

CABINET

Agenda Item: 7

Ward: District Wide

Portfolio: Economic Development

Report Author(s): Portfolio Holder Economic Development

Meeting Date: 23 May 2016

SUBJECT: Connecting Devon and Somerset - Superfast Broadband Collaboration Agreement

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Report Sign off	Seen by:	Name	Date
	Legal	Lesley Dolan	13/4/2016
	Finance	Paul Deal	13/4/2016
	Procurement	N/A	-
	Corporate Manager	Chris Atkinson	11/4/2016
	Deputy Leader	Cllr Tom Killen	11/4/2016
	Ward Member(s)	N/A	
Summary:	<p>The purpose of this report is to:</p> <ul style="list-style-type: none"> To update Cabinet on the procurement process for the delivery of Superfast Broadband Phase 2. This programme is being delivered through the Connecting Devon and Somerset Partnership (CDS). Seek the necessary authorisation to enable the council to finalise its financial commitment to Phase 2 procurement of the Connecting Devon and Somerset (CDS) project. Provide an outline of the key issues, risks and considerations associated with this decision as they relate to the wider collaboration agreement. 		
Recommendation:	<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> Notes the update on the procurement process to deliver phase 2 superfast broadband. Authorises the Portfolio Holder for Economic Development and Corporate Manager, Access to Services to finalise the terms of the collaboration agreement to deliver the Superfast Broadband extension programme 		
Direct and/or indirect impact on service delivery	<p>The recommendations are designed to deliver the Council's stated Corporate Objective – "supporting business development and growth". The collaboration agreement seeks to use the additional</p>		

to our customers and communities:	funds to provide improved broadband delivery to Mendip's residents and business communities.
Legal Implications:	The signing of the collaboration agreement would finalise the council's commitment to the Superfast Broadband Phase 2. Each partner will indemnify the lead authority for its proportionate share of the procurement and the contract management process, with a maximum liability level for MDC set at 6.55% of total costs.
Financial Implications:	The signing of the collaboration agreement would finalise the council's commitment to the Superfast Broadband Phase 2. This will mean that the sum of £400,000 allocated to the project will need to be made available to the project. The £400,000 will be an additional item for the Council's Capital Programme and if approved, the total programme will remain within the £2.5m envelope agreed by Full Council in February 2016.
Value for Money:	The agreement reflects the requirement from each funder that the monies provided are spent in their respective district. There is also a clear commitment to secure VFM which translates into securing the maximum possible benefit for the monies committed by each local authority partner.
Equalities Implications:	Equality implications are a key component of the CDS tender document. Assessment of any implications and how these are addressed by bidders is therefore a key element of the final part of the procurement exercise.
Risk Assessment and Adverse Impact on Corporate Actions:	<p>The Connecting Devon and Somerset programmes assist the delivery of superfast broadband to rural areas and supports economic delivery and growth. There is a risk related to the procurement itself as each partner will indemnify the lead authority for its proportionate share of the procurement exercise and the contract management process.</p> <p>The cost sharing limits the liability of each partner and therefore exposure is relatively small but remains a risk associated with this project. This risk should be addressed by good procurement practice in letting the contract and robust contract management in the delivery phase.</p>
Scrutiny Recommendation (if any)	Scrutiny endorses the recommendations to Cabinet.

BACKGROUND

- 1.1 The Connecting Devon and Somerset (CDS) partnership is leading the delivery of Superfast Broadband (24 Mb) across Devon and Somerset through its non-commercial rollout programme. Phase one of this project is currently seeking to bring Superfast Broadband to a minimum of 90% of all premises by end of 2017.
- 1.2 The second phase will seek to increase the level of coverage to a minimum of 95% across the partnership area. In order to support this goal a range of partners, which includes Mendip Council (MDC) have agreed in principle to make a financial contribution to the project. In the case of MDC this is a capital contribution of £400,000.
- 1.3 All of the partners have been asked to sign a collaboration agreement to confirm their financial commitment to this phase. The agreement outlines the basis on which the contribution will be used by CDS to deliver the rollout of this second phase.
- 1.4 Signing this agreement will enable the overall financial package to be finalised. This will in turn lead to the invitation to tender (ITT) being issued. Signing the collaboration agreement finalises each partner's involvement in the project.

2 Procurement process

- 2.1 The initial exercise to procure this additional coverage culminated in early Summer 2015. The deadline for that procurement phase was driven by the expiry of a State aid notice on 30th June 2015 which enabled the funding package to be delivered.
- 2.2 The initial procurement was split into two packages:

The main package related to the wider CDS area.
The smaller package covers Exmoor and Dartmoor which is an area that requires alternative solutions to provide the desired level of coverage.
- 2.3 The main package was procured using the framework agreement that existed at that time. The framework was restricted to two potential bidders, Hitachi and BT. One bid was received from BT which failed to meet the contract requirements and was therefore rejected. This was well publicised at the time and also scrutinised in depth by both of the upper tier authorities.
- 2.4 The secondary package covering the two moors was procured on an open tender basis. This area has a challenging geography and it was perceived that this would require alternative solutions to be applied. The contract was awarded to Airband who are delivering a Wifi solution to provide the required coverage.
- 2.5 The new procurement phase for the main package has been underway over the past 6-9 months. This includes supplier days, securing a new state aid notice, tender preparations, revising collaboration agreements and all the necessary work associated with a procurement of this nature.

