

Overview and Scrutiny Committee - Extraordinary

6 August 2012

Present: Councillor C B Pickard (Chair)
Councillors J M Allan, P Brooks, B Burdis,
C Gambling, M Huscroft, D McGarr, D Sarin
M Rankin, J Stirling and T Mulvenna.

Church Representative - Rev M Vine

OV18/08/12 Apologies

Apologies for absence were received from Councillors A Austin, R Glindon, I Grayson, J McLaughlin and N Redfearn

OV19/08/12 Substitute Members

Pursuant to the Council's constitution the appointment of the following substitute Members was reported:-

Councillor P Brooks for Councillor I Grayson
Councillor B Burdis for Councillor N Redfearn
Councillor T Mulvenna for Councillor R Glindon

OV20/08/12 Declarations of Interest

The following declaration of interest was made:

Councillor M Rankin – non-registerable interest – relative employed for North Tyneside Council and was directly affected by the proposal.

OV21/08/12 Exclusion Resolution

RESOLVED that under Section 100A(4) of the Local Government Act 1972 (as amended) and having applied a public interest test as defined in Part 2 of Schedule 12A of the Act, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 and 4 of Part 1 of Schedule 12A to the Act.

OV22/08/12 Change, Efficiency and Improvement Programme – Business and Technical Packages Procurement – Selection of Preferred Bidders

Prior to the presentation of the report, Councillor J Allan stated that the Committee had not been made aware of the decision made to the Option taken to appoint the preferred bidder by the Cabinet at its meeting on 2 August 2012. He stated that it was the committee's expectation that a report should have been submitted detailing the discussion and decision made by Cabinet. He also raised concerns that the decision of Cabinet was in the public domain.

The Chief Executive stated that no disclosure of the chosen bidders had been made and he believed any views being suggested were only speculation. He stated that the Cabinet had not been told who bidder 1 or 2 were but minded to agree to Option 1(a) as detailed in the report. The final decision would be made at the Cabinet meeting 13 August following consideration of the views of Overview and Scrutiny Committee.

The Chair stated that the Committee had received no indication that Cabinet had fully considered the Council Motion of 26 July 2012 to delay the appointment of bidders or the reasons why it should be rejected.

The Chief Executive stated that the report detailed the financial impact a delay in appointing a preferred bidder would have to the Council.

The Chair asked that the concerns and disappointment that Cabinet had not fully considered the Council Motion of 26 July and reported back to Overview and Scrutiny Committee its views and this be reported to the next Cabinet and Council meetings.

The Chief Executive presented the report considered by Cabinet on the 2 August 2012 and detailed the procurement process undertaken for the Business and Technical packages, the 'Final Solutions' received in the procurement of partner organisations and the outcome of the evaluation that indicated whether the Final Solutions received met the contract award criteria specified by the Council.

The Committee was reminded that Cabinet had agreed on 13 February 2012 to move forward with a Shared Service arrangement for Internal Audit and Risk Management with Northumberland County Council, which had been piloted during 2011/12. Whilst this would achieve the required level of savings for this service area, the other services being looked at for sharing (eg Finance, Revenue and Benefit Services) were found to not achieve the significant levels of savings the Council required through its CEI Programme. In addition, the Council had examined the implications of an in-house solution which had been shared with all Members in December 2011. This was felt to be an unsustainable option in terms of service delivery. The decision had therefore been taken to move to a Partnership procurement exercise to test the market.

At its meeting on 14 November 2011, Cabinet approved to undertake a procurement exercise to secure the provision of services on both the Business and Technical Packages.

The project had the following objectives:

- Investment in the services affected by the Project;
- Job protection for the existing workforce;
- Growth opportunities for the services in a wider marketplace leading to the creation of additional jobs within the Borough;
- Financial efficiencies of at least £4.9 million within the first three years of the partnerships (£2.2 million from the Business Package and £2.7 million from the Technical Package) and ongoing efficiencies thereafter subject to future financial pressures;
- Efficiencies in relation to the Council's use of office accommodation by the co-location of a partner provider within the Borough; and,
- Improved performance of the services.

