

Scrutiny Resource Chairman's report in relation to the FOCSA Environmental Services Contract Implementation- October 2010

Objective:

- (i) To determine the reasons why the resolution of council minute 439(d)(ii) has been breached without reporting back to Full Council.
- (ii) Given the size and importance of the specific contract, what was the exposure of the council to financial, functional, legal and reputational risks?

Introduction & Background

This Report, prepared in my capacity as Chair, summarizes the Panel's findings in respect of the Council's FOCSA Waste Contract.

It seems to me, that we have identified a number of shortcomings (that are far less than acceptable) as to how our Council goes about protecting itself with regard to (i) the financial; (ii) the legal; and (iii) the reputational risks associated with the implementation of its contract awards.

It is understood and accepted that our Council runs on a very lean management structure. Due to its limited resources (both in terms of finance and officers), it appears there is significant potential for Statutory Officers to be engaged in areas of business whereby they have clear operational conflicts of interest.

The panel have understood that the primary risk (from the perspective of those charged and engaged with implementing the FOCSA Environmental Services contract) was to ensure that the new service would be up and running by 1st April 2009.

However, from the perspective of members (or indeed any reasonable person not preoccupied or fettered by the pressure of a deadline by which the contract should be in operation), the panel identify an equally important risk:- full protection of the Council from any exposure, whether financial, legal or reputation must be ensured.

Existing Framework

It is assumed that the Council's own Constitution and financial and Contractual Procedure Rules are adequate to ensure that the interests of the Council (and the public at large) are protected.

It is also assumed that the terms of the Constitution are flexible enough to allow our officers to go about their business (in a way that is respected and adhered to) in order to protect the interests of the Council.

It is my belief, having considered various parts of the Constitution, that the relevant sections rightly focus upon procedures and protocols affording the

Council protection in relation to the cost elements associated with a contract award (pre- and post-tender). However, the Constitution gives little (if any) consideration to:

- (i) the cost of;
- (ii) the risk associated with; or
- (iii) the correct internal process

with regards to how the Council administers, post-tender, its business let alone safeguards and understands the associated risks it faces.

I cannot find any protocol that ensures that the Council undertakes a cost or risk analysis with regard to a contract award, in order to ensure genuine and legitimate protection.

The Panel has repeatedly asked questions such as:

1. *What processes were in place to check the progress of the Contract?*
2. *What checks were made on the progress of the Contract?*
3. *What checks and balances were in place to ensure that the Contract was completed?*

It has been impossible, based on the answers given, to ascertain definitive answers to these questions. Consequently, a further question needs to be considered:

What action was undertaken to address any outstanding issues, that had gone beyond their specified deadlines within the specific Project Plan?

Without a clear understanding of the answers to these questions it is impossible for the Panel to make specific recommendations and amendments to our procedural rules in order to strengthen and mitigate the identified risks in the future.

Concerns Identified

The Panel has identified a number of general concerns. These are as follows:

1. A lack of communication between Senior Officers and Portfolio Holders;
2. A lack of eagerness and efficiency in addressing outstanding actions contained within the Project Plan.
3. A complete oversight of the specific motion, regarding the performance bond, that was agreed at full Council in November 2008.
4. A lack of consideration as to the time allocation in instructing external legal services;
5. A lack of consideration given to the resource needs associated with

significant contracts.

6. The effects of competitive dialogue on the Council's Constitution.

Further, the Panel has voiced its concerns associated with Statutory Officers legal obligations conflicting with their duty to successfully implement such contracts.

Lutterworth Task Panel Recommendations

Many of the concerns identified have a direct synergy with the Special Task Panel Report that considered the Lutterworth Allotments.

Various recommendations, made following the Lutterworth Task Panel work, can be (and should be) applied in relation to our own work, for example-

1. A New Project should be subject to effective Project Planning, Risk Analysis and Management using the Council's standardized methodology;
2. A Project completion date should be set;
3. The Project should be subject to the Gateway Review Process with the outcome considered by members;
4. A new Project must be included in the plan, with annotations showing whether it is covered by the Project Planning Methodology with the Portfolio Area and Lead Officer identified;
5. For new Projects, any legal (or other possible) constraints should be identified and addressed early on in the process.
6. The Portfolio Holder should act as a conduit to the Members and ensure there is appropriate Political input into the Project. All Members should also receive regular briefings on progress.
7. A Briefing be prepared, in consultation with the relevant Portfolio Holder, for all Members to ensure they understand:
 - (i) the Project Planning Process; and
 - (ii) how they can obtain up-to-date information about the progress of the Project
8. The Council should pay close attention to managing interfaces with other Stakeholders, even though their interests may differ.

Further Recommendations from the FOCSA Scrutiny Panel

1. That the constitutional review committee consider the inclusion of a new sub section within the 'Contracts Procedure Rules' section of the constitution. The purpose of which is to define the protocols by which we administer and operate our business, with specific references to the risk management of a post-tendered contract award;
2. That consideration be given to the segregation of responsibilities and duties pertaining to statutory officers of the council when dealing with the administration of post tendered contracts;
3. Part 3, section C1.1.3 is explicit in that all matters of a sensitive nature that is likely to create public dissatisfaction or disapproval be referred to the executive for a decision or guidance. Part 4 (section 3)- Budget and Policy framework 5.(b) requires that if a decision is required that is not in line with the current policy framework that the decision should be referred to Full Council. These clauses need to be adhered to.
4. Actions to take place throughout the project should be clearly prioritised.
5. The role of the relevant Portfolio Holder should be clearly defined.
6. The project plan should be closely monitored.
7. Projects should be sufficiently resourced. Required resources should be identified and allocated before the commencement of a project.
8. Sensitive issues that arise during the project should be immediately reported to the relevant portfolio Holder.

Blake Pain

Chairman – HDC Scrutiny Panel for Resources