

Decision maker:	Cabinet member economy and corporate services
Decision date:	19 January 2017
Title of report:	Contract award Fastershire broadband strategy stage 3 lots 3c, 3d, 3e and 4
Report by:	Assistant director communities

Classification

Open: report and appendix 1

Exempt: appendix 2 is exempt from publication by virtue of paragraph 3 (information relating to the financial or business affairs of any particular person) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A Local Government Act 1972, as amended.

Key decision

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Wards affected

County wide

Purpose

To award contracts for stage 3 lots 3c, 3d, 3e and 4 deployment of superfast broadband in Herefordshire (and Gloucestershire) and to delegate authority to the director for economy, communities and corporate to award contracts for Lots 3a and 3b following the conclusion of BDUKs assurance.

Recommendations

THAT:

- a) **subject to the approval of Gloucestershire County Council, a contract is awarded to Gigaclear to provide gap funding to deliver fibre broadband infrastructure within areas 3c (South Herefordshire & West Gloucestershire), 3d (North Gloucestershire), 3e (South Gloucestershire) and 4 (North Herefordshire);**
 - **that the maximum value of said contract should be £12.8m with an option**

- to increase the Lot 3c subsidy contribution by up to a further £1.4m to the original published subsidy limit subject to a delivery plan to be agreed by the assistant director communities; and
 - the contract should conclude seven years after the final infrastructure payment which is anticipated in December 2019;
- b) following the conclusion of BDUKs assurance and subject to the approval of Gloucestershire County Council, the director for economy, communities and corporate is authorised to award contracts for Lots 3a (Cheltenham and Gloucester) and 3b (Hereford) to the preferred supplier/s within the parameters below:
- that the maximum value of said contract/s should be £910k; and
 - the contract should conclude seven years after the final infrastructure payment which is anticipated in March 2019;
- c) the assistant director communities be given delegated authority to, following consultation with the cabinet member economy and corporate services to take all operational decisions within the approved budget to implement stage 4 of the Fastershire broadband strategy.

Alternative options

- 1 Not to award contract and to cease investment in broadband. This option is not recommended as broadband remains a key priority for the council and underpins many of the council's wider aspirations for the development of the Herefordshire economy and access to services.
- 2 To revisit the contractual terms and re-run the procurement to create better terms for providers. This is not recommended as it would be unlikely to lead to significantly different outcome. It would incur significant time delay to jeopardise the successful implementation of Fastershire's mission to reach as many premises as possible by the end of 2018. Furthermore, the delay itself could risk the existing offer as a revised invitation to tender (ITT) would appear in the market alongside opportunities from other potentially more commercially attractive areas and there remain limitations on the capacity of the supplier side of the market to satisfy the level of demand across the UK.

Reasons for recommendations

- 3 On 3 December 2015 cabinet adopted the revised Fastershire Broadband Strategy 2015-18 which outlined the rationale and process for subsidising additional broadband delivery across Herefordshire and Gloucestershire. The recommendations are based on the outcome of a robust procurement process with bids selected on the basis of best value for money measured by cost verses coverage. The winning bids are compliant with the ITT and awardable within the provisions of the 2016 National Broadband Scheme (NBS) in relation to state aid.

Key considerations

- 4 Herefordshire Council has worked in partnership with Gloucestershire County Council for five years to improve broadband availability across the two counties in order to enable businesses, communities and individual households to become more productive, competitive and sustainable.