The report had also requested that Cabinet consider the Council Motion, agreed on 26 July 2012 (Minute No.C50/07/12):

'This motion calls on the Cabinet to delay the outsourcing process. The reason to request the delay is that the decision will affect service delivery for the next 10 -15 years and as such the Mayor should allow the full council to consider and debate a detailed analysis of the whole risks of outsourcing. It will allow more time to research the potential Bidders and identify any risks, but it also allows the Cabinet the opportunity to assess any potential in-house options which will allow the savings to be made.'

The report detailed four Options for consideration:

Option 1(a) – Appoint Bidder 2 for the Business Package and Bidder 2 for the Technical Package being appointed as the Council's "Preferred Bidder" and final adjustments in relation to the contract documentation being undertaken leading to financial close and contract mobilisation. This would include resolution of all outstanding points as identified in the Preferred Bidder Letter of Appointment, entering into of formal contractual relationships including a long term Partnering Agreement.

This would also mean the remaining Bidders would be advised they had not been appointed as Preferred Bidder and no further contract development would be undertaken with them unless commercial and financial close with the Preferred Bidder could not be achieved in accordance with the Council's requirements. The remaining Bidders would be appointed as "Reserve Bidders" and further contract development would be undertaken with them should commercial and financial close not be achieved with the Preferred Bidder in accordance with the Council's requirements.

This option would allow the Project to progress in line with the current timetable and resource commitments.

Option 1b – Appoint Bidder 2 for the Business Package and Bidder 2 for the Technical Package being appointed as the Council's "Preferred Bidder" and final adjustments in relation to the contract documentation being undertaken leading to financial close and contract mobilisation. This would include resolution of all outstanding points as identified in the Preferred Bidder Letter of Appointment, entering into of formal contractual relationships including a long term Partnering Agreement.

This would also mean the remaining Bidders would be advised they had not been appointed as Preferred Bidder and no further contract development would be undertaken with them. The remaining Bidders would not be appointed as "Reserve Bidders".

This option would allow the Project to progress in line with the current timetable and resource commitments; however it was not the recommended option.

Option 2 – Defer the decision and specify any additional actions Cabinet required the Project Team to undertake prior to Cabinet's approval of the selection of Preferred Bidder.

This option was likely to extend the Project procurement timetable, delaying the intended Contract start date, provisionally set for October 2012, incurring additional project costs and not achieving the in year project savings. This option would be in line with the request from Council on the 26 July 2012. However any lengthy delay may result in bidders withdrawing from the process and/or legally challenging on the basis that they had a legitimate expectation that contracts would be awarded within the timescales set by the Council.

Option 3 – Instruct the Project Team to abort the current OJEU procedure and to search for other or new potential providers by issuing a new/revised OJEU notice and requesting new expressions of interest.

This option had similar implications as option 2 above with greater risk of claims by bidders for abortive costs.

Option 4 – Abort the Business and Technical Packages in their entirety.

All costs incurred so far would be written off and negotiations over settlement fees with the strategic advisers would be needed. There would be significant risks of abortive costs claims by the bidders above. Aborting the process may result in bidders legally challenging this decision on the basis that they had a legitimate expectation that contracts would be awarded within the timescales set by the Council.

Under this option, alternative in-house improvements would need to be made to the services in order to meet the current budget. This would require significant investment from the Council, in particular in ICT, to drive out service efficiencies.

Option 1(a) was the recommended option.

The Strategic Director of Finance and Resources and Chief Executive detailed the financial scope based on the assumption of a 15 year relationship for services for both the business and technical packages and the legal position of the Council to enter in to contracts for services to deliver council services.

Appended to the report were a number of appendices detailing the invitation to submit final solution and the evaluation of final tender submissions for both business and technical bids.

A member asked to the level of discussion that occurred at the Cabinet meeting of 2 August 2012 before it decided that it was minded to agree with option 1(a) in the report.

