



Paper for Barnet UNISON on the need for a Public Sector Comparator in a Procurement Process

This paper sets out why the development of a Public Sector Comparator is an essential element of effective procurement.

Local Authorities are obliged by law to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". This is the duty of best value established by the Local Government Act 1999. Whilst it has been amended over the years it is still a fundamental requirement of local government decision making. When applied to procurement decisions it can and should be, interpreted as a duty to ensure that preferred delivery arrangements are demonstrably the ones which represent the best use of resources.

Given the unprecedented pressure on Council budgets, it is reasonable and responsible for Councils to actively explore alternative approaches to service delivery in their pursuit of best value. This may well include considering whether an external provider, working under contract, can provide a given service more cost effectively than direct provision. There are a number of factors to be taken into account beyond bare cost in making a judgement between direct provision and contracting out. These should include the impact on service delivery, local economic factors and also the impact on the workforce.

Direct comparison can be difficult but it is clearly incumbent on decision makers to satisfy themselves that a decision to contract out is justified by evidence and not merely an ideological preference. It follows that a 'make or buy' decision must be informed by a full understanding of the comparative costs and benefits of both a proposed externally provided solution and continuing direct provision. The latter is essentially the Public Sector Comparator which must, if it is to be truly meaningful, reflect the potential for improvements to current arrangements.

The 'Treasury Five Case Model' which is frequently cited as a best practice approach to business case development refers explicitly to the need for a 'do nothing' or 'do minimum' option to act as a baseline against which improvement options can be appraised. This is sometimes conflated with the Public Sector Comparator but to do so is to misunderstand the true value of developing an in-house case, which is to ensure that any decision to let a contract, offers benefit over the best that in-house provision can be, rather than current arrangements, which could be sub-optimal. Only in this way can the Council be certain that contracting out is the genuinely best value option. Moreover, in a market that is

essentially oligopolistic, the presence of a *de facto* in house bid will tend to increase competitive pressure and lead to a better outcome, even where this is the letting of a contract.

There are a number of examples of where Councils have followed this approach to good effect. Most recently Edinburgh City Council considered the potential for using private contractors to deliver a wide range of its services. It embarked on separate procurement processes for 3 blocks of services utilising the Competitive Dialogue process in an attempt to obtain the best offers available from the market. At the same time in-house teams were asked to work on service improvement plans or Public Sector Comparators, so that when it came to the award of contract, the Council could be sure that the services it was purchasing would genuinely optimise its use of scarce resources. In the end the Public Sector Comparators proved to be more attractive than any of the external offers and no contracts were awarded.

The One Barnet risk register provides a good indication that the outsourcing strategy adopted by the Council brings with it a number of substantial risks. Key amongst these is the loss of agility and flexibility that inevitably arises under long term contractual arrangements. The question of how Barnet will deal with future funding reductions whilst much of its budget is contractually committed is a key one. There are also important points to consider around operational risks which, whilst ostensibly passed to a contractor, ultimately remain with the Council, because of its statutory obligations in so far as many of the services currently being outsourced are concerned. It is not particularly unusual for contracts to fail commercially which can lead at worst, to a sudden loss of service provision but are more likely to lead to underperformance and/or pressure from the contractor for more money or reduced performance requirements.

Given the high significance of the services within the DRS and NSCSO packages and the potential for catastrophic consequences if anything does go wrong, it is particularly important to establish that the benefit of opting for external delivery are such as to make the taking of these risks justified. This is not a judgement that can be made without having fully explored the potential for in-house cost reduction and service improvement. A properly resourced Public Sector Comparator is the obvious way to do this.

The case for a Public Sector Comparator is a strong one. It is arguably a legal necessity to comply with the duty of best value but in any case is essential if elected members are to properly balance the high risk involved in wholesale outsourcing at a time of unprecedented budgetary uncertainty. With the high risk profile of the DRS and NSCSO contracts elected members will surely also wish to demonstrate to the people of Barnet that the risks they are taking are justified by the financial benefits of entering into these arrangements.

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