- 5 Known as the Fastershire project, the emphasis of the programme has been to extend the reach of high speed broadband deep into rural areas. The revised broadband strategy's key principle is that "by the end of 2018 everyone in Herefordshire and Gloucestershire will be able to access the broadband service they need".
- 6 Fastershire acts as a conduit for public subsidy to provide gap funding to private sector suppliers to deliver broadband infrastructure to areas that have proved to be commercially unviable.
- 7 The first contract to extend superfast broadband beyond the commercially viable areas was awarded to BT in 2012 and was worth up to £35.42m. The deployment phase of that contract is coming to an end having reached its target delivery in Gloucestershire and predicting the achievement of the contractual target in Herefordshire. In total, it will have reached c. 110,000 premises with Broadband speeds over 30Mbps.
- 8 The second contract to be signed for Lot 1 in the Cotswolds was agreed in 2015 with Gigaclear committing to deliver 6,500 premises for £3m subsidy.
- 9 The third contract, also with Gigaclear was signed in December 2016, focusing on the Forest of Dean and the Golden Valley for a value of £2.88m and the scope to increase to £4.54m.
- 10 Applying BT's delivery under the first contract and Gigaclear's Lot 1 and 2 commitments to the commercial footprint of all providers, the superfast availability stands at c. 87% in Herefordshire and c. 90% in Gloucestershire¹.
- 11 The remaining premises to be reached were subject to a second round of procurements that followed the following timescales:
 - a. April to May 2016 – Open market review (OMR)
 - b. 13 June - Industry Day
 - c. June to July - State Aid Consultation
 - d. 19 September - ITT Launch
 - e. 25 November - ITT Deadline
 - f. 16 December - Preferred Bidder Notice Issued
 - g. 9 January - Standstill Deadline

Area Consideration

- 12 Area 3c – covers 11,000 premises in south Herefordshire and Gloucestershire (west of the river Severn).

Bidder	Subsidy Required	Private Investment	Coverage %	Evaluation Score
Gigaclear	£4.2m	£7.5m	63%	58.2%
Bidder B	£5.6m	£1.3m	42%	42.08%

¹ Measured against the project's baseline of property records

- 13 Area 3d – covers 7,000 premises in north Gloucestershire.

Bidder	Subsidy Required	Private Investment	Coverage %	Evaluation Score
Gigaclear	£1.9m	£5.7m	83%	68.8%
Bidder B	£1.9m	£1.1m	51%	46.83%

- 14 Area 3e – covers 13,000 premises in south Gloucestershire.

Bidder	Subsidy Required	Private Investment	Coverage %	Evaluation Score
Gigaclear	£2.2m	£11.6m	82%	68.81%
Bidder B	£2.2m	£2.2m	54%	49.15%

- 15 Area 4 – covers 6,800 premises in north Herefordshire. Whilst the coverage offered by both bidders is similar, the private sector leverage is significantly different and the scores achieved from the holistic evaluation clearly identify Gigaclear's as the optimum solution.

Bidder	Subsidy Required	Private Investment	Coverage %	Evaluation Score
Gigaclear	£4.5m	£4.4m	75%	65.57%
Bidder B	£4.5m	£831k	80%	45.86%

- 16 Area's 3a and 3b cover the remaining areas of Cheltenham, Gloucester and Hereford. Bids have been received for the maximum available subsidy of £910k and the Council has undertaken its assessment in each case identifying a provisional preferred bidder. However, at the time of writing, BDUK had yet to complete their own assurance and the authorities have therefore agreed to pause whilst this is completed. In the interests of expediency and as same evaluation process has been employed, it is requested that delegated authority be afforded to the Director for Economy, Communities and Corporate to agree the award of these contracts once BDUKs assurance is complete and assuming that assurance is positive.

Stage 4

- 17 The award of contracts as outlined above, along with previous stages of deployment will result in 94% of premises in Herefordshire being served by either superfast or ultrafast broadband of at least 30Mbps. There will remain premises that need to be reached to meet the ambitions of the Broadband Strategy. This will be achieved through further small scale procurement activity subject to future decision reports and the extension of existing contracts to target specific areas. Additionally mechanisms will be maintained and expanded to create "demand led" solutions through bespoke grants.

- 18 ERDF (European Regional Development Fund) funding of £925k has been awarded to Fastershire in partnership with the other Marches authorities to provide grants to businesses remaining outside of coverage. Such grants are not anticipated to exceed £25,000 and will be awarded via a formal application and evaluation process.
- 19 Additionally EAFRD (European Agricultural Fund for Rural Development) worth c. £2m is being sought to fund broadband solutions for clusters of homes and businesses that also remain unserved. It is estimated that contracts valued up to £200,000 would be let per individual locality using this funding with localities selected based on an assessment of the demand and economic potential to comply with the terms of the external funding.

