

<b>LONDON BOROUGH OF CAMDEN</b>	<b>WARDS: ALL</b>
<b>REPORT TITLE:</b> Concession for Streets and Open Spaces Wireless Provision FIN/2012/18	
<b>REPORT OF:</b> Director of Finance	
<b>FOR SUBMISSION TO:</b>  Cabinet	<b>DATE:</b> 18 <sup>th</sup> July 2012
<b>SUMMARY OF REPORT:</b>  <p>This report sets out the rationale and contracting strategy for letting a concession contract for the attachment of networking equipment to Council owned assets, primarily street furniture, that will deliver a core wireless network within the borders of the London Borough of Camden in areas of the borough that are commercially viable as they have a high 'footfall.'</p> <p>Similar concession contracts for wireless services have recently been awarded by other Local Authorities.</p> <p><b>Local Government Act 1972 – Access to Information</b>          No documents were used in the preparation of this report which are required to be listed.</p> <p><b>Contact Officers:</b> <i>Fikriye Erdogan, Ben Pass and Keith Wright</i></p> <p>Telephone: 0207 974 2349, 2079, 1511          Email: <a href="mailto:Fikriye.erdogan@camden.gov.uk">Fikriye.erdogan@camden.gov.uk</a>, <a href="mailto:ben.pass@camden.gov.uk">ben.pass@camden.gov.uk</a>, <a href="mailto:keith.wright@camden.gov.uk">keith.wright@camden.gov.uk</a></p>	

## **RECOMMENDATIONS:**

The Cabinet is asked to agree the following:

- i. The procurement strategy for the letting of a concession contract to maximise the potential income/services received from Council owned assets to provide a core wireless network that is expected to include a limited free internet service, providing wireless to as many residents, businesses and visitors as possible
- ii. Include options within the contract for expansion of wireless access into other areas where the Council wishes to do so to support the delivery of wider Camden Plan objectives, maximising the digital inclusion of residents as far as possible.
- iii. That the services be provided under the concession contract in exchange for constrained use of Camden owned assets (e.g. street furniture/buildings).
- iv. To authorise the Chief Procurement Officer and the Assistant Director (ICT), in consultation with the Borough Solicitor, to finalise appropriate contract documentation.
- v. The term of the concession contract, which will be dictated by market requirements and legal constraints, be no shorter than 5 years and no longer than 10 years with break clauses at set intervals throughout the contract term.
- vi. That income generated from the contract will be allocated in accordance with Camden Plan priorities and as part of the Council's financial strategy.
- vii. To agree that the concession will be established in a way to permit other London Boroughs to participate in the arrangements to enable wireless services to be provided across Borough boundaries.

Signed: Approved by Mike O'Donnell Director of Finance.

Date: 6<sup>th</sup> July 2012

## **1. Introduction**

- 1.1. This report sets out the business justification and contracting strategy for a concession for a streets and open spaces wireless provision. The aim is to let a concession contract, as have other Councils recently, which will enable the delivery of a core wireless network in public spaces within the London Borough of Camden. It is expected this network will be further extended over time to support the priorities as set out in the Camden Plan including the Community Investment Programme (CIP).
- 1.2. The network will be owned and operated by the chosen provider in exchange for licensed use of Camden assets, primarily street furniture, to host the network equipment. It is expected that the initial offering from the provider will be the delivery of wireless internet access, although this is likely to be extended to 4G mobile (i.e. higher capacity) services in the future. This network will also complement the Council's existing free internet services that are already provided in libraries.

