


<p style="text-align: center;"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p style="text-align: center;"><b>CABINET</b></p> <p style="text-align: center;"><b>10 SEPTEMBER 2018</b></p>	
<p style="text-align: center;"><b>VARIATION TO THE DUCT ASSET CONCESSION CONTRACT</b></p>	
<p><b>Cabinet Member for Finance and Commercial Services - Councillor Max Schmid</b></p>	
<p><b>Open report</b> A separate report on the exempt part of the Cabinet agenda provides financial information.</p>	
<p><b>Classification - For Decision</b> <b>Key Decision: Yes</b></p>	
<p><b>Consultation</b> Commercial services, transport and highways.</p>	
<p><b>Wards Affected: All</b></p>	
<p><b>Accountable Director:</b> Hitesh Jolapara, Strategic Director for Finance and Governance</p>	
<p><b>Report Author:</b> Jem Kale, Head of Operations and PSR Commercial Ops</p>	<p><b>Contact Details:</b> Tel: 020 8753 2370 E-mail: jane.kale@lbhf.gov.uk</p>

## 1. EXECUTIVE SUMMARY

- 1.1. Following a tender exercise in 2013, in April 2014 the Council let a contract to ITS Hammersmith & Fulham Ltd to allow it to install optical fibres in the Council's underground duct system. Since then the revenues being made by ITS are significantly short of the forecast made when they bid for the contract. The contract runs until 2025.
- 1.2. The contract permits ITS to terminate the arrangement at any time from February 2018, with no penalty. It is therefore in the Council's interests to agree variations to the contract in order to continue to receive some income, rather than none at all.

- 1.3. The contractor does not have exclusive use of the ducts so the Council could approach other operators in the future if it wished, whether the existing contract is varied now or not.
- 1.4. The Council has previously set an annual income budget of £290k for the duct asset concession, and the same is assumed in the 2018/19 budget. So far, the actual income has not met the target. From the activation of the contract in February 2015 to February 2018 a fixed fee is due for those three years together, and the contractor has been paying that to the Council on an instalment basis.
- 1.5. If the Council does not follow the course of action recommended then there will be no income at all in 2019/20 and beyond to be set against the £290k budget.

## **2. RECOMMENDATIONS**

- 2.1. That the Council should vary the duct asset concession contract with ITS Hammersmith & Fulham Ltd from 1/4/18 under the terms set out in the exempt part of the report.
- 2.2. That the Council varies the duct asset concession contract with ITS Hammersmith & Fulham Ltd so that:
  - There is a fixed fee paid to the Council as set out in the exempt part of this report, and
  - There is a variable fee paid to the Council as set out in the exempt part of this report.
- 2.3. That the council manages the procurement risk by issuing a VEAT notice.
- 2.4. That the power to vary all other details of the contract relating to administrative aspects are delegated to the Strategic Director for Finance and Governance, in consultation with the Cabinet Member for Finance and Commercial Services.

## **3. REASONS FOR DECISION**

- 3.1. Under the terms of the existing contract the contractor can terminate the contract at any time from February 2018 with no penalty if the original income targets forecast in the contract are not being met. Those income forecasts are not being met and the Council expects that the contractor would terminate the contract if the terms of the contract were not varied now.

## **4. PROPOSAL AND ISSUES**

- 4.1. The Council owns around 20km of underground ducting originally created to carry the optical fibres required to service the CCTV network. There is space within the ducts for further optical fibres.

- 4.2. The Council ran a competitive process to find an operator willing to pay to install their own fibres in the Council's ducts. A contract was let to ITS in April 2014 but it was not activated until February 2015 when the first equipment was installed.
- 4.3. However, the contract ran at a slow pace until 2017 when a combination of personnel changes in ITS and new investment from venture capitalists began to improve the business.
- 4.4. The ITS business model is to be a wholesaler of fibre internet access. Their customers are other businesses and organisations that want to buy fast internet access. Some of those businesses go on to sell broadband access to domestic customers.
- 4.5. ITS is now investing hundreds of thousands of pounds in their fibre network and are beginning to attract customers.
- 4.6. In July 2017 the Council successfully negotiated a repayment plan with ITS for the fixed fees owed for the period February 2015 to February 2018.
- 4.7. However, it is now apparent that the original duct asset concession contract very significantly over estimated the number of customers that would be secured. Having secured the fixed fee up to February 2018 the Council would expect ITS to terminate the contract (with no penalty) at any time after February 2018, unless the contract is varied to take into account more realistic assumptions.
- 4.8. A cabinet member decision was taken to vary the contract on the terms set out in this paper for one year from April 2018. The drafting of the variation has been delayed at the concession holder's request. This paper therefore now supersedes the cabinet member decision as it covers the whole period from April 2018 to the end of the contract.

## **5. OPTIONS AND ANALYSIS OF OPTIONS**

- 5.1. The Council has two options, either to wait for the contractor to terminate the contract with immediate effect or to agree to vary the contract.
- 5.2. If the contract is terminated the Council will receive no income from the contractor for the use of the duct assets.
- 5.3. If the contract is varied then income will continue to flow to the Council, albeit at a lower amount than originally anticipated in the contract.
- 5.4. The contract with ITS does not provide exclusive use of the ducts. This means that under either option the Council can seek other operators who may wish to pay to use the Council's ducts.

## **6. CONSULTATION**

- 6.1. Staff in commercial services and in transport and highways have provided their input into the deal.

## **7. EQUALITY IMPLICATIONS**

- 7.1. There are no anticipated negative impacts on any groups with protected characteristics, under the terms of the Equality Act 2010, from this proposed variation of the duct asset concession contract.
- 7.2. *Implications completed by: Peter Smith, Head of Policy & Strategy, tel. 020 8753 2206.*

## **8. LEGAL IMPLICATIONS**

- 8.1. These are contained within the exempt part of the report.

## **9. FINANCIAL IMPLICATIONS**

- 9.1. These are contained within the exempt part of the report.

## **10. IMPLICATIONS FOR BUSINESS**

- 10.1. The recommendations in this report will lead to businesses in the borough having the option of another supplier of fast fibre broadband.
- 10.2. *Implications verified/completed by: David Burns Albena Karameros, Economic Development Team, tel. 020 7938 8583 or David burns*

## **11. COMMERCIAL IMPLICATIONS**

- 11.1 Commercial implications are contained within the body of the report.
- 11.1. *Implications verified/completed by: Simon Davis, Head of Commercial Management, Tel. 0208 753 7181, tel. 07920 503651.*

## **12. RISK MANAGEMENT**

- 12.1. In a commercial arrangement like this there is a risk that the incomes on which the finances depend may be higher or lower as expected. The recommendation seeks to mitigate loss of opportunity risk in connection with Corporate Commercial Contract Management and Procurement risk number 3 on the Corporate Risk Register and Corporate risk 1 Financial Management in accordance with our Council Priority of Being Ruthlessly Financially Efficient.
- 12.2. The operation of the contract will be monitored regularly throughout the year.
- 12.3. *Implications verified by: Michael Sloniowski Risk Manager, tel 020 8753 2587, mobile 07768 252703.*

**13. BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

None.