Community impact

- 20 The Fastershire project aims to improve the opportunities for citizens across the two counties to make use of digital connectivity where supporting education and learning, accessing services, enhancing employment opportunities, supporting preventative health or addressing well-being by tackling isolation. Connectivity also has a key role in the sustainability of rural communities by helping rurally based businesses to be viable and competitive as well as ensuring people living in rural communities have access to the same broadband services as those in more populated areas.
- 21 Digital access has a role to play in addressing issues of isolation and access to services for citizens, specifically in rural areas, and is increasingly being used as a tool to address health issues. Without further superfast deployment, there will be a digital divide between those with access to Next Generation Access (NGA) broadband and those with USC (Universal Service Commitment as set by the Government at 2Mbps) specifically as USC over time will not be enough to satisfy future demands.
- 22 As the bids were instructed to be submitted on a premise level information (rather than postcodes as previously) the information on deployment and timescale can be more transparent with information deployment plans in advance of when a premise is reached. This will also support the identification of premise / areas not covers in the contracts to enable early progression of community or grant solutions to reach further premises.
- 23 The further delivery will support the following objectives and actions in the corporate plan:
- Priority: Support the growth of our economy
 - Measure: Support economic growth and connectivity (including broadband, local infrastructure, transport and economic development)

Equality duty

- 24 The equality duty is in section 149 of the Equality Act 2010. It ensures that public bodies consider the needs of all individuals in shaping policy, in delivering services, and in relation to employees. The duty requires that when exercising public functions, public service providers must have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act
 - Advance equality of opportunity between people who share a protected characteristic and people who do not share it

- Foster good relations between people who share a protected characteristic and people who do not share it.

25 The duty relates to different groups who share any of the “protected characteristics” of age, sex, pregnancy and maternity, disability, race, marriage and civil partnership, religion or belief, sexual orientation. A needs and impact assessment is one tool that may assist decision makers to comply with the public sector equality duty.

26 A needs and impact assessment has been completed to accompany this report (appendix 1). The key recommendations of that assessment are listed below and focus on eliminating the barriers to internet access by.

- Infrastructure: continue with the roll out of fast broadband to everyone’s household that needs it to ensure equal access of availability.
- Age: encourage take up by older people through course and classes based on the fact that as people get older they are less likely to take advantage of broadband.
- Cost: that free wifi continues to be available including in the network of libraries where the public access PCs.
- Services: that services provided by the council are easy to access and navigate on the local authority webpages.
- Communities: self-run community schemes operate with support (financial and advice) from the local authority.

Financial implications

27 The total subsidy for this the final elements of Stage 3 and 4 is broken down by the following tables:

Herefordshire

Funder	Budget	Stage 3					Stage 4		Uncommitted	
		Lot 3a	Lot 3b	Lot 3c	Lot 3d	Lot 3e	Lot 4	Lot 5		Grants
HC Phase 2	2,966,000	0	109,395	943,470	0	0	915,192	-	672,500	325,443
BDUK Phase 2	5,520,000	0	109,395	1,339,921	0	0	2,705,000	-		1,365,684
Marches LEP	1,674,000	0	0	837,000	0	0	837,000	-		0
ERDF	672,500	0	0	0	0	0	0	-	672,500	0
EAFRD	840,000	0	0	0	0	0	0	840,000		0
Total	11,672,500	0	218,790	3,120,391	0	0	4,457,192	840,000	1,345,000	1,691,127

Gloucestershire

Funder	Budget	Stage 3					Stage 4		Uncommitted	
		Lot 3a	Lot 3b	Lot 3c	Lot 3d	Lot 3e	Lot 4	Lot 5		Grants
GCC Phase 2	4,200,000	345,660	0	549,413	936,275	618,652	0	0	250,000	1,500,000
BDUK Phase 2	5,460,000	345,660	0	549,413	936,275	1,554,096	0	0	-	2,074,556
ERDF	250,000	0	0	0	0	0	0	0	250,000	0
EAFRD	1,293,000	0	0	0	0	0	0	1,293,000	-	0
Total	11,203,000	691,320	0	1,098,826	1,872,550	2,172,748	0	1,293,000	500,000	3,574,556

Further information on the subject of this report is available from assistant director communities on Tel (01432) 260732

