

Wiltshire Council

Cabinet

15 November 2016

Subject: Ultrafast Broadband

Cabinet Member: Cllr John Thomson - Communities, Campuses, Area Boards and Broadband

Key Decision: Yes

Executive Summary

- i) To note the progress towards implementing a procurement solution to deliver Ultrafast broadband. To seek Cabinet approval to delegate the authority to deal with all contract documentation in relation to the Ultrafast Broadband project, part of the Wiltshire Online programme. To delegate the decision to enter into the Contract, sign all relevant Non-Disclosure Agreement (NDA) documents and enter into the Broadband Delivery UK, Department Culture Media and Sport (BDUK) Grant Agreement and the Swindon and Wiltshire Local Enterprise Partnership (SWLEP) Match Funding Agreement to the Deputy Leader of the Council and Cabinet Member for Communities, Campuses, Area Boards and Broadband and the Corporate Director of Children's Services and Adults' Social Services (acting).

Proposals

That Cabinet:

- i) Note the progress made towards delivering the 'Wiltshire Online Project'.
- ii) Note the progress of the Ultrafast procurement.
- iii) Makes an in principle decision to award and enter into the Contract or Contracts for the provision of Ultrafast Broadband services.
- iv) Following the tender process delegate the authority to enter into the Contract or Contracts for the provision of Ultrafast Broadband services to the Corporate Director of Children's Services and Adults' Social Services (acting), in consultation with the Cabinet Member for Communities, Campuses, Area Boards and Broadband
- v) Delegate the authority to enter into and to sign all other relevant documents including Non-Disclosure agreements, Grant agreements and

Match Funding agreements to the Corporate Director of Children's Services and Adults' Social Services (acting).

- vi) Agree that the Corporate Director of Children's Services and Adults' Social Services (acting), be nominated as Authority Representative for the purposes of the Contract.

Reason for Proposals

Wiltshire Council has recently successfully secured £2m from Broadband Delivery UK (BDUK), Department of Culture, Media and Sport to extend our broadband footprint across Wiltshire with an additional £1m match funding from the Swindon Wiltshire Local Enterprise Partnership. The Invitation to Tender (ITT) will total £3m and approval was given to proceed on the ITT by the Procurement Board on July 19 2016

The main grant giving body BDUK require that funds be spent by the December 31 2017. To ensure this target is met the procurement must be completed by March 2017.

Investment in broadband is subject to EU State Aid law and several key activities need to be completed, assured and passed by BDUK before we can commence with the Invitation to Tender. Activities include conducting an Open Market Review with the broadband industry to define an Intervention Area for the Ultrafast broadband investment and engagement with the telecoms sector. These activities have been completed and we are currently working with Procurement, Legal, BDUK and Economic Regeneration to complete the ITT for launch Oct 24 2016.

To ensure we can meet the challenging timeline, expectations of the procurement process and the actual delivery we will use the existing governance arrangement already in place for the Wiltshire Online programme. This paper requests that Cabinet delegate the authority and the decision to enter into the Contract, sign all relevant NDA documents and enter into the BDUK Grant Agreement and SWLEP Match Funding Agreement to the Deputy Leader of the Council and Cabinet Member for Communities, Campuses, Area Boards and Broadband and the Corporate Director of Children's Services and Adults' Social Services (acting).

Dr Carlton Brand
Corporate Director

Wiltshire Council

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15 November 2016

Subject: Ultrafast Broadband

Cabinet Member: Cllr John Thomson - Communities, Campuses, Area Boards and Broadband

Key Decision: Yes

Purpose of Report

1. To provide an update on the progress towards implementing a procurement solution to deliver Ultrafast broadband. To seek Cabinet approval to delegate the authority to deal with all contract documentation in relation to the Ultrafast Broadband project, part of the Wiltshire Online programme. To delegate the decision to enter into the Contract, sign all relevant NDA documents and enter into the BDUK Grant Agreement and SWLEP Match Funding Agreement to the Corporate Director of Children's Services, and Adults' Social Services (acting) in consultation with the Deputy Leader of the Council and Cabinet Member for Communities, Campuses, Area Boards and Broadband.

