
Meeting	Cabinet Resources Committee
Date	7 th November 2012
Subject	Wireless Concession Contract
Report of	Cabinet Member for Environment
Summary	<p>The Wireless Concession is a London-wide procurement opportunity to join a contracting process that will permit wireless internet equipment to be installed upon the Council's street furniture (mainly lighting columns), which will enable provision of a new WiFi network and 4G services in the borough.</p> <p>The contract will enable the promotion of digital inclusion for communities in Barnet and in doing so generate income for the Council.</p>

Officer Contributors	Adam Driscoll - Infrastructure Planning Officer. Roger Gilbert – Street Lighting PFI Contract Manager
Status (public or exempt)	Public
Wards Affected	All
Key Decision	Yes
Reason for urgency / exemption from call-in	N/A
Function of	Council
Enclosures	None
Contact for Further Information:	Adam Driscoll, Infrastructure Planning Officer, adam.driscoll@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That authorisation is given to participate in the London-wide procurement process to let a wireless concession contract for constrained use of council facilities and/or street furniture for the installation of appropriate wireless equipment to provide Wifi and potentially 4G services within the borough.
- 1.2 To authorise the Director of Commercial Services, subject to appropriate legal advice, to oversee the council's involvement in the London Boroughs collaborative procurement process as well as the preparation and finalisation of contract documentation.
- 1.3 That provided the contract award is for a period of no longer than 10 years and is to be granted to the tenderer who submits the most economically advantageous tender, the Cabinet Member for Environment be authorised to 'Accept' the contract on behalf of the Council.
- 1.4 That up to £60,000 of contingency (non-recurring) funds be used to cash flow the Council's costs of involvement in the procurement process as required. This is to be refunded once the concession contract delivers an income stream; with any additional income generated through the concession, after the procurement costs, used to support the Council's Capital Strategy.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet 3 April 2006 Decision 15 (Street Lighting Private Finance Initiative) approved the completion of an agreement to secure long term investment and management of all street lighting equipment within the Borough through a PFI contract. This means any future decisions or changes to the use of the equipment must be with the agreement or authorisation of the PFI provider.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The contract will support the strategic objectives to deliver Better Services for Less Money and to create a Successful London Suburb.
- 3.2 It will assist creation of an efficient council with services designed to meet the changing needs of residents by being a market-driven and income-generating contract arrangement. It will help to channel shift the way customers interact with the Council and could make mobile working easier for council services.
- 3.3 It will assist in sustaining Barnet as a successful place through promoting enterprise and employment by fostering economic growth through accelerated delivery of wireless services that would otherwise be developed locally in a more piecemeal manner over a longer period of time.
- 3.4 Provision of a minimum level of free public internet access will support residents and local businesses through universal, easier to use and instant access to wireless services. It could also provide a new more targeted advertising mechanism for local businesses to reach local customers.
- 3.5 The key priority for the contract will be digital inclusion through ensuring that wireless services are delivered to areas of the borough that are in greatest need, where commercial operations might not have otherwise led to wireless services being installed. This will be of particular benefit to households that

currently experience financial exclusion as the minimum level of public access should not require card payment. In addition, the arrangement will result in income generation for the Council.

4. RISK MANAGEMENT ISSUES

- 4.1 The risks of choosing not to support a borough wide wireless service at all is that wireless services are left to develop locally in a more ad hoc, slower and less equitable way; missing the opportunity to support economic growth now. It also means losing the opportunity of creating a new revenue stream to support wider Council services.
- 4.2 The risk of not participating in the procurement process at this time is that a separate procurement process will be required in the near future at a greater overall level of expense than through this cross-borough shared procurement approach. It is also quite likely that such an opportunity would also only come forwards within a profit sharing context with either the street lighting PFI service provider and/or the successful DRS bidder.
- 4.3 Risks related to participating in the project are detailed below:

Risk	Detail
Contracting risk (i) from Street Lighting Contract:	<p>The Street Lighting PFI Contract transferred all risk, under licence, to the PFI Service Provider and therefore there is a contractual requirement for all attachments to the borough's street lighting assets to be approved by the PFI Service Provider.</p> <p>No approval is required if the installation is carried out by the PFI Service Provider. Where installation of attachments is by a third party there will be a requirement upon that party for full indemnity against damage during installation, while installed and during any future removal / replacement activities.</p>
Contracting risk (ii) from Street Lighting Contract	<p>Indemnity may also be required in relation to the wireless technology to protect against interference with the wireless operation of the CMS equipment the Borough is providing for under the PFI Contract. Frequency cross-over poses an interference risk to one or both systems which is likely to incur a fee from the PFI Service Provider for inspecting the WiFi attachment installations on completion.</p>
Contracting risk (iii) from Street Lighting Contract	<p>Liability for consequential costs of repair/replacement of WiFi equipment must be retained by the WiFi equipment owner, e.g. in the event of vehicular damage to the street light asset without an identified liable party with whom to make an insurance claim.</p>