### **Supporting the Camden Plan**

- 1.3. The expected benefits from the proposed concession include, but are not confined to:-
  - 1.3.1. Income generation that can be used to support the Camden Plan and the Council's financial strategy;
  - 1.3.2. Assisting the Council to tackle inequality and digital exclusion through the expected delivery of a free public wireless service;
  - 1.3.3. Fostering economic growth through the accelerated delivery of 21<sup>st</sup> century wireless services into Camden that can be used by local businesses and which would otherwise develop in a piecemeal, and uncoordinated way;
  - 1.3.4. Providing an opportunity for the Council to lower its costs by making use of potentially lower cost wireless services for field workers.
- 1.4. Market research undertaken indicates that the wireless service offer is likely to vary between suppliers in what remains a fast moving and rapidly evolving market. The aim from the procurement process will be to find the optimum balance of benefits and income levels. Competition, inter borough collaboration and a competitive dialogue process will maximise the opportunity to the Council. Our approach will be to seek to identify with prospective suppliers those areas where the footfall is sufficient to make it commercially viable for suppliers to provide wireless access and make a payment to the Council under a concession contract. There will also be an option for additional provision to be added at the Council's request where the Council wishes to do so to support the delivery of wider Camden Plan objectives.

## **2. Project Information**

### **Nature of the Service Concession**

- 2.1. The service concession set out in this report will result in an agreement between the Council and a supplier.
- 2.2. 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. Any chosen supplier will need to maintain commercial viability so, based on existing contracts to date (e.g. on the London Underground), 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 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.
- 2.3. It is anticipated that this will be treated as a straight concession contract with the successful bidder expected to be solely responsible for installation, operation and maintenance of the wireless network and the supplier will own all risks and responsibilities of operating such a service.
- 2.4. It is expected that the service concession will be run at no cost to the Council, on the contrary, financial income to the Council is predicted.

### Financial Factors

- 2.5 There is no revenue or capital expenditure anticipated for providing the services in this proposal. The contract will be let as a concession on the basis that it generates income for the Council and all costs associated with implementing and operating the concession are to be covered by the chosen supplier.
- 2.6 It is expected that the income (after any costs incurred by Services impacted by the operation of the concession (e.g. engineering) will be allocated as part of a wider financial strategy and the Camden Plan.

## **Market assessment & proposed contract term**

- 2.7 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:
- Competition and business innovation in the sector – some suppliers have publicly announced plans to provide free Wireless networks across London/UK. Mobile Data Networks (3G) being pushed to capacity requiring a hand off to higher capacity data networks.
  - Advances in consumer technology such as iPads which are stimulating the delivery of premium content streaming services such as Netflix and BBC iPlayer.
- 2.8 Engagement with the market has been assessed through pre-procurement discussions with some of the main providers to assess potential interest, scope and solutions that could be provided. In some instances suppliers have approached the Council with unsolicited proposals.
- 2.9 Westminster Council and the Royal Borough of Kensington and Chelsea have recently collaborated to award a contract for similar concessionary services to what Camden has proposed, and have been consulted as part of the market assessment.
- 2.10 Based upon the assessment of the market and the strategic direction of the Council, it is proposed that a contract term is no shorter than 5 years and no longer than 10 years with break clauses based on the advice by consultants within the market.

## **Delivery Options**

- 2.11 A number of options were assessed in relation to the delivery of the services
- a) Do nothing
- For
- There is no statutory requirement for the proposal.
  - Avoids resource cost and risks of proposed contract.
  - Without Council involvement there is an increasing proliferation of free Wireless networks being implemented by private and public organisations so action is not required to increase wireless internet access in general.
- Against
- Missed opportunity to leverage Council assets to provide income to the Council and advance digital inclusion

b) Procure based on a concession contract

This option will enable Camden to receive income in return for Camden granting use of its assets (primarily lamp posts) to the successful provider

For

- No cost to the Council.
- Potential for income generation for the council
- Removes risk of operating and maintaining a Council network
- Provides a way for Camden to ensure a seamless experience for users of the service across the borough and potentially other parts of London.

Against

- Potentially limits the Council's ability to set the coverage footprint of the network.
- Potentially limits the Council's ability to set service parameters.

**Collaborative Procurement**

2.12 Camden is working with other London Boroughs to collaborate in a joint procurement. Interest has been shown from several Boroughs in participating to take this initiative forward. This should help to drive greater offerings from providers.

2.13 To facilitate collaboration Camden will engage with other Boroughs and issue a

- Specification
- Evaluation criteria and weightings
- Terms and conditions
- Procurement timetable
- Partnering Agreement.