Relevance to the Council's Business Plan

2. The Delegated authority is requested as per the constitution.
3. Investment in Broadband is highlighted as a specific action to support the delivery of our 12 key actions that will support our 3 main priorities.

Main Considerations for the Council

4. To ensure a timely and robust procurement and delivery of Ultrafast broadband to run in parallel with the existing Superfast Rural Broadband Programme, further enhancing the overall Superfast/Ultrafast coverage for the county as a whole, to support our own priorities and to support the achievement of government's target of 95% coverage across the UK, by 2017/18.

Background

5. Wiltshire Online is Wiltshire Council's programme of broadband delivery. To date we have invested over £15.5m into a total investment fund of over £30m to deliver broadband across Wiltshire in areas not picked up by commercial providers. The additional

£14.5m comes from both BDUK and BT as the contractor for contracts 1 and 2.

6. According to EU State Aid laws, public funding may only be invested in areas of market failure. At the outset of the procurement process we therefore consulted the industry to establish the geographical areas in Wiltshire that would not be served by planned commercial investment over the next five year period. This is our intervention area.
7. The Wiltshire Online programme was designed to provide a fibre broadband service to those premises that commercial providers considered to be financially non-viable. Without Wiltshire Council's investment approximately 40% of Wiltshire would not have access to superfast broadband. The approach is designed to deliver fibre broadband to the greatest number of premises for the budget available.
8. To date over 80,000 homes and businesses have access to fibre broadband due to Wiltshire Council's Wiltshire Online investment.
9. We appreciate that despite our significant investment we cannot get to every premise and so the Ultrafast investment is another key opportunity to extend our footprint across Wiltshire further.
10. The Ultrafast project also aims to target business premises in the defined intervention area in recognition of the importance of good broadband connections for Wiltshire businesses.
11. All broadband investment is subject to EU State Aid restrictions and approval.
12. There is already a robust and proven governance structure in place to ensure all spend is assured, deployment monitored and EU State Aid regulations are adhered to.

Overview and Scrutiny Engagement

13. The current Wiltshire Online governance model includes the representation of an appointed Scrutiny member to sit on all quarterly board meetings. The member then reports back to the OS Management Committee.
14. The Wiltshire Online Team also provide updates to the OS Management Committee at timely intervals.

Safeguarding Implications

15. There are no direct safeguarding implications arising from this proposal.

Public Health Implications

16. There are no direct public health implications arising from this proposal.

Procurement Implications

17. Overall the procurement route has taken due regard of:

- The EU Commission directive provided to BDUK on generating and agreeing the National Broadband Scheme 2016
- A wide spectrum of industry players through Early Market Engagement as per State Aid requirement
- Local economic growth priorities and social and inclusion objectives.
- The procurement will be undertaken in accordance with EU/National procurement legislation (Public Contracts Regulations 2015) and the council's own Procurement and Contracts Rules – part 10 of the Constitution. Under these regulations the council has a range of OJEU procurement routes available such as the Open procedure or a procedure with a pre-qualification step such as Restricted, Competitive Dialogue or Competition with negotiation. Wiltshire Council will conduct its procurement in an open, transparent and non-discriminatory manner.
- The preferred procurement approach is for Wiltshire Council to adopt an "Open" OJEU tendering procedure; given the nature and technicality of our requirements (i.e. an Ultrafast / NGA broadband network solution). The likelihood is that there would probably be limited numbers of capable suppliers; therefore all would be encouraged to submit a tender. Their submissions would then be considered together with the tender bid and supporting documentation.
- This approach is also supported by the Wiltshire Council Procurement Board.

- The procurement timetable is as follows:

