

AN OBVIOUS OPTION?

Kevin Feeney and John Cahir, A&L Goodbody, outline the significant contribution which outsourcing can make to Ireland's adjustment programme.



The 2013 budget has introduced public expenditure adjustments of €2.25 billion and it seems inevitable that additional cuts will be required in the years ahead. After five harsh budgets it would seem that there are few remaining areas where cuts can easily occur.

Given this economic backdrop, it is noteworthy that the Minister for Public Expenditure and Reform announced in his Budget day speech that the Government is “taking a focused and integrated approach to external service delivery of non-core activities, where appropriate”. This somewhat oblique terminology is believed to be a reference to potential outsourcing of non-core activities in the public sector.

Economic research indicates that cost reductions of up to 20% can be achieved when public service delivery is shifted into

a competitive tendering environment. In line with this research, the Minister stated that a cost reduction of 26% and net savings of €12.5 million were achieved through the recently created HR shared services unit for the Civil Service. While the creation of such a unit within the public sector itself is not typically seen as a form of outsourcing, it does highlight the efficiency gains that can be achieved through service delivery change.

It is therefore not surprising that the Government is now looking seriously at alternative service delivery models, including outsourcing, as a possible means of reducing public expenditure. Experience abroad as well as in this country shows that successful outsourcings can cut costs while at the same time maintaining or improving standards of services – the holy grail of public sector reform.

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GOVERNMENT POLICY AND OUTSOURCING

Government policy on outsourcing is embodied within the Public Service Reform Plan which was first published in 2011, against a back drop of the significant fiscal consolidation that was taking place and the large cost of providing public services. The reform of public services is the key theme in this Plan, including the concept of embracing alternative models for service delivery. Outsourcing is clearly one such model.

On 6 September 2012, the Government published a statement on the progress of the implementation of the Plan. The progress statement referred to a number of key successes, included the “PeoplePoint” HR shared service model referred to earlier which is now in the implementation phase across the civil service and which may be a platform and precedent for other shared services across the Civil Service.

The progress statement went on to refer to a Government initiative which is taking place to identify non-core activities in certain key sectors (namely Health, Education, Justice and Local Government) with a view to external service delivery approaches or project being developed in respect of some of these activities. This is outsourcing. The statement suggests that a number of these projects have been scoped and “detailed benefits-driven external service delivery plans are being developed”. Should these projects demonstrate value for money then, logically, one would expect them to be implemented in the near future.

Government Policy also includes the principles set out in the Croke Park Agreement, a bilateral agreement between

the Government and the trade unions which was entered into by the previous government. Within that Agreement there is an acknowledgement of outsourcing as a concept, but its acceptance as a service delivery model is subject to a prescribed process with material involvement of the trade unions in the planning and evaluation aspects of the outsourcing arrangement, together with a number of core union requirements centred around protection of public sector employment rights and benefits. There is some risk that this process and associated employment related conditions could slow the pace at which outsourcing projects will happen and potentially the value for money benefits which the Government could otherwise achieve from proper and prudent outsourcing.

PUBLIC SECTOR OUTSOURCING IN THE UK

In considering the likely future direction of public sector outsourcing in Ireland, it is worth considering the evolution and composition of the outsourcing sector in the UK, which is generally regarded as a pioneer in outsourcing both at home and abroad.

Outsourcing as a business model was born out of the difficult budgetary restraints faced by UK local governments in the 1980s. They concluded that the contracting out of services provided transparency, and allocated responsibility and accountability in an objective and measurable way, and through competitive tender processes reduced costs. This



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success resulted in the business model being embraced by other branches of the public sector, including central government.

According to the UK industry body, the Business Services Association, the outsourcing market in the UK has grown to become a £14 billion industry employing over 340,000 people. In addition, a number of UK outsourcing companies (for example, Capita and Serco), have become leading international providers of business services. Nonetheless, only 30% of outsourcings in the UK are carried out by the public sector with the remaining 70% originating from the private sector. Outsourcing in the UK is therefore predominately a private sector phenomenon.

CHALLENGES

Embracing change and managing implementation of change processes is never easy, particularly in a public sector context. A challenge for Government will be to ensure that the team tasked with the delivery of any outsourcing project is sufficiently experienced to manage the multiple stake holder groups as well as the financial, technical, economic, legal and other aspects of any outsourcing. The outsourcing initiatives/projects, touched on in the September 2012 Public Service Reform Plan progress statement, will be seen both within public and private sector circles as path finder projects and it is therefore critical that they will be a success. Success relies on the right team being involved in and managing with their delivery.

Another potential challenge to the implementation of public

sector outsourcing projects is the public sector unions. Under the Croke Park Agreement, the trade unions have reserved particular influence over any public sector outsourcing. The hierarchy between traditional trade union values on one hand and the broader public interest policy of the Government being able to provide public services within a reduced budget (i.e. without borrowing) will be a key issue influencing whether outsourcing is embraced as a service delivery model in this country.

A core trade union objective is, understandably, protection of employment for workers. One would hope that this objective is already enshrined in law. Under EU law, as implemented in Ireland, legal protections exist for workers (whether in the public or private sectors). Specifically, the EU Directive on Transfer of Undertakings (Protection of Employment) ("TUPE") provides that when a transfer of an undertaking occurs (as will be the case with most outsourcings) the affected workers have the right to transfer by operation of law to the new service provider with their terms and conditions of employment preserved. Whether by accident or design, the current quasi-outsourcings which have taken place in the public sector to date have not resulted in any material transfer of employees from the public to the private sector.

Public sector pension issues are likely to represent a challenge in outsourcings where there will be a transfer of workers from the public sector to the private sector. Pension rights do not transfer as a matter of law under the TUPE Directive. Whilst the default position is that there is no obligation to require a replication of a public sector pension scheme by a private sector outsource service provider, there are a number of structures, proven in the UK public sector outsourcing market, to deal with transferring employees and pension benefits in a way which is equitable and appropriate.

LOOKING AHEAD

The Public Service Reform Plan puts citizens and business customers at its core. Accordingly if it is accepted that the quality of services to the public must be maintained or indeed improved, and if it is accepted that during the current period of fiscal consolidation that good governance dictates that the country should not borrow to provide public services, then it seems inevitable that on-going reform will be needed. Outsourcing will not be a panacea to meet all of the current reform objectives within the public sector. However, it may form part of the overall solution. It is an essential service delivery methodology with the potential for providing the same or better services to the public at a lower cost to the exchequer. For this reason it is suggested that it must be explored and at least tested on a pilot project basis.

The success of any such pilot project is likely to be the catalyst for whether outsourcing projects have a future in the Irish public sector. A key dynamic in this regard will be the need for Government to pick the right pilot project, of a type that is proven in other jurisdictions and which can clearly demonstrate value for money. The other obvious dynamic will be whether the trade unions will seek to compromise the potential success of outsourcing projects through their powers under the Croke Park Agreement, or any replacement. Time will tell.