



Report of: Executive Member for Finance and Performance

Meeting of:	Date	Agenda item	Ward(s)
Executive	22 November 2012	E8	All

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SUBJECT: Wireless Concession Contract

1. Synopsis

- 1.1 A local government, pan-London, collaborative ICT group, attended by the council, has identified a number of collaborative opportunities. One of these is a wireless concession contract.
- 1.2 The contract involves the letting of a concession for the attachment of networking equipment to council owned assets, primarily street furniture, which will deliver a free wireless network within the borders of the collaborating Authorities and for which the Authorities will receive a fee.
- 1.3 Marketplace research suggests that the potential level of income for the council could be in the region of £80,000 per annum although the actual amount will not be known until after the tender process has been completed.
- 1.4 The network will be owned and operated by the chosen provider in exchange for licensed use of assets, to host the network equipment.
- 1.5 The wireless network will allow people living, working and passing through the borough to access the internet outside, via their own wireless enabled devices such as smartphones, tablets and laptops free of charge (subject to fair usage).
- 1.6 The wireless network is unlikely to have much penetration into buildings and therefore will be available outside only for the most part.
- 1.7 Whilst suppliers are likely to target high footfall areas in the initial phase, this cannot be known for certain until bids are received and the competitive dialogue stage of the procurement begins. The council will be looking to further the Fairness Agenda by ensuring that more disadvantaged areas are included. This expansion of the network is likely to require funding. The council may choose to source this funding from the income received via the initial phase of the implementation.

- 1.8 There is no capital outlay required by the council in terms of the wireless network or its operation, the investment comes entirely from the service provider.
- 1.9 Council resources will be required to support the implementation and manage the on-going contract the implications of which are outlined in paragraph 8.1.
- 1.10 TfL are working on a similar project using their own street assets on Red Routes so the timing of the pan-London collaboration is critical in order to leverage maximum income opportunities ahead of TfL implementing a potentially competing service.

2. Recommendations

- 2.1 To agree to the council participating in a joint procurement with 17 other London Boroughs for the letting of a concession contract for the provision of wireless internet access to people living, working and passing through the borough.
- 2.2 To authorise the Corporate Director of Resources (in consultation with the Corporate Directors of Finance and Environment and Regeneration) to enter into a concession contract with the successful tenderer, for a period of between 5 and 10 years, with appropriate break clauses through the contract term.

3. Background

Trends in Mobile Device Use

- 3.1 Recent research shows that mobile data consumption is rapidly increasing driven by the growing popularity of smartphones and tablet devices to access internet based services such as email, general internet browsing, social media etc.
- 3.2 Ofcom estimates that in 2011, 32.6 million subscribers accessed the internet via their mobile phones, an increase of nearly 10 million since 2010.
- 3.3 Mobile data connections were previously dominated by 3G dongles and data cards, newer methods growing in use are:
 - Directly via 3G smartphone or tablet
 - Directly via wifi
 - Via tablet or laptop 'tethered' wirelessly to a smartphone with 3G connection
- 3.4 Some people will have monthly smartphone or tablet contracts which include a set or unlimited amount of data usage. Others will use the 'pay as you go' method which allows them to flex up or down the amount they spend on data.
- 3.5 According to Ofcom
 - 19% of smartphone users use wifi to save on mobile data charges and to increase their connection speeds. (Wifi enables them to connect at no additional charge via either their own broadband connection in their own home or via a publically available network such as those often available in cafes, etc).
 - 15% of people live in a home where mobiles are the sole form of telephony. This avoids the expense and commitment of paying monthly line rental for a fixed land line.
 - The least affluent socio-economic groups and those in privately rented or social housing are less likely to have a fixed line broadband service in their homes, thus, the reliance on mobile phones for telephony as well as for internet access is doubly important.