The Chief Executive stated that's a number of clarification questions were asked and the nature of those questions would be circulated to members for their information.

Members raised some concerns and asked for clarification on a number of areas of the report namely;

- a) The workstreams included in the Business and Technical packages.
- b) The number of expressions of interest and the reasons why so high.
- c) Services that matter most to residents.
- d) Contracting Structure.
- e) Key performance indicators.
- f) Value for money.
- g) Availability of performance information.
- h) Implications of termination of the contracts.
- i) Assets to be transferred.
- j) Project risk register.
- k) Secondment of Finance.
- l) Financial penalties.

The Chief Executive explained the rationale behind the workstreams in each package and reminded members of the workstream information that was presented to the committee in January 2012. High levels of expressions of interest were received as there was a strong market for good services, creating good competition and benefited the Council.

He stated that partnership working would ensure that all services were available and improve the services over future years. Those residents through the Residents Survey had indicated the services that they considered important.

In relation to the details of the contracts, the Chief Executive stated that if a preferred bidder was appointed following the Cabinet meeting 13 August 2012. A member workshop would be held to inform all members to the detail of the appointed contract, the workshop would provide information to the Key Performance Indicators, Value for Money, benchmarking and all other areas highlighted by members of the committee.

Agreed that (1) the Change, Efficiency and Improvement Programme – Business and Technical Packages Procurement – Selection of Preferred Bidders be noted; (2) report the Overview and Scrutiny Committee’s concerns and disappointment to the next Cabinet and Council meetings of the perceived lack of full consideration of the Council Motion of 26 July at the Cabinet meeting on 2 August; (3) Cabinet be informed at the Committee’s concerns to the perceived lack of clarity within the report to the options to terminate contracts; (4) Cabinet be informed of the need to have clear Key Performance Indicators, Value for Money and benchmarking data in place before contracts are finalised; (5) Cabinet be informed of the concerns of the limited knowledge of the specialism of local government finance of each bidder and that the Head of Finance being transferred to the preferred bidder; (6) if the appointment of a preferred bidder following the Cabinet meeting 13 August 2012 is made, a member workshop be held to inform all members to the detail of the appointed contract; and (7) the questions asked at the Cabinet meeting 2 August 2012 be circulated to members for their information.

OV23/08/12 Change, Efficiency and Improvement Programme – Business and Technical Packages Procurement – Client Functions

The Strategic Director of Finance and Resources presented a report that detailed the proposals for the retained client functions pursuant to the Change, Efficiency and Improvement Programme and the implementation of the Business and Technical Packages and appropriate delegations in order to implement the necessary arrangements.

If Cabinet approves the appointment of Preferred Bidders for the Business and Technical Packages, the retained client functions and arrangements to support the service delivery model would need to change. The focus would be to ensure the development of strong and sustainable partnership arrangements, alongside ensuring service delivery performance from the Partner(s) was managed and that the six objectives set out by Cabinet at its meeting on 14 November 2011 were met.

The report also detailed the proposed senior and other management arrangements that would be needed to effectively oversee the new ways of working, following a review undertaken by the Chief Executive, Strategic Director of Finance and Resources and the Head of Regeneration, Development and Regulatory Services.

The roles and responsibilities of the client teams were to ensure that the delivery of those services in the Business and Technical Packages were timely, within budget and compliant with the Key Performance Indicators set out in the contractual arrangement proposed. The client team would ensure that all work set out in accepted business cases was also

compliant with both national and Council policies and embraced the same standards expected by all.

Working with Members remained a key responsibility at a Ward level and especially with the Elected Mayor, Cabinet Members and Chairs of Committees.

The report detailed four Options for consideration:

Option 1 – approve the recommendations set down in paragraph 1.2 of the report. (This would ensure a smooth transition and mobilisation of the partnership(s)).

Option 2 – defer the decision. (There was no reason for deferral.)

Option 3 – propose alternative arrangements for consideration by the Chief Executive, Strategic Director of Finance and Resources and the Head of Regeneration, Development and Regulatory Services.

