councils and the contractors were not identified and no supportive information or evidence for these claims was provided.

4. Competitive Dialogue

- 4.1.** Competitive Dialogue (CD) is a relatively new procedure (2006) that is used for most complex procurements. It is an expensive process for both bidders and contracting authorities.
- 4.2.** The OGC advise that before embarking on CD contracting authorities should have *“a fully developed and robust business case, clearly defined objectives, a high degree of confidence about affordability, and have identified fully any other constraints or risks.”*
- 4.3.** It is important that contracting authorities are clear about their objectives as this will contribute to minimising the parties bid costs.
- 4.4.** Unfortunately the City Council has not produced an Outline Business Case or carried out a full options appraisal.
- 4.5.** The contracting authority is required as part of the process to produce a descriptive document for potential bidders. This will provide additional information to that contained in the OJEU notice.
- 4.6.** A Descriptive Document for the proposed SSDP for Corporate and Transactional Services is being prepared and UNISON has been provided with a copy of a DRAFT (v7). This makes it clear that the intention is to establish a SSDP or Joint Venture to take responsibility, from day one, for:
- Revenues and Benefits;
 - HR/Payroll;
 - Procure to Pay
 - Contact Centre
- 4.7.** The Document identifies that 690 staff are employed in these functions. In addition during the dialogue phase, the Council says it will wish to develop a specific plan and review process for the establishment of business cases to add other services. It anticipates that five organisations will be invited to participate in dialogue, gradually reducing to three or two. The Council aims through this new partnership to reduce operating costs by 20%-30%.
- 4.8.** Descriptive documents for the other two services are being prepared. The Council say during the CD phase they will continue to work on their existing internal improvement plans (in all areas of the Council).

- 4.9. The Council has no plans at this stage to consider and resource an in-house bid for CTS. There have been claims by some senior Council officers that the authority is proposing to use the CD procedure to appraise the options and to examine what the market has to offer, with the intention of developing parallel service improvement plans in order to keep services in-house. This would be very surprising and would almost certainly be an 'abuse of process' unless bidders had been very clearly warned in advance that this was the intention, and potentially the Council's preferred option.
- 4.10. A fully developed and robust OBC, including an options appraisal would have helped to clarify this.
- 4.11. To preserve the option of an in-house service improve plan the following text should appear in the OJEU advert

Objective criteria for choosing the limited number of candidates: Previous experience, resources, financial capacity and evidence of ability to comply with equality, environment and workforce requirements. Continued participation in the dialogue will be subject to successful assessment by way of a Gateway Review. The Gateway Review shall include independent external assessment of the applicant's proposals in addition to an assessment on in-house Service Improvement Plans. The contracting authority reserves the right to terminate the dialogue at any stage if the applicants or tendering organisation are unable to deliver a step change from in-house provision in terms of both improved quality and price.

IV.2.1) Award criteria (please tick the relevant box(es)) B) The most economically advantageous tender in terms of: B2) the criteria as stated in the specifications, in the invitation to tender or to negotiate or in the descriptive document. Those specifications will include compliance with the equality, environment and workforce criteria. The contracting authority reserves the right to terminate the dialogue at any stage if the applicants or tendering organisation are unable to deliver a step change from in-house provision in terms of both improved quality and price.

5. Care and Support Service

- 5.1. A special meeting of the Finances and Resources Committee was held on the 4 February 2010 to consider a review of Care and Support Services procurement and in particular a recent assignment carried out by Deloitte for the Council. This dealt with the failure of some of those managing the procurement process to fully adhere to the intended processes. As a result the Chief Executive announced that he would be carrying out a full 'lessons learned' exercise" to ensure that the council is well placed to undertake future procurement projects *"since this approach will continue to play a major role in securing the financial efficiencies required in the coming months and years."* His report will be presented in the summer.
- 5.2. This is a sensible and prudent decision and UNISON will wish to contribute to the Review. In view of the Reviews scope it would clearly be

inappropriate to initiate the CD procedure for the three services proposed, particularly given their complexity and potential impact.

- 5.3.** It should also be noted that in December 2009 a new Remedies Directive came into force and this has been implemented in Scotland. This comes at a time of an ever increasing workload for the Courts in resolving procurement disputes. The Directive makes a number of changes to the procurement regime and the consequences in the future of a serious procurement breach could be catastrophic for the Council

6. The Draft OJEU Advert

- 6.1** UNISON has received a draft OJEU advert for consideration. 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

- 6.2** While these provisions have limited direct impact on the commercial business of private companies, they have direct application where a private company performs a public service activity under contract.

- 6.3** Given that 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.

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

7.0 Equalities Issues

- 7.1** The letter of 19th February states that the council regards equality as an important issue, that contract documentation will make proper provision for equalities that the council intends to apply its equality policies and to apply equality impact assessments to all parts of the ABM programme. These statements give cause for concern.