Activity	Elapsed Time	Start Date 2016	End Date 2016
Issue of Contract Notice	1 day	31 st October 2016	31 st October 2016
Closing date for Expressions of Interest	4 weeks	28 th November 2016	28 th November 2016
Bidders sign up to Code of Conduct	4 weeks	28 th November 2016	28 th November 2016
Bidder access to the Data Room	8 weeks	31 st October 2016	26 th December 2016
Clarification Question process	8 weeks	31 st October 2016	26 th December 2016
Bidders prepare responses	12 weeks	31 st October 2016	23 rd January 2017
Evaluate bidder response and clarify where required	4 weeks	24 th January 2017	21 st February 2017
Local Body initial governance (e.g. sign off evaluation and preferred bidder)	1 day	-	21 st February 2017
Bidders notified of evaluation outcome (e.g. preferred bidder announced)	1 day	-	21 st February 2017
Standstill period – see section 3.2.3	2 weeks	22 nd February 2017	8 th March 2017
Contract finalisation/Due Diligence	1 week	21 st February 2017	28 th February 2017
DCMS Approvals including State Aid and Funding	1 weeks	21 st February 2017	28 th February 2017
Local Body final governance (e.g. to sign off decision to award contract) and Contract Award	1 Day	-	9 th March 2017
Contract Signature	1 day	-	9 th March 2017

Equalities Impact of the Proposal

18. There are no equalities impacts arising from this proposal

Environmental and Climate Change Considerations

19. There are no direct Environmental Impacts as a result of the proposals but, the roll out of superfast broadband services does have the potential to make a significant contribution to Carbon Reduction in the County. The successful Bidder will also be required to work with BDUK and the Council to meet sustainability goals within the contract, the solution provided must be capable of being upgraded as technology improves.
20. Depending on the solution offered the implementation stage will have some environmental implications. The successful Bidder will also be required to work with BDUK and the Council to meet sustainability goals within the contract, the solution provided must be capable of being upgraded as technology improves.

Risk Assessment

21. The progress of the Wiltshire Online Programme and the delivery of broadband access feature in the corporate performance framework and on the Citizens' Dashboard and is regularly reviewed.
22. Project risks are also regularly reviewed by the Wiltshire Online Project Board set up to oversee the delivery of the project.
23. A working group has been set up including officers from the Programme Office, Procurement, Legal, BDUK and National Competence Centre to work together to ensure a robust procurement process is carried out as well as full EU State Aid compliance.

Risks that may arise if the proposed decision and related work is not taken

24. The grant agreement from BDUK is very clear on the timing expectations of the Ultrafast build, build should largely be complete by December 2017. Any delay achieving the milestones as detailed in the procurement timeline could result in delaying ITT release and contract award. Any delays will ultimately put at risk the success of the procurement and grant fund if the grant funders build expectations cannot be met by any bidder.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

25. Through the procurement process the risk is that the procurement is not managed correctly and can be challenged or there is a failure to adhere to EU State Aid regulations. To mitigate these risks the working group conducting the procurement includes representatives from the existing Wiltshire Online delivery team, the Strategic Procurement Hub, Legal, BDUK and the National Competency Centre. The team have to pass a series of central government checkpoints before passing through each milestone. The Board will

be updated regularly and the internal Wiltshire Online risk register will be regular maintained and reported on.

Financial Implications

26. There are no direct financial implications as the investment does not include Wiltshire Council funds.
27. There will be the cost of officer time and this can be secured with existing resources.
28. We will enter in a grant agreement with BDUK to call off funds when a series of assurance checks have been completed and demonstrated.
29. We will enter into a match funding agreement with the SWLEP. The grant agreement from BDUK requested a sum of 'match' funding, an additional sum of money to add to the £2m BDUK awarded Wiltshire. The Swindon Wiltshire Local Economic Partnership has agreed to invest £1m as the aims of the Ultrafast project aligns with their own strategic ambitions for businesses in Wiltshire, as per their Strategic Economic Plan "*excellence in digital connectivity*".

Legal Implications

30. The legal team have had sight of and had the opportunity to comment on all procurement documents as well as the decision making process and breadth of delegated authority requested.

Options Considered

31. Option 1: Enter into the Ultrafast contract and work within the existing proven governance and agreed delegated authority needed.
32. Option 2: Enter into the Ultrafast contract without a clear governance, decision making or contract management structure.
33. Option 3: Do not enter into the Ultrafast contract.

Conclusions

34. The Wiltshire Online programme is a successful programme and the Ultrafast fund provides another key opportunity to achieve our broadband ambitions. Continuing with the existing governance model will ensure a robust procurement conclusion and a timely and cost effective deployment.

Robin Townsend (Associate Director, Corporate Function, Procurement and Programme Office)

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Background Papers

(None)