

AT A MEETING
- of the
3G TELECOMMUNICATION
WORKING GROUP
held at The Council House, Walsall on
Thursday 15 December 2005 at 6.00pm

PRESENT

Councillor Ian Shires

OFFICERS PRESENT

David Elsworthy
Debbie Breedon
Steve Pretty
Elizabeth Thomas
Jonathan Bailey (Amey PFI)

APOLOGIES

Apologies for non attendance were submitted on behalf of Councillor Ayshea Johnson, Councillor Louise Harrison and Councillor Marco Longhi (portfolio holder).

Councillor Shires welcomed people to the meeting and introductions took place. David Elsworthy gave a brief outline of the work carried out by the group at the last meeting. He advised that Mr Peter Murray of British Telecom Wholesale had been in attendance to give a presentation and respond to members questions.

NOTES OF THE LAST MEETING 21 NOVEMBER 2005

Members received the notes of the previous meeting and acknowledged the questions and answers given at that meeting. Councillor Shires advised that the questions raised by the group would be addressed at today's meeting.

Steve Pretty advised that the legal documentation had not yet been looked at, however both Amey and council officers were in favour in principle of the innovative use of street furniture's to provide microconnect 3G coverage for Walsall. Mr Pretty advised that the PFI contract precluded any third partner arrangements however advised that both parties could at anytime vary the contract. He emphasised that the legal section had not looked at the documentation yet nor vetted the contract, but confirmed that in principle both parties were in favour. Mr Pretty introduced Jonathan Bailey from Amey PFI who proceeded to give a presentation entitled "Title, Risk and Licence in the Apparatus under the Walsall PFI".

Mr Bailey congratulated Walsall Council for its recent three star rating and felt that this was a feather in the council's cap and in Amey PFI's cap encouraging innovation and revenue streams throughout the council. He advised that the use of existing

street furniture to deliver a 3G network will also be an innovation that should be recognised nationally as this would be the first PFI contracted to undertake. Members were advised that other council's with a PFI contract at this time had declined the partnership with British Telecom.

Mr Bailey gave a presentation; the key issues were set out in the following slides: -

- Risk and licence in apparatus – setting out the broad definitions of title equal ownership, risk equals a potentially harmful event and the liability for the consequences. Licence equals right to use, manage or maintain the apparatus and apparatus equals lighting columns, illuminated signs, bollards, beacons and private feeds etc
- Risk and licence pre-PFI – before the PFI contract was executed the apparatus belonged to the council, the council carried all the risk also implicit with ownership Walsall also licensed to use, manage and repair the apparatus.
- Risk and licence in existing apparatus during the PFI – the risk in existing apparatus passed to Amey, in addition the council granted Amey a licence to use, manage or repair the existing apparatus.
- Risk and licence in new apparatus during the PFI – new apparatus installed by Amey is owned by Amey until it is certified at which time Walsall Council takes over ownership and grants a licence to Amey to use, manage or repair the new apparatus. The risk sits with Amey at all times.
- Risk and licence in adopted apparatus during the PFI – apparatus installed in new schemes is owned by the contractor until it is adopted then it is owned by Walsall MBC who then grants a licence to Amey. After adoption the risk is transferred from the contractor to Amey.
- Risk and licence in all apparatus after the PFI – when the PFI contract expires in 2028 title risk and licence referred to Walsall Council.
- Major risks:-
 - Design
 - Installation
 - So what are the major risks
- Operations: -
 - Accident, damage and knockdowns
 - Adequacy of cabling
 - Electrical safety of all apparatus
 - Emergency repairs
 - Energy consumption
 - Environmental liabilities and waste management
 - Fault rectification

- Health and safety including CDM
- Increased cost of operation
- Latent defects
- Lighting failures
- Non performance of apparatus
- Third party liability

That concluded the presentation.