- 28 The spend profiles of the Council's broadband contracts have traditionally been difficult to manage. They are triggered by delivery milestones which are themselves unpredictable due to the challenges of deployment and the lag between delivery, financial defrayal and claiming. As penalties are legally unenforceable, payment release is the only control available to manage delivery and therefore, the knock on impact on the Council's own financial management needs to be accepted.
- 29 Whilst each external fund includes overall match funding requirements, we would seek to frontload the external funding as far as possible and in particular the BDUK and LEP funding.
- 30 The uncommitted funding will be used to extend existing contracts and where appropriate undertake new mini tenders. It is not anticipated that that any underspend will remain uncommitted following Stage 4 but, should any underspend arise, it should also be noted that it may be subject to an apportionment with BDUK.

Legal implications

- 31 The decision to procure a solution for lot 3 and 4 formed part of the strategy for broadband adopted by cabinet on 3 December 2016
- 32 Broadband delivery is not a statutory function of the council, but the general power of competence is available under the Localism Act 2011 to enable the council to conduct the project as set out in this report.
- 33 The procurement process and contracts are in line with, OJEU, BDUK and the council's procurement policies and procurements.
- 34 The contract will be sealed by legal services under delegated powers.

Risk management

- 35 Most of the risks to the council for instance, premise level transparency, coverage decreases and cost increases are mitigated through the contract. However, a number of additional risks are outlined below:

Risk ref	Risk	Detail	RAG Rating	Mitigation
1	Coverage Offered is not 100%	A number of premises that were contained in the ITT have not been bid back and therefore could remain unconnected.		An element of the Fastershire Broadband Strategy budget has been retained in order to run a series of secondary mini tenders. Additionally, the Project is seeking EAFRD and ERDF funding and BT underspend to bridge the remaining gaps and / or offer bespoke connection grants.

2	Completion date	The predicted completion date is December 2018. Any slippage would take delivery beyond the Strategy's vision end date.		While there would be no material impact in outcome, it could be viewed that Fastershire had failed to deliver within its prescribed time frame. It will be imperative that all parts of the local authorities' organisations pull together including Highways. Given the experience to date, there is no reason to believe that this will not be the case. There are also various external dependencies which could affect the delivery date including obtaining private land owner permissions and the cooperation of the power companies.
3	Low Take Up	The Project Financial Model depends on a relatively ambitious take up requirement.		There is no risk to the authorities in regard to the financial contribution. However, lower take up would restrict the degree of clawback and reinvestment into further unserved areas. The Faster Business and Community programmes as well as Fastershire's marketing function should be retained and extended to avoid this risk.
4	Supplier Capacity	Gigaclear appear to have significant aspirations to expand their coverage. They also appear to have designs on a range of other BDUK contracts that are further back in the pipeline. Although it is difficult to assess the risk, they could conceivably overstretch their capabilities.		Gigaclear are growing at an accelerated pace and have become more sophisticated since the first contract was signed. There is no indication as yet that they are becoming stretched. Being the first authority to award under the latest NBS should assist the priority given to Fastershire by Gigaclear.
5	Potential Challenge	Other supplier(s) could if so inclined to challenge the decision to award contract to derail the delivery.		A compliant process has been followed during the procurement. Any challenge will be addressed immediately to reduce any impact on time.
6	State Aid	Need to be compliant with State Aid requirements.		Due process has been followed to meet the requirements of State Aid.

Consultees

- 36 The Revised Fastershire Broadband Strategy was subject to consultation as below:
- Gloucestershire County Council – as joint partner in agreement with the approach.
 - BDUK (part of Department of Culture, Media & Sport) as funder and partner in agreement with approach. Also provided assurance.
 - Business Board on revised strategy (November 2015).
 - Business seminar (November 2015).
- 37 With specific reference to Stage 3, lot 3 and 4 consultation involved:
- Open Market review April to May 2016
 - Industry day with commercial providers on 13 June 2016
 - State Aid consultation from June to July 2016

Appendices

Appendix 1: Equalities Impact Assessment – Fastershire Broadband

Appendix 2: Tender Evaluation Report Exempt

Background papers

None