

North Tyneside Council

Report to Council

Date: 24 January 2013

ITEM 11

Title: Risk Management issues associated with the Business and Technical Packages

Portfolio(s): Elected Mayor
Finance
Community and Regulatory Services

Cabinet Member(s): Mrs Linda Arkley
Cllr Judith Wallace
Cllr George Westwater

Report from Directorate: Finance and Resources

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Strategic Director Finance & Resources

Wards affected: All

PART 1

1.1 Purpose:

As a result of a Council motion agreed on 26 July 2012, Council considered a report on the risks of outsourcing at its meeting on 27 September 2012. At the meeting, Council requested that a further report be submitted back to full Council detailing the risk management implications associated with the business and technical packages. The report was deferred on 25 October 2012 and 29 November 2012 to the next meeting of the Council.

The purpose of this report is to:

- (a) Detail the risk management implications associated with the packages; and
- (b) Set out the documentation considered by Cabinet in the decision making process relating to the procurement process for the two packages.

1.2 Recommendation:

It is recommended that Council:

- (1) Note the approach to risk management taken during the procurement of the packages; and
- (2) Note the planned approach to the ongoing management of risk during the implementation of the packages.

1.3 Forward Plan:

This item does not appear on the current forward plan but is submitted in compliance with the request of Council at the Council meeting held on 27 September 2012.

1.4 Council Plan and Policy Framework

This report relates to the 2012-2015 Council Strategic Plan and the Change, Efficiency & Improvement Programme as part of the 2012/13 Budget Envelope.

1.5 Information:

Background

- 1.5.1 At its meeting on 13 August 2012, Cabinet agreed to appoint preferred bidders for the Business and Technical packages of services. Cabinet also noted the Council motion of 26 July 2012 and requested that a report on the risks of outsourcing be submitted to the Council meeting on 27 September 2012.
- 1.5.2 At the September meeting Council requested 'that a further report be submitted back to full Council detailing the risk management implications associated with the business and technical packages; the documentation considered by Cabinet in the decision making process relating to the procurement process for the two packages; and the implications to the Council of decisions being taken without the full documentation being available to decision makers'.
- 1.5.3 It is not accepted that there was a failure of the decision makers to consider the relevant risks. The Council's approach to risk management and specifically the risks of the Change Efficiency and Improvement (CEI) Programme and the packages was set out in the Cabinet Report of 12 March 2012. This is attached at appendix A.
- 1.5.4 Decisions made by local authorities may be open to challenge, for instance by way of judicial review, if they are considered to be unreasonable. This could be the case, for example, whether there is an absence of consideration of all material matters, such as in relation to any risks arising. It is apparent from the information provided in this report, as well as in the supplementary report containing exempt information, that in this instance information relating to risk has been provided and considered throughout the process. Any challenge made in relation to judicial review must be made within 3 months of the decision being taken, this timescale has now elapsed.
- 1.5.5 Decisions to award contracts may be challenged by bidders in the process or any economic operator. This risk has been mitigated as all bidders within the process have been notified of the outcome of the procurement process. Also a contract award notice has been published in the OJEU. Any potential claim for breach of the regulations and subsequent damages must be made within 30 days of the date of knowledge of the breach. As the Council have fully notified bidders and the transparent contract award notice this risk is mitigated.
- 1.5.6 The Cabinet Report of 13 August 2012 which sought the decision to implement the packages did not include the full Risk Management Plan as this is an officer responsibility and was consistent with the approach taken for similar projects. The Council's Corporate Risk Register is considered bi-annually at Senior Leadership Team (SLT), Cabinet, and Audit Committee.

Risk management approach during procurement of the packages

- 1.5.7 A Procurement Risk Management Plan has been implemented throughout the delivery of the Project. This has been maintained and updated by the Project Team and the Project Sponsors throughout the process in order to respond to new risks as they arise and effectively plan a response. The Plan as at the date of the 13 August 2012 Cabinet decision is attached at appendix B.
- 1.5.8 The reporting of these risks during the procurement process has been via the Council's CEI Programme governance arrangements. The CEI Theme B Board monitors this project and the risks associated with it. As Cabinet Member for Finance, Deputy Mayor Councillor Wallace is a member of this Board with the following remit extracted from the Board's terms of reference:-
- a) Provide leadership support to the Theme Sponsor on behalf of Cabinet;
 - b) Constructively challenge the Business Plans and options being considered by the Theme;
 - c) Assist the Board to track the benefits of the Theme;
 - d) Assist the Theme Sponsor to remove barriers to progress, particularly those of a political nature;
 - e) Act as a measure of quality control and conscience.
- 1.5.9 The Board has received monthly progress reports before, during, and after the procurement exercise and these include sections on risks and issues. The Board also reviewed the full risk management plan at its meeting on 8 March 2012 ahead of bidders submitting their first outline solutions, and again on 4 October 2012 to review and close down any risks at the end of the procurement process.
- 1.5.10 Throughout the procurement process, the Mayor has received weekly updates from the Chief Executive and the Cabinet Member for Finance has received fortnightly updates from the Strategic Director of Finance and Resources in order to understand the key challenges of the procurement exercise and the potential risks to a successful outcome for the Council. The Deputy Mayor and the Strategic Director of Finance and Resources discussed a detailed packages update on 25 January, 16 May, 21 June, 6 July, 24 July, 17 September, 2 October, and 11 October 2012.
- 1.5.11 As part of the governance arrangements for the CEI Programme, all Cabinet members attend the CEIP Corporate Governance Board which oversees the entire programme. Both packages have been discussed at these meetings during the procurement process on 11 January, 8 February, 19 March, 11 April, 15 May, 13 June, 11 July, and 8 August 2012.
- 1.5.12 In taking its final decision on 13 August 2012, Cabinet had the following information within the reports to assist its decision:-
- a) The main contracting terms that protect the Council against risk. These are attached at appendix C;
 - b) Summary of the comments and issues raised by the Overview and Scrutiny Committee on 6 August 2012 in relation to the Business and Technical procurement exercise.