Collaborating parties would need to sign the Partnering Agreement, commit to the timetable and agree the relevant documentation including the terms and conditions. Each Borough(s) would contract with the winning supplier separately. This is expected to offer best value to Camden and ensure a faster delivery of any wireless infrastructure. This option is expected to provide the most economical way to achieve the greatest benefit to the participating Council(s) and will have the added advantage of shifting most of the operational risks onto the selected provider(s).

**Concession Contract**

2.14 Funding for the proposed wireless services would be secured by using a concession contract in exchange for the use of Council assets. This is expected to result in a cost neutral or income generating contract that will fully support delivery of the services for the life of the contract. As the 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.

- 2.15 A concession contract will allow LB Camden to consider its right to utilise/licence Council assets for the provision of services or the generation of income. No fee will be paid to the provider, rather the provider will be required to maximise the income from the assets, for their own and the Council's benefit.
- 2.16 EU procurement regulations are not applicable to concession contracts; however, the principles of equality, fairness and transparency are applicable. In the case of this procurement, the treaty principles will be adhered to and the contract will be advertised in the Official Journal of the European Union (OJEU).
- The Competitive Dialogue process will be followed and an adequate number of days to hold dialogue sessions with bidders will be factored into the timetable adhering to the regulations after they have been shortlisted following receipt of Expressions of Interest. A 'supplier day' will be held to engage with the market to demonstrate Camden's and other boroughs' commitment to taking this concession forward and to explain the procurement process to potential suppliers. The requirement specification will be as detailed as possible to streamline the dialogue process to ensure efficiency of process. The Competitive Dialogue process is being used as it is the most appropriate procurement route to use where it is not entirely possible to fully specify what solutions can be offered, where it provided the Council with flexibility to ensure best value for the scope of a requirement such as this. It has been favoured over the restricted OJEU process, which does not allow for variations to the specification and thus, may not be beneficial to Camden.
- 2.17 The Tender award criteria will be made on the basis of the Most Economically Advantageous Tender (MEAT). The criteria will be developed to ensure that Camden (and other participating boroughs) receive the maximise outcomes from the process by balancing income with wider social and economic benefits.

### **Contract Management Strategy**

- 2.18 The contract will be managed jointly by ICT and Procurement. It is anticipated that the implementation phase will involve staff from Corporate Property/Engineering/Street Environment/Planning.
- 2.19 Works will not commence until a programme and resource programme are in place and agreed by all parties. Quarterly or monthly liaison meetings will take place between the key Council representatives and the supplier's representatives during the implementation and operational phase or more frequently if required.

## Timetable

2.20 The expected timetable for the procurement is set out below.

Indicative Timeframe	Date
Cabinet Approval	July 2012
Procurement process (see table below)	July to February 2013
Award contract	February 2013

The key milestones in the procurement process are set out below:-:

PROCUREMENT PROCESS
Advertise on Procure4London website / Post OJEU notice
<b>Supplier day</b>
Send out Expressions of interest (EOI)
Deadline for EOI Submissions
Evaluation of EOI complete
Shortlist applicants for Competitive Dialogue
Issue ITPD to bidders
Dialogue stage**
<b>End of dialogue stage</b>
Issue ITSFT to bidders
Deadline for receipt of Final tenders
Evaluate (min 3 people) need to be available
Complete evaluation/clarifications sought
Award Contract
10 day Standstill Period
Implementation (10 Days) (if applicable)
Contract starts

## Risks

2.21 The main risks and associated mitigation strategies in relation to this project are set out in the below:-

Risk	Mitigation Strategy
Advertising Conflict Camden has a number of contracts for physical advertising on street furniture and buildings. Any physical advertising for a Wireless network may conflict with these contracts.	<ul style="list-style-type: none"> <li>Requirements will be specified to exclude any physical advertising without authorisation from the Council or if necessary exclude physical advertising from the agreement altogether.</li> </ul>
Failure to achieve key benefits	<ul style="list-style-type: none"> <li>Primary objectives to be specified as mandatory requirement of</li> </ul>