Risk	Detail
Contracting risk (iv) from Street Lighting Contract	Energy for the Borough's street lighting assets is managed through the PFI Contract. Therefore energy supply and consumption for the WiFi assets must be accounted for separately from the street lighting assets and will need agreement. The successful contractor would pay any associated fee.
Financial risk from not achieving the key benefits	Full engagement in a 'borough specific' session during the competitive dialogue process will enable the Council's key objectives to be set down as contract requirements.
Reputational and equity risk from not achieving borough wide coverage	<p>It is quite likely that the contract will not achieve 100% borough-wide coverage. As a 'concession contract', delivery of the network entirely depends on market conditions and providers are likely to focus on areas of high footfall and commercial user demand.</p> <p>It will therefore be necessary to manage public expectation as the network may be informally recognised as 'the council's WiFi network'.</p>
Reputational risk of a public perception of the network as 'free WiFi'.	The contract is only likely to guarantee a minimum level of free WiFi access, so it will be important to manage public expectations from outset.
Legislative and financial risk from non-removal of equipment at end of the contract period	<p>The contractor could potentially be able to claim rights under the Telecommunications Act 1984 (the Code), so that at the end of the contract the Council would need a court order to enforce the removal of equipment. Legal advice has been sought by LB Camden and the relevant provisions will be incorporated into the main contract.</p> <p>There could also be financial reparation costs for damage caused to street lighting assets by extended installation and/or poor removal techniques if they damaged the assets or their protective coating. The PFI Service Provider is likely to require the contract to include a fee for inspecting all affected assets.</p>
Reputational and legislative risk if young people are not safeguarded through use of the network	The Council will need to be seen to make every effort to ensure that the network is safe. It must be set up with adequate protections to avoid minors from accessing or receiving inappropriate material or social contact via "the Council's wireless network". This risk will be mitigated through discussions during the competitive dialogue process and ensuring the resulting contract provides appropriate safeguards.

Risk	Detail
Reputational risk if delays to contract commencement due to planning concerns	The equipment is unlikely to be considered de minimis and will therefore require separate planning permission. To minimise the risk of this approval process delaying matters, a suitable procedure will be developed to ensure the design of the equipment provides suitable options for both residential and conservation areas.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Digital Exclusion is both a cause and a symptom of social exclusion and approximately 15% of the Country, circa 6 million people, are identified as both socially and digitally excluded¹. Individuals and communities can quickly be left behind if they do not have the means to access the shared digital spaces upon which our lives are increasingly dependent for employment, social networking, entertainment, information and accessing public services.
- 5.2 The addition of an alternative and cheaper network than the 3G networks currently provided will be a step towards providing digital inclusion to communities. Two key measures that are potentially available through the concession contract are firstly a minimum level of free usage that should enable financially excluded people without access to credit/debit cards to receive digital access and services. Secondly if the dialogue can secure a network that delivers broader coverage then it will enable people in less commercially viable areas to have as and when access to digital services even if they do not have their own home broadband connection.
- 5.3 The process of letting of a concession contract will provide the Council with an opportunity to work with and shape this new market as it comes forwards to ensure that the opportunity to access wireless services also comes to less commercially viable areas in parallel with the deployment of WiFi equipment to the most commercially beneficial areas. If the Council does not open up its street furniture to support wireless access then ad hoc commercial services will end up coming forwards more slowly and only in the most viable areas.
- 5.4 The opportunities for digital inclusion will be prioritised during the dialogue process. At present it is anticipated that securing borough wide coverage will be a priority so that as many of Barnet's communities as possible can benefit from the network, wider economic growth is supported, as well as access to quality public services provision being extended to all residents. Furthermore aside from a minimum level of free access or data, the network provides a means of giving permanent and unrestricted access to online public services (such as the Council's website, NHS Direct and other health services as well as TfL / Network Rail journey-planning software to name but a few examples).
- 5.5 The bids for the contract will be scored in individual lots (for each local authority) based on 60% of the score relating to any income generated, and 40% of the score based on the quality of benefits secured. The evaluation of the quality of the bids will provide scoring that ensures the Council follows requirements under the Equality Act (2010); details of this scoring will be made available to bidders at appropriate stage of the procurement process.