- 7.2** The 19th February letter was a response to a request for copies of any documents setting out consideration of equality matters under the ABM programme. The response tends to indicate that nothing has been done.

- 7.3** The 19th February letter states that all aspects of the ABM programme will be subject to equality impact assessments. That simply cannot be the case because the ABM programme is well advanced and OJEU adverts are about to be placed at a time when equality issues have received no active consideration.

- 7.4** The focus on equality impact assessments suggests a poorly developed understanding of how the public sector equality duties apply in a procurement situation. While impact assessments are important, the question is not solely whether the procurement exercise has a justifiable adverse impact on equalities. The more fundamental question is how does the council continue to promote equalities and the elimination of discrimination when a function or functions are delivered on its behalf by a private contractor.
- 7.5** Where a contractor is carrying out a public function on behalf of a public authority, the legal liability for the equality duties in relation to that function rests with both the contracting authority and the contractor. This means that public authorities will need to build relevant equality considerations into the procurement process, to ensure that all the public authority's functions meet the requirements of the statutory duty, regardless of who is carrying them out.
- 7.6** Compliance with equality considerations will therefore form part of the consideration of service reviews, service improvement plans, the outline business case, options appraisal, the prospectus, the OJEU advert, the definition of selection criteria, the Gateway Review, the award criteria, the final contract, and mechanisms for monitoring and review.

8.0 The Climate Change (Scotland) Act 2009

- 8.1** The Climate Change Scotland Act sets various targets for a reduction in emissions and it empowers Scottish Ministers to set further targets and adopt a variety of measures pursuant to the reduction in emissions.
- 8.2** 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.
- 8.3** There are clear implications for the ABM programme. In designing and developing the programme the ABM team must build in specifications, controls and penalties which enable the council to manage private contractors in a manner that is compliant with the Climate Change Act 2009.
- 8.4** The Climate Change obligations must be therefore embedded in the OJEU advert, prospectus and all related contractual documents. The capacity to meet Climate Change targets and to monitor and evaluate performance must form part of the objective selection criteria, Gateway Review and Award Criteria.
- 8.5** The omission of these requirements casts doubt on the rigour of the ABM process to date.

9.0 TUPE, Section 52 Guidance, Pensions & Related Matters

- 9.1** Although the draft OJEU makes 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.
- 9.2** Whether TUPE applies will depend on the existence of a relevant transfer. However there is the possible option of staff secondment as an alternative or supplementary approach to workforce issues. This does not feature in the OJEU advert or the prospectus. This omission risks curtailing the options open to the contracting authority.
- 9.4** Whether TUPE applies or not the Section 52 guidance on managing workforce issues will apply and given the differences in approach from the approach in England and Wales it is essential that adherence to section 52 requirements is established as a binding obligation from the outset.

10.0 Local Government Scotland Act 2003

- 10.1** The Scottish Best Value regime is unique and it has a firm statutory base in the 2003 Act.
- 10.2** In addition to the statutory definition of Best Value there is detailed Ministerial guidance on the delivery of Best Value.
- 10.3** In addition to the general public sector equality duties which derive from Westminster legislation there are equality duties embedded in the 2003 Act which go beyond the obligations set down in UK law.
- 10.4** These requirements will have a direct bearing on the performance of any procurement contract and must therefore feature in the OJEU, Prospectus, contract documentation, selection criteria, Gateway Review and Award Criteria.

11.0 Conclusion

- 11.1** 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.
- 11.2** Considerable doubt remains about the appropriateness of running service Improvement plans in parallel with three complex Competitive Dialogue processes. We remain of the view that SIPs, options appraisals and a detailed business case are essential pre-requisites for a competitive dialogue process.
- 11.3** 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 is essential that they are given due prominence in the OJEU Advert, prospectus and all contractual documentation.

Footnote:

Paragraphs 5.2 and 9.1(ii) of the ABM Report 17 December 2009 refers to a Gateway process and includes an explanatory diagram.

Details of the Office of Government Commerce Gateway Review Process can be found at www.ogc.gov.uk. The following are relevant extracts:

"OGC 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 - "this is a programme-only Review that sets the programme in the wider policy or corporate context. This Review investigates the direction and planned outcomes of the programme, together with the progress of its constituent projects. It can be applied to any type of programme, including policy and organisational change. The Review is repeated throughout the life of the programme from start-up to closure; an early OGC Gateway Review 0 is particularly valuable as it helps to confirm that the way forward is achievable, before plans have been finalised."

Gateway 1- "Confirms that the Business Case is robust – that is, in principle it meets business need, is affordable, achievable, with appropriate options explored and likely to achieve value for money"

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