

Wards Affected:

All Wards

TENDERS FOR SUPERFAST BROADBAND INFRASTRUCTURE

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Executive Summary:

The tenders will be for the provision of superfast broadband infrastructure (fibre optic cables in the ground etc.) in areas across Milton Keynes Borough, defined by Broadband Delivery (BDUK), which will be allowed to receive State Aid under EU competition laws.

The provision of superfast broadband infrastructure is a priority in the Council's new Corporate Plan and will enhance the economic competitiveness of Milton Keynes encouraging new investment and new jobs to the Borough.

The proposal to use the BDUK's Procurement Framework to procure the infrastructure is put forward as it will be fully approved by the EU and allows public investment to take place under a State Aid exemption.

The Council has an opportunity to procure this infrastructure with other Local Authorities which should provide economies of scale and attract more funding from the Industry than if we procure this infrastructure alone.

The option to procure on a standalone basis will still exist if the joint procurement option proves less favourable but the Council will need to use the BDUK Procurement Framework to avoid potential problems with State Aid rules

However, as the BDUK Procurement Framework has yet to be finalised we cannot currently guarantee that the BDUK Procurement Framework complies with the Council's Contract Procedure Rules and Financial Regulations but current knowledge indicates it will be compliant.

The proposed option is to seek approval to procure jointly, or alone, using the BDUK Procurement Framework subject to approval by senior officers once the final version of the Framework is available.

Whatever approach is adopted there will be no cross subsidy involved with other Authorities in the partnership.

1 Recommendations

- 1.1 That Option B (i): To proceed tender under the BDUK Framework – with partners Central Bedfordshire and Bedford Borough Councils be approved, subject to confirmation from the Section 151 Officer; the Assistant Director (Law and Governance); the Assistant Director (Planning, Economy and Development) (Project Sponsor) and the Head of Strategic Procurement that the finalised terms of the BDUK Procurement Framework are consistent with the Council's policies and procedures.

2 Issues

- 2.1 The BDUK Procurement Framework is the route by which BDUK allocated funding will become available.
- 2.2 If the Council chooses not to use the BDUK Framework there is a greater risk that the Council may have to negotiate its own arrangements on State Aid with the EU. This would incur very significant administrative cost and would delay the delivery of superfast broadband infrastructure.
- 2.3 BDUK has specified that Local Authorities should aim to procure jointly. To this end the Council has joined with Central Bedfordshire and Bedford Borough Councils. Central Bedfordshire is the lead authority for the purposes of this procurement. To ensure that this arrangement continues to provide value for this Council it is necessary to authorise either a joint or an independent procurement.
- 2.4 It is important that Milton Keynes funding is only spent in Milton Keynes itself. To this end it is likely that the procurement will be split into three "pots", one for each partner. Milton Keynes will retain control of its own procurement pot.

3 Consultation and Policy

- 3.1 The procurement seeks to progress the Council's strategic vision for Digital Infrastructure in Milton Keynes, adopted by Cabinet on 28 September 2010, which is based on the following 5 strands¹ -
- UK leadership;
 - Ubiquitous coverage;
 - Competitive market;
 - Future-proof infrastructure; and
 - High take-up of digital services.

¹ Broadband Delivery Programme for Milton Keynes, [March 2010], Analysis Mason Ltd.

- 3.2 The procurement also seeks to implement several key Policies including the Council's Corporate Strategy and the Economic Development Strategy and particularly the Council's broadband policy, adopted by Full Council, on 12 July 2011, which endorsed motion 5(b)(i) to develop a Local Broadband Plan as part of the BDUK requirements in order to bring better broadband to MK. This was followed by the delegated decision to approve the submission of the Joint Local Broadband Plan to BDUK on 20 March 2012.
- 3.3 A Project Board has been set up and meets regularly. The Assistant Director for Planning, Economy and Development is the Project Sponsor. The Project Manager also attends Project Board meetings with representatives from MKC Strategic Procurement, Legal Services and IT.
- 3.4 To help ensure that the overall package offered to the industry is attractive the total number of State Aid applicable properties has been maximised by developing the Local Broadband Plan into a Joint Local Broadband Plan with Milton Keynes's partners in the neighbouring authorities of Central Bedfordshire and Bedford Borough. This document is attached and has been approved by BDUK.
- 3.5 The use of public money to help fund the extension of the superfast broadband network is subject to the EU's rules on State Aid. BDUK's Framework will be fully approved by the EU and allow public investment to take place under a State Aid exemption.
- 3.6 It is also proposed to procure suppliers in conjunction with our Local Authority partners although the particular investment requirements of Milton Keynes will be ring-fenced. The funding for the Milton Keynes requirement will be met by an investment from the MKC capital budget. Formal capital spend allocation been submitted through the Capital Programme Review Panel (CPRP) and agreed with the Cabinet.
- 3.7 It is anticipated that through this procurement the successful supplier will match the public sector's contribution and provide a solution using a suitable mix of technologies to achieve superfast broadband in the designated State Aided areas of the Borough. A revised START document covering the project through to delivery of the necessary infrastructure was presented to CPRP on 7th July (and funding approved).
- 3.8 As the final details of the BDUK Procurement Framework have yet to be finalised it is not possible to assure the Committee that it meets with all the requirements of the Council's Contract Procedure Rules and Financial Regulations.
- 3.9 It is, therefore, proposed that an officer led panel comprising Assistant Director (Law and Governance); Assistant Director (Planning, Economy and Development) (Project Sponsor) and the Head of Strategic Procurement assesses the Procurement Framework, once available and provides assurance to the relevant Cabinet Member that it can be adopted for use for this procurement.

