



## **Southwark Branch**

### **Submission to Overview and Scrutiny Committee report on Commissioning and Procurement at Southwark Council**

In response to the headings in the chairs presentation to Overview and Scrutiny Committee held on the 20<sup>th</sup> October 2014.

#### **How are procurement decisions made and scrutinised?**

At present this is a mystery to Southwark UNISON. We have not participated in any procurement decisions until very recently in connection with Home Care. We know that the branch secretary of Ucatt has attempted to influence procurement decisions connected to the provision of repair services to Council Tenants. Our involvement has been limited to lobbying Council Members as to what options Council reports contain and which options they should choose. Regrettably it is our view that options for procurement in council documents bare a similarity to TV phone-ins. There is inevitably one obvious option with the others discounted by Council Officers in their recommendations.

It is noted that one Council has recently returned to a committee system of governance. UNISON believes that this is the most accountable form of decision making. The problem with individual member decisions is that it requires a great deal of determination to keep up with decisions even if in the forward plan. It isn't clear how one would publically lobby the Council over decisions made by IDM. Southwark UNISON believes that the Council should go much further in notifying the public of decisions to be made by IDM and set out more formal public consultation processes in respect of procurement and consult service users at the time of commissioning.

#### **How much political/democratic input is there? How open and transparent is the process**

It is the view of Southwark UNISON that these questions cannot be separated. In order to have democratic input it is necessary to have an open and transparent process. Too often procurement decisions recommended by Council officers are ratified in closed session as the information is deemed

commercially sensitive. It is the view of Southwark UNISON that our members employed by the Council are as equally confined by the terms of their employment contracts in respect of disclosure as the officers presenting the reports. UNISON would also be willing to give serious consideration to signing confidentiality agreements if this is necessary to enable us to see the bids and procurement information.

**E.g.**

- Home Care Commissioners have recently asked for a forensic study of the books of our current home care contractors in order to enable them to present the costs to the council of an in-house option. We note that the auditors commissioned to carry out this study have a track record in that they provided similar financial information that allowed the council to take decisions to bring Revenues and Benefit Services and Customer Contact Services back in house. However we have been told by Commissioning Officers this it is very unlikely that Southwark UNISON will be able to see the findings of the forensic audit as they will be commercially sensitive.

In nearly all cases a service review will be triggered which we assume looks at contractors performance and considers alternative methods of provision. This review will also consider in which way the service will be delivered. This will include technical considerations in respect of methods of payment, length of contract and partnership arrangements. It will also review policy and objectives and the nature of the service required to deliver them. In most cases the first that a trade union knows this is taking place is when a decision has been arrived at. UNISON would like members involved in delivering a service to;

- Receive notice that such a process is to commence
- Receive a timetable for the process
- Be permitted to submit a trade union concurrent to any subsequent reports received by the Council
- To be allowed access to tender documentation
- To be allowed access to bids
- Be involved in stake holder consultations about “co-production” etc.

Southwark UNISON invites the Council to enter into a procurement agreement. The provisions of such an agreement are attached as an appendix. It is recognised that in many cases Southwark UNISON would neither have the resources or the expertise to comment, for example on the purchase of energy supplies, however by early notification and access through the process Southwark UNISON members would be in a strong position to challenge assumptions made within the commissioning and procurement process, in so doing making such decisions more robust.

**How do we monitor the contracts?**

Southwark UNISON currently has members, with excellent professional skills, involved in the monitoring of contractor performance. However, anecdotally it would appear that our concerns about contractor performance whilst noted are not able to bring about significant improvement in performance.

**E.g.**

- A home care agency has three times failed inspection by the Care Quality Commission. The failure has been in the training and development of staff and the failure of the corporate centre to support its branches. UNISON has provided evidence that this company expects it's workforce to complete back to back appointments. It can only be assumed that the home care agency has a contractual requirement to satisfy the CQC?
- Ucatt has regularly reported that housing repair contractors have been "subbing out" a great deal of its work and yet this practice continues as recently reported to the press.

The cost of monitoring is a duplication of the management costs of the contractor. However because of conflicting interests it is not possible for the council to take on trust the performance information provided by the contractor. People will point to partnering arrangements where this cost is said to be curtailed – however Southwark UNISON believes this involves the Council accepting a sub standard service on the basis that the losses are not greater than the costs of independently monitoring and enforcement action.

### **Are the outcomes good enough?**

"Good enough" is an existential question. Southwark UNISON believes the Council should develop its commissioning and procurement values so that the Council is able to say they have "the best" available. Emphasis should be placed on the core values of the contractor. The Council should not be commissioning on the basis of cost. Even in simple procurement of stationary or energy supplies it is still important to consider environmental sustainability and supply chain ethics before cost.

### **Are we getting value for money?**

"Value" again assumes a set of values to be established within a Council procurement and commissioning charter. In arriving at the benefits of a contract the Council should be taking a holistic approach that considers not only the benefits to the service user but the benefits to the borough (and wider) as a whole. The way in which the Council commissions and procures services has an impact on the local market and may distort pricing and skills in areas that were not intended. This impact can be positive in that other suppliers will need to react and adapt – however the impact can also be negative. How this is costed will be a "head scratcher" and the Council's fiduciary duties mean that instinct and belief will not satisfy the district auditor, but the Council should be brave and set trends in commissioning and

procurement. We have seen many Tory boroughs fly in the face of sound evidence about privatisation not working and still follow ideological processes to reduce the scale of local government to its minimum. Southwark Council has an opportunity to enhance the position of local government in the local economy by ensuring “Value” isn’t just counted in “pounds shillings and pence”.

