

THE IN-HOUSE OPTION IS BEST VALUE

Joint Trade Union Briefing on Environmental Services

The Right Choice for the Right Reasons

The trade unions invite elected members to make the right decision for the right reasons under the statutory duty to deliver Best Value. This paper sets out the basis on which the in-house option beats the Enterprise bid on a Best Value basis.

The Best Value Duty

There is no reference in the Chief Executive's report to the Best Value duty on elected members. Repeated advice to councillors creates the false impression that Best Value relates to price. The duty is to "deliver continuous improvement"; to "maintain an appropriate balance" between quality and cost; and, to have due regard for efficiency, effectiveness, economy and equality. The council must also act in the way "best calculated to contribute to the delivery" of climate change targets and the council must "act in a way that it considers is most sustainable."

Environmental Impact Assessment

The officials simply do not understand the nature of the obligations that apply to ABM. The report concedes that no impact assessments have been undertaken and they wrongly claim that this position has been endorsed by SEPA and other agencies. This is neither true nor accurate. There are two types of assessment, an initial Strategic Assessment, at the commencement of a programme, and a subsequent Impact Assessment. Neither type has been conducted.

SEPA took the view that no Strategic Assessment was required because there would be no significant impact. However, the council's own screening exercise had identified that the Environmental ABM WOULD have a significant environmental impact and yet no Strategic Assessment was done. Clearly this is a mistake. At no stage did the statutory agencies release the council from all Strategic AND Environmental Impact assessments contrary to the impression created by the Chief Executive's report.

In the admitted absence of any Strategic Environmental Assessment or any Environmental Impact Assessment elected members cannot competently vote for Enterprise and show the required due regard for sustainability.

Recycling

There is no reference in the report to single stream comingling of recycled materials. This is unfortunate because comingling is the bedrock of the Enterprise Bid. Comingling, or single bin refuse collection, will replace the current system of “source separation” using multi bins. The successful sale of recycled materials relies on the separation of uncontaminated materials. The ABM team’s propaganda in support of Enterprise is the subject of a reference to Audit Scotland under the Code of Practice on Local Authority Publicity. One element of that complaint focuses on the claim by ABM officials that sustainability is enhanced under comingling because participation rates increase. What they deliberately fail to mention is that while single bin systems are popular the recovery rate for comingling is poor compared to source separation, as is the quality of the end product.

There is a simple hierarchy in recycling. Kerbside “source separation” is preferable to dual stream comingling and single stream comingling is the least effective solution. The Scottish Government is adopting measures to move recycling away from comingling and towards source separation. The Waste (Scotland) Regulations 2011 regulations state that councils have a “duty to take all such measures available to that person as are reasonable in the circumstances to apply the waste hierarchy set out in Article 4(1) of the Waste Directive. The EU Waste directive calls “for measures aimed at ensuring the source separation, collection and recycling of priority waste streams. In line with that objective and as a means to facilitating or improving its recovery potential, waste should be separately collected if technically, environmentally and economically practicable, before undergoing recovery operations that deliver the best overall environmental outcome.”

We know that source separation in Edinburgh is technically, environmentally and economically practicable – source separation is the current system and it is the basis for the in-house bid. Comingling is cheaper because fewer bins require fewer vehicles and fewer jobs. That is the principle reason for the price difference between the bids. But the price difference is superficial and unlawful.

The council is classed as a “Major Player” under the SNP Government’s flagship Climate Change Act. This status carries the obligation of working to the highest possible standard and influencing the recycling behaviour of Edinburgh residents. The council policy “Sustainable Edinburgh 2020” reflects this obligation and contains a commitment to global leader in sustainability. Having proved that source separation is feasible and viable the council is not permitted to downgrade to a less sustainable process. Comingling is not unlawful per se, but given the duty to act in the most sustainable way it is not a lawful choice in the current context.

Sustainability and Best Value

Elected members are obliged to have due regard for sustainability obligations in the Best Value assessment of both options. We invite elected members to simply reject the Enterprise Bid on the basis that it downgrades the council's existing commitment to high quality recycling. Alternatively, we suggest that the Enterprise savings can be discounted to reflect the need to preserve source separation. We estimate that the savings offered by Enterprise are reduced by £26 million over seven years if source separation is retained.

Pensions & the PPP Protocol on Two Tier Working

In November 2002 the Scottish Government issued a document titled "Public Private Partnerships in Scotland—Protocol and Guidance Concerning Employment Issues". On the question of pension provision for staff employed by a private contractor in a partnership for delivery of public services the protocol states: "the service provider will be required to offer new recruits to a PPP workforce access to the same pension arrangements as transferred employees." In response to a Parliamentary question on 17th November 2011 the Cabinet Secretary for Finance confirmed that the protocol remains in force.