- 2.6 In order to enter the next phase of the procurement CDS are seeking to ensure that all partners have signed off the collaboration agreement. As stated above the agreement will effectively finalise the commitment to delivery of the project. The sign off of this agreement is being sought as soon as possible.

3 Collaboration Agreement – Issues and Risks

- 3.1. In committing to sign the agreement there are some key risks and issues to consider. These are in four key areas which are explored in section 3.2 - 3.10 of this report and detailed below.

Indemnity

- 3.2 There is a specific risk related to the procurement itself as each partner will indemnify the lead authority for its proportionate share of the procurement exercise and the contract management process. The cost sharing relating to liability is on the following basis and therefore limits the liability of each partner as outlined in the table below.

B&NES	3.27%
DEVON	37.64%
MENDIP	6.55%
NORTH SOMERSET	6.27%
SEDGEMOOR	5.56%
SOMERSET	24.22%
SOUTH SOMERSET	10.47%
TAUNTON DEANE	6.22%
WEST SOMERSET	2.78%

- 3.3 The exposure for MDC is therefore relatively small but remains a risk associated with process. This risk should be addressed by good procurement practice is letting the contract and robust contract management in the delivery phase

Board representation

- 3.4 In the initial procurement exercise in 2015 the Somerset Districts were offered one representative on the board. Whilst the procurement failed this place was offered to the Somerset leaders Group and is currently occupied by Cllr John Williams of Taunton Deane Borough Council. Since that procurement there has been further negotiation which has led to the offer of an additional place to represent Districts on the Board. This would bring representation to a level that reflects the relative financial commitment being made by Districts.

Local Outcomes and Ring fencing

- 3.5 The agreement reflects the requirement from each funder that the monies provided are spent in their respective district. There is also a clear commitment to secure VFM which translates into securing the maximum possible benefit for the monies committed by each partner.
- 3.6 It should be noted that an element of funding is focused on business premises. The tender invitation will therefore have requirements around delivering this type of premises which were not possible in the phase one rollout. There can also be

specific requests built into the tender around priority areas although this will need to be kept at a relatively simplistic level to minimise complication in the tender process.

- 3.7 The tender will set a minimum threshold of 95% superfast coverage across the CDS area. However as the procurement is subject to bidders assessing what is technically possible in each area and then submitting their coverage projection it is not possible to issue a guarantee at this stage around the specific gains in each district.
- 3.8 The council therefore needs to balance its aspiration to deliver enhanced coverage against the reality that ahead of the procurement exercise there can be no clear cut guarantee of exact coverage that will be gained as this is an unknown until completion of the bidding process.
- 3.9 The secondary consideration relates to how much extra benefit is gained from contributing. In simple terms the less money that is committed to an area the less coverage a bidder is likely to provide. As the council has broadband as it's priority it seems logical that we would wish to make the contribution that has been requested from the lead partner.

Repayment of contributions

- 3.10 All partners requested clarification on what circumstances could enable their withdrawal from the rollout delivery phase. In summary this may occur if the contract were inoperable. This risk should be addressed through the tender process and in reality withdrawal is only possible in that limited situation.

4 Summary

There are clearly risks and issues created by signing the collaboration agreement. However these are on balance adequately addressed by the agreement. There may be further amendments but subject to these changes Somerset County Council, acting as lead partner have asked each partner to sign off the agreement once it has been finalised.

In order to achieve this goal members are asked to authorise entering into the collaboration agreement, the terms of which have been settled by the Corporate Manager – Access to Services in consultation with the Portfolio Holder for Economic Development. This will be supported by verification from the Section 151 officer.

RECOMMENDATIONS

It is recommended that Cabinet:

1. Notes the update on the procurement process to deliver phase 2 superfast broadband.
2. Authorises the Portfolio Holder for Economic Development and Corporate Manager, Access to Services to finalise the terms of the collaboration agreement to deliver the Superfast Broadband extension programme

REASONS FOR RECOMMENDATIONS

Gaining greater coverage of superfast broadband across Mendip, continues to be a critical issue for residents and businesses. The finalisation of this agreement by Mendip District Council and all contributing local authorities will enable the overall financial package to be finalised across the Connecting Devon and Somerset area. This will enable the Invitation to Tender to proceed, while securing maximum value for money on outcomes (coverage) to be achieved within the district.

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List of background Papers:

Match Funding for the Superfast Broadband Extension Programme - Cabinet report dated 7 July 2014
Connecting Devon and Somerset Update – Scrutiny Report dated 22 February 2016