¹ Digital Inclusion: An Action Plan for Consultation, 2008

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 Agreeing to participate in the procurement will involve engaging in the competitive dialogue and sharing key information to enable the bidders to work up solutions for individual or groups of boroughs within the wider framework. This agreement to participate in the procurement process does not commit the Council to proceed with signing of a contract without further recommendation to the Cabinet Member for Environment through delegated powers.
- 6.2 Any costs of the procurement process will be met through use of contingency (non-recurring) and then repaid from the income stream linked to this concession or EPR budgets as required, any income or costs arising from the tender will not represent budget provisions until the procurement process is well developed or complete. It is envisaged that there will be a requirement of one day per week over nine months from five senior resources. Estimated costs based on the above are approximately £60,000.
- 6.3 Any income that will accrue from the contract is currently unknown and will depend on the potential overall profitability from developing the network, less the cost of borough requirements in terms of digital inclusion, network safety for children, and operation of a secure parallel network for Council staff. There will be no cost to the Council in the provision of this service as detailed in section 9.11, all costs in relation to the service will be funded by the operator of the concession, including all costs related to using the Council's assets.
- 6.4 The development of this contract will require staff support from highways, finance, procurement, property and legal services.

7. LEGAL ISSUES

- 7.1 As the contract is to be let as a services concession contract, the procurement is exempt from the Public Contracts Regulations 2006 as per regulation 6(2) (m). However it is subject to Treaty principles of transparency, fairness and non-discrimination and therefore, it has been agreed that the procurement process will follow normal public contracts practice with an OJEU advert, followed by a pre-qualification questionnaire and then the formal tender process.
- 7.2 The OJEU advert and all contract documentation must make clear that the London Borough of Barnet will be one of the boroughs likely to contract with the successful Tenderer.
- 7.3 There are potential conflicts with the Apparatus Licence transferred to the PFI Service Provider under the Street Lighting PFI Contract that will need to be fully explored through the competitive dialogue and overcome to enable contract award. It will be necessary to encourage active engagement by the PFI Service Provider to establish these legal issues at an early stage.
- 7.4 The Council's participation in the procurement must be made subject to the contract which it has with its PFI Street Lighting partner.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Constitution, Part 3, Paragraph 3.6, Cabinet Resources Committee has responsibility for:
- (i) All matters of responsibility relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council;
 - (ii) Developing and recommending, to Cabinet for adoption, an e-Government strategy and associated ICT policies and strategies; and
 - (iii) Approval of schemes not in performance management plans but not outside the Council's budget or policy framework.
- 8.2 Constitution – Contract Procedure Rules – details the authorisation and acceptance thresholds for works, supplies and services. Cabinet Resources committee are requested to approve the costs of participating in this procurement exercise which are estimated at £60,000. As the level of income from the contract is currently unknown and as the decision affects all wards in the borough, it is being treated as a key decision.

9. BACKGROUND INFORMATION

- 9.1 The opportunity to participate in a joint-procurement exercise, for letting of a WiFi concession contract, arose through the Society of London Treasurers ICT Project Board that set up five key projects to support improved services and council income. The London Borough of Camden are leading on this project supported by two other boroughs that were already signed up by July 2012; sixteen other London Councils alongside Barnet Council including neighbouring boroughs Brent and Haringey have expressed an interest in joining the procurement exercise in order to maximise the scale and benefit of the overall contract process compared to boroughs separately procuring wireless network suppliers over the coming few years.
- 9.2 The services proposed will consist of a public wireless provision across significant areas of the borough, these areas are expected to primarily be in areas of "High Footfall" as these provide the maximum potential income generation for the suppliers. This is likely to translate into town centres, parks, transport nodes, schools, hospitals and other busy community centres where people are passing-through, waiting for services / connections or meeting to relax or socialise.
- 9.3 Any chosen supplier will need to maintain commercial viability so, based on existing contracts to date (e.g. on the London Underground, Westminster / Kensington and Chelsea), it is expected that there will be restrictions or conditions applied to the free wireless internet access and these will be the subject of detailed contract discussions prior to contract award. These will vary depending on the supplier chosen and may include, but are not confined to, limitations on:
- Times when the network is available
 - Speed of the network connection
 - Geographical coverage of the network
 - Services available on the network.