Option 4 – leave the service arrangements as currently configured. (This would not be cost effective or efficient and would make managing delivery of the contract and partnership interface difficult to manage on a day to day basis).

Option 1 was the recommended option.

The Chair asked to the process undertaken to how selection was made to ensure that the roles and responsibilities of the client posts could be met by the skill-set of those officers who had been identified take up the posts.

The Head of Regeneration, Development & Regulatory Services stated that a skills audit and analysis had taken place to identify the most suitable officers. He stated that a delivery skill training package had been developed and that the client team would gain further experience by visiting another authority that had experience of partnership arrangements.

The Human Resources officer stated that the Council needed to take into account of the employees available to carry out the necessary duties and support staff to carry out the responsibilities of the posts.

The Chair requested that Cabinet ensure that the right skills are matched to the duties that are required for the Client Team posts and that Overview and Scrutiny Committee receive a response report of the process undertaken to match the required skills of current employees to the duties and responsibilities required following transfer of services.

Agreed that (1) Change, Efficiency and Improvement Programme – Business and Technical Packages Procurement – Client Functions be noted; (2) Cabinet be requested to ensure that the right skills are matched to the duties that are required for the Client Team posts; and (3) that Overview and Scrutiny Committee receive a report of the process undertaken to match the required skills of current employees to the duties and responsibilities required following transfer of services.

OV24/08/12 Change, Efficiency and Improvement Programme – Business and Technical Packages Procurement – The Corporate Core

The Chief Executive presented the report that Cabinet received that detailed the proposals that had been consulted on and developed as to how the Corporate Core of the organisation would operate post October 2012.

The Corporate Core was a three year project within the Change, Efficiency and Improvement Programme. It was focused on how the strategic functions the Council needed in the future could be delivered within a new operating framework and with reduced resources.

The key proposed changes were:

- to introduce two new types of working arrangements within the Corporate Core :
 - Core Democratic and Governance functions
 - Strategic 'centres of excellence'
- to move the Scrutiny function back into Legal, Governance and Commercial Services
- to align the Performance function with the Policy and Research function
- to align Communications and Engagement functions to create a customer focused centre of excellence
- Strategic Projects to be realigned to the Finance and Resources Directorate and form the client function for the future delivery of the Technical and Business Packages.

Consultation on the proposals had been undertaken with staff and trades unions. Further details of the proposals were set out in Appendix A to the report. Following the consultation

- the revised structures had been accepted including the realignment of the management of Strategic Projects Team
- a plan was in place to deliver £338,000 savings in line with the target for 2012/13
- in terms of impact on staff, the reductions in resource levels should be able to be achieved in line with individual preferences with a selection exercise required for the five Grade 9 posts of Scrutiny Advisor and Performance Advisor.

Full implementation of the arrangements would occur in line with the delivery of the new Technical and Business packages.

A Member expressed concerns to the proposed deletion of the Domestic Violence Coordinator.

The Chief Executive responded that the post to be deleted was a vacant post, however, he reassured the Committee that these duties would be incorporated into the new post Safer North Tyneside Advisor.

A Member questioned the reason for the Apprentice: Web, Design and Print not being transferred along with the Web/Graphics Team within the Business Package.

The Chief Executive stated that it was the understanding that apprentice position is held within the Communications Team as the apprenticeship consisted of areas responsible to the Communication Team and not just Web/Graphics Team.

The Chair asked that clarification be sought on the position of this post and Members be informed.

A Member asked if it was the belief of management that the 2 FTE Scrutiny Advisor post was sufficient to support the scrutiny function of the Council.

The Head of Legal, Governance and Commercial Services stated the scrutiny function would be further supported in addition to the 2 Scrutiny Advisor posts by senior officers from each of the Council's service areas.

Agreed that (1) the Change, Efficiency and Improvement Programme – Business and Technical Packages Procurement – The Corporate Core be noted; and (2) clarification be provided to the reasons why the position of Apprentice: Web, Design and Print was to be retained within the Communication Team.