Jonathan Bailey outlined the contractual pitfalls of indemnity, liability and risk implications. He advised that one motivating factor for the council for transference to the PFI was transference of risk to the private sector. He advised that risk transferred to the contractor on 28 April 2000 and that simultaneously Walsall MBC granted a licence for Amey to work on all the equipment. Mr Bailey highlighted a number of key contractual pitfalls: -

1. In the PFI contract Amey have to replace any damaged light columns within five days. The contract from British Telecom states that columns have to be replaced within four weeks. This contractual issue would have to be negotiated and agreed between Amey and British Telecom.
2. Energy consumption – members were advised that the EAC estimated annual consumption was paid by Amey and that any additional energy costs would fall on Amey under the current arrangements. Mr Bailey was keen to advise members that energy consumption should be negotiated. He further advised members that the current level of energy consumption 3.8p would soon be going up to 8p per kilo watt hours. This would have a massive impact on the budget for energy consumption from light columns.
3. In the PFI contract, Amey have to attend any emergency on site within one hour, however, British Telecom require that the equipment is powered down before they would touch the equipment, this would require careful negotiation of the procedure for powering down and attending emergencies on site and would take more time to deal with emergencies.
4. Routine maintenance – Mr Bailey advised that British Telecom require one months notice of any routine maintenance, this would need to be renegotiated as street lighting may require day to day power downs and one month's notice is not practicable.
5. Mr Bailey advised that there may be health and safety risks to people on the ground and confirmed that after reading research on health implications of mobile telecommunication radiation he recognised this may be minimal but would still have to be considered as a risk.
6. Mr Bailey advised that in order to power down equipment before working on lanterns there would be cost implications in both time and manpower. He advised that the third party liabilities would have to be fully addressed.

There followed a period of discussion. Members and Mr Bailey discussed the remuneration for use of lanterns and street furniture. Mr Bailey advised that he had recently met with British Telecom and advised that this was a business entirety wanting to make money. He advised officers and members that British telecom would be looking for considerably more than £1,000 year profit on each of the lighting columns and that taking into consideration that there was little indemnification £1,000 was not sufficient for risk transference costs.

Elizabeth Thomas further advised that additional administration costs would have to be taken into consideration as the council would be dealing direct with British Telecom not Amey. After a further period of discussion members listed the areas of work that would have to be carried out before a decision could be taken by cabinet.

Mr Bailey advised that Amey would have to work with British Telecom on procedures, in particular relating to road traffic accidents, repairs and maintenance, complaints procedures need to include British Telecom, personnel would have to be trained and this would be additional capital expenditure costs for Amey PFI. There may be additional weekend working which has not previously been budgeted for, the notification times would have to be negotiated; the emergency estimate time for work would have to be re-evaluated for the risk element and there would have to be a co-ordination of services.

Mr Bailey advised that when Amey replace lighting columns often there have to take into consideration latest legislative requirements and redesign and re-siting may be required; this may cause a gap in network coverage. He advised that the onus is on Walsall Council to find alternative sites for British Telecom structures. He advised that legal fees would have to be taken into consideration and would be at least double the cost of current legal fees.

All in all members felt that £1,000 would not cover the cost to the council and that further detailed information would have to be taken into consideration before cabinet could receive a recommendation from this panel.

During consideration of the information received this evening and in consideration of questions raised at the last meeting further discussion took place, the following points were identified by members as key issues to address: -

- No other PFI has agreed to British Telecom partnerships, examples being Wakefield and Manchester.
- The principle is agreed but the full implications must be explored and bottomed out before a decision is taken.
- The main focus of this network is the Town Centre; members considered commercial viability and demand; it may be that Walsall Town Centre currently has full coverage and that the outline costs of changing the contractual arrangements with Amey PFI would not be remunerated if the columns were not installed.

It was agreed to recommend to scrutiny panel in a report that more technical, financial, legal and liability issues and information were required prior to any decision being made. Members recommended that a further meeting takes place of officers,

from British Telecom Mr Peter Murray, from Amey Mr Jonathan Bailey, the portfolio holder Councillor Marco Longhi, the risk manager Ann Johnson and legal representative Tracy Giles.

Members requested a short report to the meeting of Regeneration, Environment, Housing and Community Safety Scrutiny and Performance Panel on the 11 January 2006 to advise of the findings of the two meetings of this working group and to make a recommendation to panel that this meeting of officers should take place before any report is received by cabinet and that a full technical, financial, risk, legal and liability issues are fully addressed in any report to cabinet.

TERMINATION OF MEETING

The meeting terminated at 7.20 p.m.