- 9.4 The opportunity to deliver a borough-wide WiFi network offers the possibility to increase 'channel shift' of customers to online services, but also to develop a parallel secure network for staff to use wherever they are within the borough. For example all customer / defect information could be directly recorded into official databases, and staff could access their own emails without requiring a blackberry or delay for VPN login as their computers would have permanent WiFi access to the Council's secure network.
- 9.5 Westminster Council and the Royal Borough of Kensington and Chelsea recently collaborated to award a contract for similar concessionary services and have advised the project team for this contracting process. Figures 1 and 2 demonstrate how the equipment is visually quite unobtrusive:



Figure 1 - Rukus 8800 installed in Kensington High Street



Figure 2 - Close up of device - painted a similar colour to the lamp post

9.6 Market assessment and proposed contract

- 9.7 The market for wireless services is characterised by keen interest from some suppliers to build public wireless infrastructures. This interest appears to be driven by:
- (i) Competition and business innovation in the sector – some suppliers have publicly announced plans to provide free Wireless networks across London/UK. Also mobile data networks (3G) are being pushed to capacity requiring a hand off to higher capacity data networks.
 - (ii) Advances in consumer technology such as iPads which are stimulating the delivery of premium content streaming services such as Netflix and BBC iPlayer.
- 9.8 The main income generator behind the concession contract is that 4G mobile technology can be easily slotted into the wireless boxes as that system is rolled-out over the coming years, and given that they will be located in areas of

high footfall it provides a means of delivering additional 4G network capacity at a much cheaper price than installing new mobile phone masts.

- 9.9 Engagement with the market was undertaken by Camden Council as project lead and assessed through pre-procurement discussions with some of the main providers to assess potential interest, scope and solutions that could be provided. In a few instances suppliers have even approached Camden Council with unsolicited proposals.
- 9.10 Based upon the assessment of the market it is proposed that a contract term of no longer than 10 years with suitable break clauses, be agreed with the winning bidder.
- 9.11 It is anticipated that the contract will be treated as a straight concession with the successful bidder expected to be solely responsible for installation, operation and maintenance of the wireless network, the supplier will own all risks and responsibilities of operating such a service.
- 9.12 Delivery of the proposed wireless and 4G services will be secured through a concession contract involving the use of Council assets. There will be no funding requirement upon the Council for provision of these services; in reality is anticipated that contract may generate income and certainly enough income to fully support delivery of the service for the life of the contract.
- 9.13 Income received from the concession is anticipated to be used to support the Council's capital strategy in order to link the income from letting Council assets to priorities for investment related to those assets.
- 9.14 As technology and consumer/business demand changes rapidly in this sector the contract should provide a guarantee of provision for the full term and extensions and also incorporate appropriate review and break clauses within the contract if demand for this service, or the technology provided, becomes obsolete within the duration of the contract.
- 9.15 The concession will be awarded using the Most Economically Advantageous Tender (MEAT) criteria, weighted as 60% to the whole life cost (income / value) and 40% to quality.
- 9.16 As the Council's street lighting equipment is currently maintained and operated by a third party provider through a Private Finance Initiative (PFI) contract, the terms of this contract will need to be carefully considered in relation to this procurement process. At present it has been identified that negotiation over the concession will need to take the following issues into account:
 - (i) The PFI Service Provider has approval right over the use of the street lighting equipment and may charge a fee for checking, or it may be easier for the PFI provider to provide the whole installation process.
 - (ii) Interference from the WiFi equipment with the wireless technologies within the street lighting equipment may need to be addressed
 - (iii) Indemnity against the consequential costs of repair / replacement from incidents involving accidental damage to the wireless equipment will be needed to address the result of damage to the lighting column.

- (iv) The maintenance and replacement programmes must not be inhibited, and it will be necessary to ensure an operator cannot assume rights (as code system operators) over the Council's statutory responsibilities or the street lighting equipment, and that suitable arrangements are in place to address damage caused during equipment removal.
- (v) WiFi units require energy to run, whilst this is likely to be of very low power the contract should make provision for payment of the energy charges.

10. LIST OF BACKGROUND PAPERS

10.1 None

Cleared by Finance (Officer's initials)	JH
Cleared by Legal (Officer's initials)	SS