- 3.6 The provision of public wireless networks is growing in line with demand for services as outlined above. The following paragraphs provide an overview of developments across London, the UK, Europe and the USA.
- 3.7 In 2011 Westminster City Council, together with the Royal Borough of Kensington and Chelsea let a concession contract to O2 to provide free wireless internet access to areas within those boroughs. O2 began rolling out this service in July 2012. It is now possible to connect free of charge to the internet via this service in London's West End.
- 3.8 Free wireless connectivity was installed across a number of central London tube platforms during the Olympics. This service is operated by Virgin Media although it will revert to a pay as you go access service from 2013 for non-Virgin mobile or broadband customers.
- 3.9 In Paris, several hundred individual wi-fi zones offer free connections in public parks and municipal spaces.
- 3.10 New York also offers free wi-fi in parks and last year began to install wireless internet access at several of its subway stations.

4. How the concession contract will operate

- 4.1 In essence the contract involves the letting of a concession for the attachment of networking equipment to council owned assets, primarily street furniture, which will deliver a core wireless network within the borders of the collaborating Authorities.
- 4.2 In return for this concession the participating authorities will receive an income derived through a combination of:
- Rental of space on appropriate street assets for service providers' transmitters.
 - Share of advertising revenue generated via the registration page (see Section 5). Open book accounting will be utilised to assure the level of revenues due.
- 4.3 No capital investment will be required from the council; all investment will be made entirely by the service provider.
- 4.4 The council will need to provide, as part of the tender documentation, a list of the street furniture assets it is willing to allow the service providers to use. The assets themselves remain the property of the council; however the wireless transmitter devices and the network they form will be owned and operated by the chosen provider in exchange for licensed use of assets, to host the network equipment.
- 4.5 Whilst the wireless transmitter devices are likely to be small and unobtrusive, installations will be subject to planning regulations and consents where necessary.

4.6 Example photo of a wireless transmitter



- 4.7 The wireless network is unlikely to have much penetration into buildings and therefore should not conflict with local business wireless offerings.
- 4.8 Service providers are likely to want to target high footfall areas initially as these are more likely to prove more financially viable & financially attractive for them. The areas initially selected for connectivity will be identified through the tender process but it is anticipated that providers are likely to be interested areas such as Angel, Upper Street and Holloway Road.
- 4.9 Whilst it will be possible to extend the network to other areas of the borough this will require additional investment and will need to be managed in a phased approach. Funding the extension of the network could be subsidised by the income generated from the initial installations.

5. Accessing the wireless service

- 5.1 Users wishing to use the free wireless service will be required to register via an internet 'splash' page. This is a simple, one-time registration process and users will be required to provide minimal, basic details e.g. a user name and email address.

- 5.2 The requirement to register in this way and the control mechanisms which assures the protection of the data the user provides and limits its future use is governed by the Digital Act. The Act requires users to register in order that they acknowledge accountability for their actions and to prevent abuse
- 5.3 Once set-up, access to the service is automatically available for selection on future occasions.

6. Benefits of the concession-based wireless network

6.1 The wireless based concession network will deliver a number of benefits for people living and working in the borough, the council and the service provider. The following paragraphs provide a more detailed overview of those benefits.

6.2 Benefits for people living and working in the borough

- Free access to internet when out and about rather than paying for data packages or pay-as-you-go (subject to fair usage).
- Ability to access faster, new generation connectivity (4G) as soon as it is available making downloads and access to the internet quicker.

6.3 Benefits for the council

The wireless concession based network will provide an opportunity to;

- Support digital and social inclusion – the free wireless service will be available to everyone in the borough starting with high footfall areas with the potential to extend to other areas over time.
- Reduce inequality – the free of charge service will make it easier for everyone to access internet services from their smart phones/tablets.
- Promote and support local businesses via advertising on the wireless network home page.
- Promote and provide access to council services via the wireless home page, providing a mechanism for encouraging more residents/visitors to interact online thereby supporting the delivery of the council's customer access strategy.
- Enhance the council's reputation as a digital borough.
- Generate an income stream for future reinvestment and expansion of the network to other areas of the borough.
- Support future ways of working – the wireless network will support the delivery of the council's working without walls project by providing free network access for those staff wishing use their own devices to access council email and systems.