This obligation feeds into the Best Value assessment in two ways. First, the council has a general obligation to have due regard for Government policy and guidance in a procurement situation. More specifically, the Best Value rules define sustainability in terms of social and economic wellbeing as well as environmental protection. This definition of sustainability is also adopted by the council in the policy document "Sustainable Edinburgh 2020". In the foreword to the document Sue Bruce states "It's more than just "being green"; it is about balancing social, economic and environmental issues in the most efficient and equitable way." The policy also observes that "we need to acknowledge and challenge our weaknesses so that we can build on our strengths. We still have significant pockets of deprivation, poor health and unemployment, wealth disparities, resource over-consumption, areas of poor air quality and traffic congestion."

The projected outcomes from the Sustainable Edinburgh 2020 policy include "A prosperous city – where people can earn a livelihood that will provide for them and their dependents." And the policy commitments include a pledge to "support inclusive communities by working towards the elimination of poverty, ensuring equitable access to public services, education, employment, culture and training and securing good quality and affordable housing."

Some of the workers facing privatisation earn basic salaries as low as £15,000. Membership of the Local Government Pension Scheme is an important protection

against poverty in old age. Closure of the pension scheme runs directly contrary to the council's policies on social and economic sustainability.

Pensions and Best Value

Elected members are obliged to have due regard for the PPP protocol as well as social and economic sustainability obligations in the Best Value assessment of both options. We therefore invite elected members to simply reject the Enterprise Bid on the basis that it is a breach of the PPP Protocol and undermines the council's existing commitment to eradicate poverty. Alternatively, we suggest that the Enterprise savings can be discounted to reflect the need to preserve full pension rights. We estimate that the savings offered by Enterprise are reduced by £3.9 million over seven years if the pension scheme is retained.

Unemployment and Best Value

Although this fact was concealed by the ABM team's recent press advert, the report to full council and the recently published "Full Business Case", the Enterprise bid will cost around 250 jobs at a time of high unemployment. Elected members are obliged to have due regard for social and economic sustainability obligations in the Best Value assessment of both options. We invite elected members to simply reject the Enterprise Bid on the basis that it contradicts the council's existing commitment to provide employment and eradicate poverty. Alternatively, we suggest that the Enterprise savings can be discounted to reflect the need to preserve the jobs associated with recycling based on source separation. As stated previously, we estimate that the savings offered by Enterprise are reduced by £26 million over seven years if recycling jobs are retained.

Industrial Relations

On 27th October 2011 the council voted to defer a decision on Environmental Services for a variety of reasons including a request that steps be taken to gauge staff and trade union engagement with the in-house option. On 4th November trade union representatives met with Philip Barr and David Lyon and agreed a consultation process. Under this agreement the council posted the individual requirements of the PSC option to employees and the unions then sought support for a statement committing support for the PSC in light of the individual implications as explained by the council. The trade unions submitted a draft statement for comment from the council and it was rejected on the basis that it was too detailed. An abbreviated statement was then adopted.

The workforce received full detail of shift patterns and work arrangements by post prior to depot meetings at which they voted overwhelmingly to end the overtime ban and accept the changes in the PSC. This outcome was communicated to the council by the trade unions on 11th November. The commitments made by members to accept shift changes and other members were not specified because it was expressly agreed with senior managers that the vote would be taken in the light of full specification provided to employees by the council.

The trade unions were therefore disappointed to hear that the council took the view that this exercise did not reflect a specific commitment to the PSC changes. We feel we worked to an agreed process in which employees made their decision in light of detailed information received from the council. We had also gathered hundreds of signatures on a petition pledging support for the in-house option.

Although we agreed to re-run the exercise by asking members for individual written consent we are concerned that letters sent on 21st November will not be returned in time for elected members to make an informed decision. If written expressions of commitment were required this should have been raised by the council at the meeting of 4th November and commenced shortly thereafter.

Having said that, we view the whole exercise as an assessment of the potential for harmonious working within Environment Services. So, despite our reservations, we agreed to the second consultation as an indication of our commitment to improved industrial relations.