Risk Management approach during the implementation of the packages

1.5.13 The procurement process is now complete and the contracts signed for both Partnerships. The Project Team and Sponsors have now developed Implementation Risk Management Plans for each Partnership in accordance with the Council's Risk Management approach referred to at 1.5.3 and 1.5.6. This is a joint approach that has:-

- a) Carried forward any live or residual risks documented in the Procurement Risk Management Plan; and
- b) Pulled through the strategic and operational risks currently documented within each of the package service areas. These have been assessed and depending on their nature, either fall within the control of the Council retained client functions or are being transferred to our new partners as ongoing operational risks to be managed by them. Some risks will be jointly owned between the Council and the partners to work together to manage.

The risks associated with business change and improvements planned by both partners will also start to be documented as the implementation of the packages progresses and each business case is considered. This will be in accordance with the Council's Risk Management Approach referred to at 1.5.3 and 1.5.5.

Risk Management through the Partnership Governance Frameworks

1.5.14 Formal governance arrangements are now in place for each partnership to ensure that they are managed effectively. The Operational Partnering Boards (OPBs) monitor risks and issues and escalate any serious matters to the Strategic Partnering Boards (SPBs). Elected Members are represented on the SPBs. For the Business Partnership, this is the Mayor and the Cabinet Member for Finance; for the Technical Partnership, this is the Mayor and the Cabinet Member for Community and Regulatory Services.

Ongoing Member involvement

1.5.15 Member workshop(s) will be arranged to explain the contractual arrangements and the key performance indicators (KPIs) as agreed by Cabinet on 13 August 2012 in response to the recommendations of Overview and Scrutiny Committee made on 6 August 2012. In line with Members wishes, these are being arranged for January 2013.

1.5.16 Both partners have indicated to the political groups they have met that they intend to make themselves available to meet with individual members or groups as required.

1.5.17 If the Overview and Scrutiny Committee wish to receive reports on performance as part of its general responsibility, quarterly performance reports submitted to the Strategic Partnering Boards can be made available.

1.6 Decision options:

1.6.1 Option 1:

Council could accept the recommendation listed at 1.2.

1.6.2 Option 2:

Council could offer further comments to the Cabinet it feels are appropriate.

1.7 Reasons for recommended option:

Option 1 is the recommended option in line with the request from Council on 27 September 2012. The report indicates that the Council's corporate risk management approach has been followed at all times through the procurement and no further action is required.

1.8 Appendices:

Appendix A – Corporate Risk Management Summary Report, Cabinet 12 March 2012
Appendix B – Procurement Risk Management Plan
Appendix C – Main contracting terms

1.9 Contact officers:

Katy Middleton, Corporate Manager (Commercial Team), tel. 643 5854
Sarah Heslop, Manager Commercial Team (Legal Services), tel. 643 5456
Vicki Dixon, Senior Manager (Financial Strategy and Planning), tel. 643 5723

1.10 Background information:

The following background papers have been used in the compilation of this report and are available at the office of the author:

- (1) Delivering Change, Efficiency and Improvement: A four year plan, Cabinet 7 March 2011.
- (2) Change, Efficiency and Improvement Programme, Cabinet 12 September 2011.
- (3) Change Efficiency & Improvement (CEI) Programme – Procurement of Business and Technical Services, Cabinet report dated 14 November 2011.
- (4) Risks of Outsourcing Report, Council 27 September 2012.

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There are no direct financial implications of the recommended option.

2.2 Legal

The legal implications are set out in the body of the report.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

The project's approach to risk has been managed by the Project Team and the Project Sponsors. The Risk Log has also been reported to the Change Efficiency and Improvement (CEI) Theme B Board during the procurement process.

2.3.2 External Consultation/Engagement

No external consultation or engagement has been undertaken in relation to the compilation of this report.

2.4 Human rights

There are no direct implications of the recommended option under the Human Rights Act 1998.

2.5 Equalities and diversity

There are no direct implications of the recommended option in respect of equalities or diversity.

2.6 Risk management

There are no direct risk implications of the recommended option.

2.7 Crime and disorder

There are no direct implications of the recommended option in respect of crime and disorder.

2.8 Environment and sustainability

There are no direct implications of the recommended option in respect of environment and sustainability.

PART 3 - SIGN OFF

- Strategic Director(s)
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Strategic Manager, Policy and Partnerships