4 Specification

- 4.1 The procurement seeks to deliver the service objective 4: Guide and assist the progress of private sector and other public infrastructure investment
- 4.2 The draft specification will be developed in partnership with the relevant Cabinet Member and our Local Authority partners. It is based upon an examination performed on behalf of MKC by consultants, Analysis Mason, for the 2010 Digital Infrastructure Strategy and updated since then to provide the evidential basis for the Joint Local Broadband Plan.
- 4.3 The Joint Local Broadband Plan identifies a series of key short and longer term objectives.

Joint Local Broadband Plan - Short-term objectives

- Provide NGA broadband (at least 24Mbit/s) to at least 90% of premises in the Bedford and Central Bedfordshire areas, and **to 95% in the Milton Keynes area by 2015**. The technology should be future-proofed, innovative, cost-effective and flexible for upgrade.
- **Deliver improved basic broadband (at least 2Mbit/s) to all premises in our areas by 2015**. The basic broadband service should be reliable, robust and future-proofed using a cost-effective solution.
- Increase competition between broadband providers, in line with the need to support the effective operation of the market.

Joint Local Broadband Plan - Long-Term Objectives

- **Deliver NGA broadband to all premises in our areas by 2020 in line with the Digital Agenda for Europe, i.e. 50% receiving a minimum of 100Mbit/s**. The technology should be future-proofed, innovative, cost-effective and flexible for upgrade.
- 4.4 A survey of the Broadband needs of Milton Keynes was conducted between 30/6/2011 and 31/1/2012. The results of which have influenced the development of the Joint Local Broadband Plan. The Joint Local Broadband Plan aims to enable the provision of superfast broadband services to hard to reach places within the Borough. The Industry is expected to fund the rollout to other, more viable, areas of the Borough, mainly in the urban areas.
 - 4.5 Analysis Mason has identified which existing exchanges and their surrounding infrastructure will need to be upgraded but the proposed mix between hard wired (fibres); wireless and satellite solutions for the infrastructure to be provided will be determined by the tendering companies. The best overall solution that also offers the most private sector matching investment should be successful.

- 4.6 To encourage the development of local businesses a further requirement that the Council is keen to include in the specification is that the successful contractor should ensure the maximum use of local contractors to provide and install the required infrastructure.

5 Evaluation Criteria & Panel

- 5.1 Evaluation criteria will be as designated in the BDUK Framework and these will be reviewed and agreed by the Project Board. There will need to be some discretion between cost and quality evaluation of the bids received, hopefully from BT and Fujitsu. However, the final decision about whether to accept a particular tender will remain with Milton Keynes Council.
- 5.2 BDUK Evaluation Criteria are broken down into the following elements:-
- (a) Value and Pricing (30 to 70%) divided between affordably & leverage and contract & commercial fit).
 - (b) Quality (max weighting 70%) divided between local solution design, solution outcomes & delivery. The split between both elements is to be agreed by Authority via the JLBO Project Board.
- 5.3 Tender Evaluation Panel arrangements will be determined by the procedures required by the BDUK Framework. These will also be reviewed by the JLBP Project Board to ensure they meet all the requirements of Milton Keynes Council's financial procedures. The relevant Cabinet Member will be included in the Tender Evaluation Panel.

6 Contract Terms and Conditions

- 6.1 Tenders will be sought for a contract period starting on 01/04/2013 and ending on 31/03/2015. The contract may need to be extended depending upon the detailed infrastructure delivery requirements of the successful tender.
- 6.2 We have yet to receive final details of the BDUK Procurement Framework but we are content that in the light of this being a document produced by central government (BDUK is part of DCMS), and that it will be used by most other Local Authorities to procure their own superfast broadband services, it will allow us to meet the Council's requirements and the tender will be let in accordance with the Contract Procedure Rules (and will be agreed with the Legal Department).
- 6.3 The Council's Senior Client Officer for the procurement is Nick Fenwick, Assistant Director (Planning Economy and Development) and for the management of the contract is Martyn Smith, Programme Manager, Infrastructure Coordination and Delivery Service

7 Alternative Options

7.1 Option A: Do Nothing.

7.1.1 This would not achieve the stated national or local objectives for superfast broadband delivery and if progressed later would be unlikely to attract any national funding.

