

## **Checks and balances within the partnership contractual arrangements**

The main contracting terms that protect the Council are set out in the Cabinet Report of 13 August 2012. These are summarised below:-

1. Term – the contract is for a term of 10 years, the Council will be automatically obliged to extend the contracts by a further 5 years should the Partners continue to provide value for money, meet the Collective Partnership Targets and there have been no significant key performance indicator failures or material defaults under the terms of the contract. A significant KPI failure would arise where three or more deductions occurred in the two years prior to the decision to extend the contract.
2. Monitoring – The Project team have established 3 levels of monitoring the partnership through Collective Partnership Targets, Key Performance Indicators and Performance Indicators.
  - a. The Collective Partnership Targets link to the partnership objectives agreed by Cabinet. Monitoring of these targets will be carried out on an annual basis to ensure the Partner is meeting their contractual obligations. Any failure of the Partner to deliver the Collective Partnership Targets in accordance with the contractual arrangements may be deemed a breach of contract on the part of the Partner and the Council may seek to rectify using the contractual remedies available. Remedies available to the Council will include removal of exclusivity to the Partner or at the extreme termination of the contract.
  - b. A suite of Key Performance Indicators (KPIs) have been agreed with bidders, the KPIs were developed utilising in-house information as to the current performance levels, national benchmarking and intelligence from other local authorities and reflect current national and local policy. Failure to achieve KPI's will attract a performance deduction.
  - c. The Partners will also provide monitoring information against Performance Indicators (PIs) as agreed during the dialogue process. The PIs are based on existing monitoring arrangements to senior management.
  - d. Where the Council do not currently measure the KPI targets this will be subject to a baselining exercise. This will take place from contract commencement until 31 March 2013 to ensure that the targets imposed are robust.
  - e. As referred to above the KPIs reflect current local and national policy. Local policy will be determined by either the Cabinet or Council depending on where the functional responsibility lies, but at all times what is being delivered is a matter for the body with the functional responsibility to determine. How the service is delivered is a matter for the Partners as the KPIs are outcome based and do not determine the manner in which the service is delivered.

3. Review – an annual review will be undertaken by the Strategic Partnership Board to review performance of the contracts, agree the business plan for the following year, review KPIs and PIs and to ensure that the Partners are achieving the Collective Partnership Targets. This will ensure that the contractual targets remain relevant. A more robust review of the partnership will take place in year 5 of the contract, the primary aim will be to review the services which are being delivered under the contracts and review the Collective Partnership targets.
4. Governance – the Partnerships shall be managed on a day to day basis by the Operational Partnership Boards. These will consist of Partner employees and also the retained client. These will be governed by the Strategic Partnership Boards and these will be responsible for setting and reviewing the strategic objectives and targets for the Partnerships. The Elected Mayor and appropriate Cabinet Member will be members of the Strategic Partnering Board. Scrutiny of the contract outcomes will continue to be available to be examined and challenged by the Council's overview and scrutiny arrangements. The Partnership Boards will also consider any new projects to be delivered by the partnerships and how these are managed through the change control procedure. A training needs analysis is underway for client retained staff to ensure that they have the skills to effectively manage these contracts.
5. Commitments to local employment – the contract as drafted requires Bidders to submit solutions for meeting the Collective Partnership Targets, linked to the Council's key objectives of growth opportunities. Bidders solutions were to describe how many jobs would be created in the Borough and how this would be achieved.
6. Staff – the Business Package provides that approximately 420 employees will transfer to the Partner. The Technical Package has approximately 335 employees. Further, the Technical Package has 58 full time equivalent employees who will remain in the employment of the Council, however, seconded to the successful Bidder to enable the Council to fulfil its statutory duties.
7. Statutory Functions - the Council has a scheme of delegation in place delegating the Council's statutory functions to Council officers and this approach will continue. The Technical Package has the largest number of statutory functions, such as planning, licensing and environmental health, which officers discharge on behalf of the Council. To preserve the delivery of these statutory functions, Bidders were asked to model on the secondment basis referred to above. If, at any point in the future, changes to the statutory framework occur it is possible that those officers will TUPE transfer to the successful Partner.
8. Pensions - it was a requirement that the Partner obtained Admitted Body Status in order to protect the employees pensions. An actuarial valuation was carried out and this proposed an increased rate to the employer's rate (of the successful Partner). The Bidders were requested to factor Pensions costs into their financial model. As a valuation of the employer's pensions contributions is made every 3 years this amount may vary over time. The Council requested that Bidders factor

in a highest and lowest limit of +/-3% on the valuation sum. At the end of the contract there may be an exit liability on the Council and so Bidders were asked for their proposals as to how the exit liability could be managed. In addition, all Bidders were required to put in place a bond to cover any liabilities of the Partner that may arise as required by the Tyne and Wear Pension Fund.