	<p>tender and used for EOI.</p> <ul style="list-style-type: none"> <li>• Concession Fee/Revenue share will be assessed as part of the 70% weighting on cost to ensure that Council maximises return on asset use.</li> <li>• Minimum revenue payment to the Council could be specified as part of profit sharing arrangement (guaranteed concession fee).</li> </ul>
<p><b>Footprint of network coverage</b> It is unlikely that based on the concessionary model full coverage of the borough will be possible. Providers will want to target highest footfall areas only to get best return on investment.</p>	<ul style="list-style-type: none"> <li>• If any sites are deemed as mandatory these should be included as selection criteria for the EOI.</li> <li>• In order to maximise income for the Council, restrictions or mandates for areas of coverage should be avoided.</li> </ul>
<p><b>Managing Expectations</b> There is already a developing expectation that the concession will deliver a free to end user, unrestricted wireless network across all of the borough. This is not achievable and there is a risk to the Councils reputation</p>	<ul style="list-style-type: none"> <li>• Be clear in all communications that primary outcome of concession is to generate income for meeting the aims of the Camden Plan.</li> <li>• Ensure that providers are made aware during procurement of the aspirations of the Council and that footprint and free access are a desirable outcome without prejudice to income.</li> </ul>
<p><b>Protection of minors connecting the internet</b> Risk that minors in the borough could access harmful content and although the provider will be legally responsible for all aspects of access the Council will have a reputational risk if seen as “Camden’s wireless network”</p>	<ul style="list-style-type: none"> <li>• Require suppliers to fully specify their methods and communication on content filtering</li> <li>• Require compliance with the Digital Act.</li> <li>• Be clear in public communications that the network is not Camden owned or operated.</li> <li>• Request details from providers on our ability to request filtering of content</li> </ul>

## **Responsible Procurement**

2.22 The potential environmental impacts are listed below:

In order to meet specific Sustainability requirements the following Environment criteria will be considered. These requirements form a key part of the Councils Sustainability action plan 'Green Action for Camden' (2011-2020).

- Carbon Reduction
- Reducing emissions to improve air quality
- Reducing waste

## **Equalities Impact Assessment**

2.23 An initial Equalities Impact Assessment exercise has been carried out to consider all aspects of digital inclusion arising from this concession. This will be maintained and updated during the procurement and will be finalised on completion of the procurement process.

## **London Living Wage**

2.24 It is not anticipated that there will be any London Living Wage (LLW) considerations in this contract. However to ensure all employees within the successful provider's employment receive LLW as a minimum, subject to the report on LLW also on today's Cabinet agenda being approved and best value being demonstrated, a clause will be included in the contract requiring the provider to pay LLW to all its employees.

## **3. COMMENTS OF THE DIRECTOR OF FINANCE**

3.1 The Council aims to maximise the return on its investments in its asset base. The awarding of concessions to use our street furniture as wireless network facilitators would help the Council fulfil this objective by ensuring a net contribution to the Council for the use of its assets which otherwise would have generated nil returns.

3.2. It will contribute towards the Council achieving a number of its objectives contained in its Camden plan. It would help reduce some of the issues of inequality by providing a platform for most to access the internet on the go. It will help "create conditions for and harnessing the benefits of economic growth".

3.3 Additional resource requirements will be kept to a minimum, so the Council can maximise the benefit of this new income stream to its Council tax payers.

3.4. In addition to these comments, The Director of Finance comments are reflected in the body of the report.

#### **4. COMMENTS OF THE BOROUGH SOLICITOR**

- 4.1 The Cabinet must agree the contract award strategy for all proposed revenue contracts in excess of £2,000,000 under CSO 3.2. At this stage it is not clear what the final contract value will be as this will depend on the benefits offered by providers and the term of the concession period agreed.
- 4.2. The proposed contract being a services concession contract is exempt as per regulation 6(2)(m) from the Public Contracts Regulations 2006. However the contract is subject to treat principles and the service has decided to voluntarily publish a notice in the OJEU to mitigate any risk of challenge considering the potential value of the contract.
- 4.3. The proposed procurement strategy complies with the EU and UK regulations and the Council's Contract Standing Orders.

**REPORT ENDS**