Having met the vast majority of members and discussed the position in detail we can vouch for the fact that the staff are committed to support the in-house option. In addition to ending the overtime ban we have accepted the shift patterns, productivity targets and work arrangements for all environmental services. We have also brought new issues to the agenda including steps to develop a culture of mutual respect, dispute resolution by mediation, training and development for staff and co-design of new refuse routes to boost efficiency and productivity. These measures were not grudgingly accepted by members – they have been embraced with enthusiasm as reflected by the constructive tone of a service improvement meeting with refuse managers on Friday 18th November. We invite elected members to verify that observation by direct contact with service managers.

The Ernst & Young Report

Another measure agreed by council on 27th October was external testing of the in-house option. We have to say that a one-week desk exercise based on telephone interviews is a superficial exercise compared to the rolling programme of independent assessments contained in the Gateway Review reports. We have one brief observation to make on the Ernst and Young findings. The key conclusion is that

although the PSC is a fair comparator the confidence rating is low to medium because of uncertainty surrounding industrial relations and the capacity of management to lead a major change programme. We feel we have addressed the industrial relations issue. The obvious observation to make about management is that the same doubts extend to their ability to manage change through external contracts – a point that was made very clearly in the recent Audit Scotland review of the ABM programme and is recorded as a risk in the ABM team’s Full Business Case. The key difference is that in-house managers have the opportunity to lead change in partnership with the workforce – rest assured that the same cannot be said for Enterprise.

Bias

It is with some regret that we draw elected members attention to overt bias surrounding the reporting of the merit of the two options by the ABM team. The IPSOS MORI poll was suppressed because it exposed public concern about privatisation. The Evening News advert was hopelessly biased in its portrayal of the relative merits of the different options and is the subject of a formal complaint to the Controller of Audit at Audit Scotland. The Full Business case was published recently and it is similarly biased, making no reference to key Best Value weaknesses in the Enterprise bid such as those contained in this paper. The bias on issues such as the closure of the pension scheme, job losses and poor quality recycling can be viewed against a backdrop of the suppressing of OFT convictions; the concealing of fatal accidents; the excusing of HSE prosecutions and the suppression of the MORI report. Having invited the public to the Lothian Chambers to hear a comparative analysis of Option A and Option B, Mark Turley concluded his homage to Enterprise without making any reference to the content of the in-house bid. We fully respect the position of political parties who have said they will judge the case on its merits once full information is provided. Our concern relates to the objectivity of the information presented for your consideration.

Conclusion

The IPSOS MORI research and the recent Public Debate demonstrate the strength of public concern over privatisation. People remember the disastrous social, economic and service impact of CCT and contracting out. The Best Value regime moved away from CCT and the fixation with price to develop a more holistic assessment of service delivery options. Although the ABM team tend to ignore the non-financial elements of Best Value, elected members are legally obliged to look at the decision from a wider perspective. The plan to downgrade recycling efforts, dismiss workers and close the pension scheme will have a damaging social, economic and environmental impact and may be unlawful. The appendix to this submission shows how the

guaranteed savings could be as low as £22m if a Best Value test is applied as opposed to a simple price comparison. The PSC option offers Best Value and the opportunity for a step forward based on partnership.

High Level Analysis of Enterprise Costs

The following comments are predicated on the following assumptions and estimates:

- Having demonstrated the efficacy of source separated recycling it would be a breach of the Climate Change Act 2009, the Waste (Scotland) Regulations 2011 and the EU Waste Directive to downgrade to single stream comingling
- The proposed shift to comingling is assumed to result in the loss of 100 jobs at an average, annual, total value per annum of £30,000 per job.
- The proposed shift to comingling reduces net capital and maintenance spend on vehicles and equipment of £5 million over the contract period
- The PPP protocol remains in force and requires that new employees are entitled to join the Lothian Pension Scheme.
- We estimate an average staff turnover of 100 per annum and an average salary of £20,000 over the contract period and an associated saving of 7% employer pension contributions following the closure of the Lothian Pension Scheme
- No account is taken of the added fuel costs associated with source separation
- No account is taken of lost revenue from the low market value of contaminated recycled materials
- No account is taken of the cost arising from taxation of land-filling contaminated recyclables
- No account is taken of the loss of guaranteed savings due to dependencies, excusing causes or proposed savings that are business case dependent

Service Option	Enterprise	Council
Savings	£52 m	£45 m
Hidden pension costs	£3.9 m	
Environment costs (jobs)	£21 m	
Environmental costs (equip)	£5 m	
Net Best Value savings	£22.1 m	£45 m

Even on the stretch target of £72m, the Best Value adjustments reduce the Enterprise savings to £42.1 m, £3.9 m behind the in-house option.