9. Value for Money – the Council required the Partner to show value for money throughout the term of the contract, a benchmarking test against other providers will be undertaken in years 4, 8 and 12 of the contract. This is a robust mechanism to ensure that the contract price is still valid and comparable in a similar market place. The Council will request that a benchmarking test is undertaken at the identified points in the contract and also is required when the Partner undertakes a new project. This will give transparency as to overhead costs, rates and/or profit. A target range of costs will be provided, whether this be local or national targets for comparable services, and the Partner must always remain within this tolerance at the testing points. Failure to do so may result in the Council withdrawing exclusivity or terminating the contract.
10. Performance - a robust payment and performance mechanism will be in place. Each Workstream contains a number of Key Performance Indicators (KPIs) which set out the area to be measured, the Expected level of performance at which the full payment attached to that KPI will be passed to the Partner, and a Minimum level of performance, below which no payment will be made to the Partner. Of the total payment due to a Partner, an amount is classed as “at risk” on the basis of performance. All Bidders have accepted a value of 35% at risk, which is considered to be a good value with which to motivate levels of performance.
11. Supply Chain – the Council cannot currently procure local providers to deliver services as this is contrary to EU Treaty principles of transparency and openness. The Procurement rules only apply to Public Bodies therefore any private sector supplier can source its own supply chain which may in turn assist local businesses. Incorporating social issues such as supporting the local economy can only be used as evaluation criteria where they are directly linked to the subject of the contract. Social issues, such as job creation and protection, were incorporated as part of the contractual obligations with which the successful Partner must comply.
12. Buy Back – to ensure continuity of services there are a number of areas which the Business Package are to provide to the Technical Package, this includes ICT, financial support and HR functions. This support is to be provided to the Technical Partner until 31 March 2015. The Council is to be indemnified for any failure of the Business Partner. Bidders have also provided details of additional services which the Council may choose to provide to the successful Partner. The officer team’s assessment of overheads has taken into account findings from previous contractual negotiations. If buy back arrangements do not extend beyond the initial period, the Council will retain sufficient budgets to cover any remaining/fixed costs associated with those services. Officers are therefore confident that there will not be any “overhanging overhead” issues arising.

13. Licence – a licence over areas at Quadrant is agreed with Bidders. Further, the Bidders may in future seek to take additional space within Council buildings to maximise efficiencies.
14. Assets - which are used in delivery of the services will transfer to the Partner at the commencement of the contract for a nominal value. A record of assets used by the successful Partner will be maintained throughout the lifetime of the contract and returned at the end of the contract. In relation to the Technical Package it is envisaged 44 fleet vehicles will transfer to the Partner. Bidders were asked to provide a detailed refresh and renew programme in relation to the fleet.
15. Winter maintenance services - will transfer to the Partner however given the commencement date of the contract the Council will retain responsibility for the winter maintenance in 2012.
16. Termination – ultimately, termination of the contracts by the Council may occur in the following ways:-
  - a) Termination at will – the Council may terminate the Contract at will however this option can only be exercised after an initial period, this ranges from 3 to 5 years as proposed by the bidders. The actual cost of termination would depend on when in the term of the contract the Council seeks to exercise this option.
  - b) Termination for default - the Council may terminate the agreement should the Bidder fail to perform at any point during the contract. Performance deductions will be made prior to any contractual remedy applying. The Council may provide the Partner with an opportunity to remedy the default prior to termination. However if the Contractor has materially defaulted under the terms of the contract, the Council has the option to terminate the agreement without proceeding with such a default notice. The Partner will have exclusivity to provide the services detailed within the Business and Technical Packages, however any performance failure may mean that exclusivity is withdrawn and an alternative delivery model may be employed to ensure the services are continually delivered to a high standard. The successful Partner shall indemnify the Council for any increase in costs due to their failure to perform.
  - c) Termination on benchmarking. At year 8 a benchmarking test will be carried out, should the Partner prove not to provide value for money the Council shall not be obliged to extend the contract by a further 5 years. This will also be the case should the partner have failed to meet the Collective Partnership Targets, KPIs or if the Council has served a material default notice on the Partner.