6.4 Benefits for the service provider

A concession contract is attractive to service providers as it presents opportunities to;

- Install a new, faster network infrastructure to replace and support the over-burdened 3G network using lower cost technology.
- Increase market share and market presence.
- Expand their network services to provide both wi-fi and 3G/4G services to customers as well as providing an improved user experience by providing quicker access to the internet and online services.

- Generate income streams via a number of means ie. through advertising and commission based referral of services plus the potential to resell network bandwidth to other providers.

7. Status of Project

- 7.1 There are 17 London authorities participating in the wireless concession procurement. The project has been led by Camden and a project board has now been established at which LBI has representation.
- 7.2 Within the council, initial engagement has begun with key stakeholders in Environment and Regeneration, Procurement and Legal Services. More specifically involvement and support from the following departments/organisations will be key:
- Highways
 - Planning
 - Licensing
 - Legal
 - SSE (Lighting PFI contract)
- 7.3 Transport for London is understood to be working on a similar concession contract at present, using their own street assets on Red Routes although their procurement is believed to be 3-6 months behind the PAN London scheme. For this reason, the timing of this project for LBI is key and we are currently well positioned to stay ahead of any conflicting projects and to maximise the income opportunity and benefits for the council.

Procurement Route and Timetable

- 7.4 Each borough will enter into its own individual contract with the successful service provider and it is anticipated that the contract length will be between 5-10 years.
- 7.5 An OJEU Notice has been published and a Pre-Qualification Questionnaire was issued on 19 September 2012.
- 7.6 A full specification will be issued on 19 November 2012 and will consist of a core set of requirements, with each borough adding their own appendix of individual, specific requirements. It should be acknowledged that as a concession contract, there are limitations as to how prescriptive we may be in our specification.
- 7.7 It is anticipated that the contract will be awarded in February 2013 with implementation beginning April 2013.
- 7.8 A timetable is outlined in the table below

Activity	Date
Issue PIN	27th June 2012
Issue OJEU Notice	14th September
Issue PQQ	19th September
Deadline for PQQ	31st October 2012
Issue Specification and Invitation to Participate in Dialogue to shortlisted bidders	19th November 2012
Dialogue stage	20 th December 2012
Invitation to submit final tenders	31 st January 2013
Deadline for receipt of final tenders	28 th February 2013 12 Noon

Award Contracts individually	End March 2013
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Implementation/ Contract starts

April 2013 depending on implementation plan

8. Implications

8.1 Financial implications:

Marketplace research suggests that the concession contract could generate an income of £80,000 per annum however this is an estimate and the actual amount will not be known until the tender process is complete.

It is not certain until negotiations begin what the likely income will be and therefore the council should select the most economically advantageous option once this becomes clearer. The council retains the right to withdraw from the procurement if tenders do not appear financially viable.

The income will be generated from two revenue streams:

- Rental of space on appropriate street assets for service providers' wireless transmitters
- Share of advertising revenue. Open book accounting will be utilised to assure the level of revenues due.

The rental income will be a steady, fixed amount dependent on the number of assets used. It may increase as further assets are utilised.

The advertising revenue is more speculative. The share of advertising revenue offered to the council will be determined by the negotiation during the competitive dialogue phase of the procurement. Advice on this will be sought from industry specialists.

No capital outlay is required from the council in terms of the network infrastructure costs or the on-going running costs (power, maintenance, etc). These will be met entirely by the supplier.

There will be an impact on council resources in terms of staff time to support the implementation and manage the contractual relationship. It is anticipated that this will impact staff resources in E&R who will be required to support the implementation. The level of resource required will need to be assessed as part of the tender process however it is anticipated that the level of resource required will be higher during implementation than in subsequent phases/years.

