

EXECUTIVE BOARD – 18 NOVEMBER 2014

Subject:	Concession agreement to make the Council's ducting assets available to a telecoms operator		
Corporate Director(s)/ Director(s):	David Bishop, Deputy Chief Executive/Corporate Director for Development and Growth Chris Henning, Director of Economic Development		
Portfolio Holder(s):	Councillor Nick McDonald, Portfolio Holder for Jobs and Growth		
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Key Decision	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject to call-in	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons: <input type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Total value of the decision: Estimated at least £1m over the life of the concession			
Wards affected: All	Date of consultation with Portfolio Holder(s): 17 October 2014		
Relevant Council Plan Strategic Priority:			
Cutting unemployment by a quarter	<input type="checkbox"/>		
Cut crime and anti-social behaviour	<input type="checkbox"/>		
Ensure more school leavers get a job, training or further education than any other City	<input type="checkbox"/>		
Your neighbourhood as clean as the City Centre	<input type="checkbox"/>		
Help keep your energy bills down	<input type="checkbox"/>		
Good access to public transport	<input type="checkbox"/>		
Nottingham has a good mix of housing	<input type="checkbox"/>		
Nottingham is a good place to do business, invest and create jobs	<input checked="" type="checkbox"/>		
Nottingham offers a wide range of leisure activities, parks and sporting events	<input type="checkbox"/>		
Support early intervention activities	<input type="checkbox"/>		
Deliver effective, value for money services to our citizens	<input type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
The Council has assembled a network of approximately 20km of ducting along the new tram route and in the city centre, particularly through the Creative Quarter constructed during other civil works. This represents an important asset and is considered to be particularly valuable to a telecoms operator interested in establishing an 'open access' fibre network. In addition to generating revenue for the Council, a new 'open access' fibre network could transform connectivity for Small and Medium Enterprises (SMEs), introducing affordable 'gigabit' services. The new network could also offer similar advantages to the public sector, including the City Council. Depending on the investment plans of the operator, such as network, it could also, in time, be extended widely from its initial routes to offer services to residential properties.			
Exempt information:			
Appendices to the report are exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it could adversely affect the Council's ability to maximise the price it obtains for the assets.			

Recommendation(s):

- 1 To approve an open procurement process to offer a concession for exclusive use of the assets and delegate authority to the Deputy Chief Executive/Corporate Director for Development and Growth to select the preferred bidder and award the contract based on the most economically advantageous tender.

1 REASONS FOR RECOMMENDATIONS

- 1.1 To ensure the efficient operation of an 'open access' network it is necessary to offer exclusive rights over the ducting to a single operator to construct and operate the fibre network and then make it available to customers and service providers on a commercial basis. To meet obligations under EU procurement law and the Council's own financial regulations, it is necessary to acquire the operator through an open tender process.
- 1.2 The contract will be awarded to the most economically advantageous tender to allow the Council to consider wider benefits including the quality of the solution proposed by each tenderer.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 The Council made a strategic decision in 2011 to make provision in its tram extension contract for separate telecoms ducting to be included in the build, to be used in future to enable an 'open access' telecoms network for a range of purposes including the SME sector. The tram extension route passes through most of the Council's strategic growth sites, and this was seen as a significant opportunity to promote growth and investment.
- 2.2 During other civil works undertaken by the Council, and especially in the Creative Quarter area, it has been possible to extend the network and to create a continuous ducting route of approximately 20km through the most significant growth sites in the city (detailed in exempt Appendix C).
- 2.3 Consideration has been given to how best to deploy the Council's ducting in a way that would optimise return on investment, while at the same time providing the best outcome for potential users of the network – including SMEs, and larger public and private organisations. Based on experience elsewhere in the UK it is expected that offering the ducts to the market may result in a new offer for the Nottingham market providing ultrafast, low-cost gigabit services. We would expect any operator to be more flexible in terms of the type of services being offered e.g. offering 'dark fibre' which is currently not available, and also more responsive to customer needs e.g. shorter delivery times than the current standard 90 days. We would also anticipate a lower cost Broadband offer, particularly to SMEs.
- 2.4 Other urban centres such as Coventry and Hammersmith and Fulham have already awarded exclusive rights of use in their similar ducting assets. The Council has examined the approach taken by each of them and understands that they have managed to achieve significant service improvements as outlined above, for example, in Coventry inward investors can be offered a much shorter order time when considering properties connected to the network.

The Developing Fibre Market

- 2.5 Over the last five years the fibre market in the UK has begun to experience considerable change as new operators have entered to compete with the existing

providers. A new model has emerged, which is already more common elsewhere such as Sweden, where an operator will build a purely fibre network, connecting each property to a single strand of fibre for their exclusive use. Normally the user would rent the fibre and then purchase services over the fibre from a wide range of suppliers (often referred to as the 'open access' model). While this model has significant benefits for businesses and public services, it can also offer low cost gigabit services to the residential market if the fibre network can be extended more widely. The model is highly competitive compared to existing available services in the business market.