7.2 Option B: Proceed to tender under the BDUK Framework – with partners Central Bedfordshire and Bedford Borough

Positive

The OJEU has already been published by BDUK. Therefore there is no additional work or cost for MKC.

State Aid will be pre-agreed between BDUK and the EU. Agreement of State Aid approval independently by the Council would be a very significant task.

A joint procurement with partner Local Authorities includes more State Aided premises so should prove to be a more attractive tender to the potential suppliers. BDUK guidance is that partnerships should include around 100,000 State Aided premises to provide the maximum attraction to the Industry. Our partnership will provide 74,000 premises whilst Milton Keynes alone would only include around 20,000.

Availability of evaluation/Value for Money tools – The BDUK Framework will include a selection of tools designed to aid evaluation of bids.

The procurement is structure to allow the Council to award separately if it chooses. However, this would need to be agreed with BDUK.

Negative

There will be a maximum of two suppliers, BT and Fujitsu. It is possible that only BT will bid. Not using the BDUK framework could attract other suppliers but other risks weigh against this option.

Joint working (reduced autonomy of MKC). We will share project management and admin costs with partners but this is likely to reduce or limit the ability of the Council to do as it wishes, i.e. we would be bound by joint partnership decision making/governance.

7.2.1 There are two choices within this option as below:

i. Proceed now – **This is the recommended option**

Whilst the final format of the specification and contract has yet to be finalised by BDUK the drafts appear acceptable. Economies of scale by procuring jointly with other Authorities may provide financial benefits and the project implementation will be the quickest of all options.

- ii. Proceed when BDUK terms are known

This would exclude the opportunity to consider better value for money arising from joint procurement and neighbouring authorities.

7.3 Option C: Join with the MKC Networks procurement (non BDUK Framework)

7.3.1 The State Aid implications as outlined above outweigh all potential advantages for this option

8 Delivery Options

8.1 BDUK and Milton Keynes Council funding will support the implementation in State Aided areas of the Borough. The tender exercise will solicit bids from the Industry to match fund these investments. It will be for the bidders to determine the best/most appropriate technical solutions required to meet coverage targets.

9 Policy

9.1.1 The tenders will seek to implement the policy adopted by Full Council, on 12 July 2011, which endorsed motion 5(b)(i) to develop a Local Broadband Plan as part of the BDUK requirements in order to bring better broadband to MK.

10 Resources and Risk

10.1 The costs of this contract are met from the 2013/2014 and 2014/2015 Capital Programme (Capital) funded from New Homes Bonus. The costs identified within this exercise can be contained within the agreed budget. Provision has also been made for the revenue costs of the project.

10.2 Resources and Risk Assessment for this project are available upon request as background papers

10.3 The key OPPORTUNITY secured by this contract is the provision of central government funding that is EU State Aid approved to help the Council extend superfast broadband coverage to the State Aided areas of Milton Keynes Borough. It is assessed that the delivery of this contract provides a HIGH Likelihood that a HIGH Impact will secure the opportunity defined.

10.4 The key THREATS for this contract include a lack of competition for BT. Fujitsu are the only other supplier included in the BDUK Procurement Framework which may reduce competitive tension and result in a less beneficial offer for the Council. To this end the Tenders received from BT and Fujitsu may not match the amount of public sector investment as currently assumed. This would result in a lower percentage of State Aid classified premises being provided with access to superfast broadband infrastructures, or further public sector money being spent to meet the current 95% target.

10.5 The governance measures set out in 3.3 above provide a basis to conclude that these threats, properly managed represent a MEDIUM Likelihood or a MEDIUM Impact.

Y	Capital	Y	Revenue	N	Accommodation
Y	IT	Y	Medium Term Plan	N	Asset Management

Carbon and Energy Management

As set out in the specification, evaluation criteria and risk assessment.

Legal

This recommendation complies with MKC rules, UK and European legislation.

Other Implications – see attached START doc for explanation of these implications.

Y	Equalities/Diversity	Y	Sustainability	N	Human Rights
Y	E-Government	Y	Stakeholders	N	Crime and Disorder
Y	Carbon and Energy Policy				

Annex - Resources Allocated (Exempt Information)

Background Papers: OR weblinks to the relevant information

Risk Assessment (Exempt Information)

Joint Local Broadband Plan