8.2 Legal Implications:

The proposed contract is being structured as a services concession contract and is therefore outside the provisions of the Public Contracts Regulations 2006 (regulation 6(2) (m)). However the concession contract is subject to the EC treaty principles of equal treatment, transparency, proportionality and mutual recognition and therefore it has been decided to voluntarily publish a notice in the OJEU and to follow a structured competitive tendering process incorporating competitive dialogue in order to mitigate any risk of challenge in view of the potential value of and anticipated interest in the concession contract.

State aid is not considered to be applicable as the council will be receiving a market 'rent' for access to its street furniture and tenderers will be bidding for the concession contract on a competitive basis.

Further if the 'rent' is in part based on a revenue share this will form part of the consideration receivable by the council from the operator for the right to use council street furniture and will therefore not amount to trading.

The council will need to ensure that the level and period of exclusivity given to the successful operator for the use of street furniture does not breach the requirements of the Competition Act 1998. Further the council also needs to ensure that the level exclusivity in the contact does not conflict with the council's other contractual and statutory obligations including those of an operator exercising rights under the Electronic Communications Code (Schedule 2 of the Telecommunications Act 1984).

The council may grant a permission to the operator to affix apparatus to the council's street furniture located on the public highway a person for the production of income (section 115E(b) of the Highways Act 1980).

The council has a PFI partnership with SSE Contracting to deliver public lighting services across the council's highway network. The street lighting apparatus is owned by the council but is licensed to the PFI contractor to fulfill its maintenance and management obligations under the PFI contract. Equipment enabling internet access does not fall within the list of permitted attachments to street lighting columns under clause 9 of the PFI contract. Accordingly, it will be necessary to obtain the specific consent of the PFI contractor to enable such attachments to be made.

8.3 **Environmental Implications:**

The use of wireless technology has rapidly increased in recent years and is an accepted part of our everyday lives from the office (LBI main office buildings); to shops and cafes (Costa Coffee, Starbucks, McDonalds, many independent businesses, etc) to the open air (Angel N1 shopping centre has free wireless internet as do parts of the West End - Oxford Street, Regent Street, Exhibition Road, etc). This wireless technology (based upon radio frequency) is not the same as that of a mobile phone mast which works on a very different set of frequencies and has, in the past, raised a different set of health and safety concerns.

An Environmental/Health and Safety Impact Assessment has been completed. Corporate Health and Safety consider that there are no significant issues to consider regarding this type of wireless network. Further information will be required regarding the PFI contractor's installation methods once negotiations have taken place with them.

Environmental and Health and Safety implications have been considered as part of the Pre-Qualification Questionnaire which was issued on 19 September 2012. This is yet to be assessed.

We are requesting compliance with safety standards as part of the Invitation to Participate in Dialogue and will assess suitability and seek independent input if required.

The World Health Organisation (WHO) and Health Protection Agency (HPA) both agree that there is no evidence that exposure to radio signals from wireless devices adversely affects health.

The HPA have specifically stated - "Based on current knowledge and experience, radio frequency (RF) exposures from Wi-Fi are likely to be lower than those from mobile phones. Also, the frequencies used in Wi-Fi are broadly the same as those from other RF applications such as FM radio, TV and mobile phones."

8.4 **Equality Impact Assessment:**

An Equalities Impact Assessment will be carried out.

Equalities implications have been considered as part of the Pre-Qualification Questionnaire which was issued on 19 September 2012. The council has the opportunity to include any LBI-specific equalities requirements in the specification/tender documentation.

9. **Conclusion and reasons for recommendations**

- 9.1 A wireless concession contract offers many strategic and social benefits for the council, its residents and local businesses. It is therefore recommended that the council continue with the collaborative procurement of a wireless internet concession contract.

Background documents

None

Signed by:

Executive Member for Finance and
Performance

Date

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