- 2.6 In the UK a number of operators have begun to build such networks in York, Peterborough, Coventry, Aberdeen, and Hammersmith and Fulham. Generally they have started by establishing a core network linking key business and public service sites and built out over time to connect the rest of the city. They undertake this on a purely commercial basis and aim to achieve a return on investment over a long term - normally between 10-20 years.

The Recommended Concession Approach

- 2.7 Careful consideration has been given to how the Council's ducting assets can be offered to the market without providing unfair competitive advantage i.e. 'State Aid' to the operator. The concession approach has been felt to be most suitable for a number of reasons:

- it will enable the Council to offer the assets at a market rate and should not fall foul of state aid rules (see legal advice) – note, this is not a services contract as the City is not purchasing telecoms services;
- it will allow the Council to ensure the assets are used by the operator in a particular way and protect against the operator disposing of them in the future;
- it will provide the Council with a long term interest in the network, proving a rental and revenue share over the full period of the concession, and beyond;
- it will transfer the risk of generating income from the asset to the concessionaire.

Structuring of procurement processes

- 2.8 The procurement will be undertaken to achieve the most economically advantageous tender and will include criteria for both price and quality.
- 2.9 On price the aim is to achieve a minimum guaranteed payment (MGP) in the form of an annual 'rental' figure as well as a guaranteed percentage share of revenue. The Council would also be interested in proposals which could offer good prospects of significant revenue growth over the period. While public sector connectivity contracts cannot be tied to the arrangement (the concession approach cannot be used to procure services), the Council will be looking for a proposal which offers good prospects of reduced public sector networking costs.
- 2.10 Quality will be determined mainly on the impact the proposal will have on the economy of the city. The Council will be looking for proposals that will bring significant benefits to businesses and also help secure inward investment.

Timescale

- 2.11 The Council is aiming to award the concession by the second quarter of 2015 to coincide with the Council's tram-side ducts becoming available. Other ducting

routes will be constructed by the Council during 2015 and 2016 during scheduled highway improvements (and possibly on an ongoing basis) and these will be made available to the concessionaire as and when they become available.

- 2.12 The Council would be looking for an operator who could begin to install fibre into the ducts as soon as possible (hopefully starting in 2015) and who could begin connecting properties on the Council's strategic sites as a priority.

Expected Coverage

- 2.13 It is expected that the initial coverage (possibly in the first five years) will mainly be for the areas that are adjacent to the ducting routes as this will involve the minimum of investment by the operator. However, the Council will be looking for an operator who has financial backing and aspirations to extend across the whole city in time.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 Disposing of the assets through outright sale. This would provide the Council with a one off capital receipt which could be greater than the concession value, and would also not require any further involvement by the Council. However it is far from certain that a greater price would be achieved as telecoms operators, for their own commercial reasons, do not necessarily value outright ownership over a lease arrangement. It was therefore felt that this would not offer any significant advantages over a concession approach and would exclude the Council from any future interest in the development of the asset.
- 3.2 Setting up a joint venture with a private operator. This would involve the Council sharing risk and would also require additional investment and ongoing engagement by the Council with little or no advantage. Currently there are no examples of joint ventures of this type involving councils and telecoms operators, and there seems to be little interest from the market.

4 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY/VAT)

- 4.1 Details of the costs of assembling the duct assets are included in the exempt appendices. It is a requirement that the Council should at least cover its costs and make a reasonable return on investment. A financial model has been developed to provide an indicative profile of the minimum revenue requirements of a successful tender over the concession period.
- 4.2 The award will be made to the most economically advantageous tender which should ensure value for money for the Council considering both price and quality.

5 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS AND CRIME AND DISORDER ACT IMPLICATIONS)

- 5.1 Independent legal advice has been obtained confirming the methods outlined above. The proposed concession method has been tried and tested in other cities and has not yet been challenged under State Aid rules (although that risk needs to be managed). The benefit of the concession offered through an open tender is that it aims to secure a return on investment for the Council, thereby evidencing that the operator is paying more than the Council's costs and therefore ensuring no state aid exists.

5.2 For the potential value of the contract, the Councils Contract Procedure Rules (CPR) requires a tendering process to be undertaken. The proposal in question seeks authority to undertake a complaint procurement exercise in line with the Council's CPR's and as such there are no significant procurement concerns with this proposal.

5.3 Economic Development have engaged with the Corporate Procurement Unit since the inception of this project and will be supported to conduct the procurement and achieve value for money via an assessment of the open market and their proposals.

6 SOCIAL VALUE CONSIDERATIONS

6.1 A concession arrangement does not involve procurement of services and is outside of the EU Public Contract Regulations 2006.

7 REGARD TO THE NHS CONSTITUTION

7.1 Not applicable.

8 EQUALITY IMPACT ASSESSMENT (EIA)

Has the equality impact been assessed?

- (a) not needed (report does not contain proposals for new or changing policies, services or functions, financial decisions or decisions about implementation of policies development outside the Council)
- (b) No
- (c) Yes – Equality Impact Assessment attached

9 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

9.1 None

10 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

10.1 None

11 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT

Rosalie Parkin, Corporate Services Procurement Category Manager