### **What is the impact on the workforce?**

This question depends on the nature of commissioning and procurement. Southwark UNISON believes that the Council should set out a set of principles in respect of the workforce.

Historically Southwark Council has brought services in house which has had a very positive impact on the workforce and would comply with any set of principles the Council could establish.

However UNISON has serious concerns about the use of “service contracts”. When we call the Council to account for it’s expenditure on consultants, “interims” and agency staff we are conscious there is a body of people carrying out work through a service contract that aren’t recorded as any form of temporary staff. Often these workers are filling establishment posts that could be used to mitigate redundancies. It is difficult to ascertain which are establishment posts and which are supernumerary. It creates a two tier workforce within teams.

When the Council renews contracts or (heaven forbid) outsources services to the private or voluntary sector as a minimum the following should apply

- Access to the LGPS
- Trade Union recognition agreements
- London Living Wage
- Company sick pay
- Local delivery employing local people where possible
- Work creation and training programs
- Defined hour contracts without unreasonable “availability clauses”
- Free access to personal protective equipment
- Guarantees that TUPE terms and conditions will last for the term of the contract

### **E.g.**

- The Council’s provider of leisure services has a two tier workforce, has placed people on short term and ad hoc contracts, has a poor record of training, including training in safeguarding and at times health and safety practices have been of concern to the branch.
- The Council’s provider for day centre services for adults with learning disabilities has recently cut the terms and conditions of staff and is

increasingly relying on “bank staff” (zero hour contracts) to deliver routine services. We are at this very moment trying to establish whether they intend to remunerate their bank staff for attending training.

Both of these employers enjoy charitable status. The branch recently sought information from the day centre provider as to when and where their board meetings took place. This information was refused. Recently a charitable provider was swallowed up by a larger organisation whilst maintaining its trading identity. The governance arrangements are now even more complex. The company is set up as a company limited by guarantee. They are able to change articles of association without agreement with service users, clients or members. The frequency of meetings and the involvement of service users in governance arrangements are below those that would be routine if the services were provided in house. Where Councillors do sit on charity boards there is no obvious place where a member of the public can enquire as to attendance and contribution.

### **Do we need a new corporate procurement strategy?**

Southwark UNISON does believe that the Council should develop a new procurement strategy. This should include a commitment to delivering services in house where possible

#### **E.g.**

- We have a successful pest control service treating Council homes and providing services to a neighbouring authority yet this service does not provide pest control services for Council offices?
- We have an established team of grounds maintenance workers who look after estates and some parks yet we have a contract with Quadron for the major parks where employees are on worse terms and conditions than their Council employed colleagues.
- The best performing LGPS scheme is one which has in house investment advisers.

### **Other reasons for bringing services in house;**

1. Contracts are in-flexible for the length of their term. In a quickly changing environment where savings have to be made the Council would have more flexibility in reshaping an in house service than trying to renegotiate a contract. In house services will allow the council to respond more quickly and simply to the integration and localities agenda for example.
2. The financial benefits of outsourcing a service are not always delivered. As mentioned above, commissioning, tendering, monitoring and enforcement action all sap resources. The Council should value the

service in house in long term ways, including economies of scale across the workforce and Council premises. The LGPS scheme would have increased members and be more sustainable.

3. In respect of Home Care Contracts the Council has had to pay additional costs to contractors to lift wages to the London Living Wage, ensure that travel time and training time is remunerated. At the same time one of the contractors has reported a quadrupling of assets within the last 4 years and the profit going to a private limited company owned by a Hedge Fund. £5,187,912 2009 to £22,187,399 2013<sup>1</sup>. Home Care is not a service that requires many assets or investment other than in high quality trained staff and software.
4. The Council should take responsibility for it's services and reputation directly. It is an abdication to wash hands of a poor service and blame contractors.
5. The Council can be assured of service cost transparency if the service is delivered in house. Contractors will hide costs or inflate them and use confidentiality clauses to prevent the Council from knowing the true costs of providing a service,
6. An in house bid will never be a "loss leader or under bid". Large contractors frequently pump prime their services with a pitch team and many promises about investment on which they will subsequently renege. Once the contract is awarded key personnel are moved to the next bid and the quality of services suffers from the lack of resources made by under bidding. This in turn increases Council costs in monitoring and enforcement.
7. Tendering costs are high. Professional services for specifications and quantities etc, lawyers for the contract documents, advertising and officer time. The Audit Commission has estimated that a "Client" will need to set aside between 2 – 7% of the contract cost to maintain the client side during the life of a contract and more for larger more complex PPP arrangements.

## Appendix One

UNISON Branch Guide to Negotiating a Procurement Agreement

<https://www.unison.org.uk/upload/sharepoint/On%20line%20Catalogue/21274.pdf>

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<sup>1</sup> <http://companycheck.co.uk/company/03117278/LONDON-CARE-LIMITED/financial-accounts>