

Meeting:	Cabinet member economy and communication
Meeting date:	Monday, 23 July 2018
Title of report:	Fastershire Procurement Outcome for European Agricultural Fund for Rural Development
Report by:	Assistant director communities

Classification

Open

Decision type

Key

A key decision is defined as: likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates (in excess of £500k either positive or negative); and / or 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.

Wards affected

(All Wards);

Purpose and summary

The report makes recommendations regarding the award of contracts in relation to the funding award from the European Agricultural Fund for Rural Development (EAFRD) for the Marches and Gloucestershire Viable Clusters Broadband Project. This project is part of the delivery of the Fastershire Broadband Strategy to provide superfast broadband in Herefordshire (and for this project working with neighbouring counties). The proposals also relate to adaptations to the procurement process to ensure that as much of the European funding as possible is invested in expanding broadband coverage.

The recommendations would allow for:

- Additional coverage in areas not covered in previous broadband deployments;
- Increase the percentage of coverage of superfast broadband in the county to become one of the most fibre connected counties in the country;
- An innovative solution to deploy broadband to hard-to-reach areas;
- Works with new suppliers for deployment of fibre broadband;

- Uses external funding to support the financial investment already made by Herefordshire Council and national government in broadband deployment.

Recommendation(s)

That:

- In consultation with Gloucestershire County Council, Shropshire Council and Telford and Wrekin Council and as the accountable body for the Marches and Gloucestershire Viable Clusters Broadband Project, contracts for Lots S15, S16, T1, H12, H8, H9, H1, H22, and H2 be awarded to Airband and Lots G10, C1 and C5 be awarded to Voneus for the values of £5,027,000 and £460,000 respectively;**
- The Assistant director communities has delegated authority to award contracts to Airband and Voneus for additional lots within the remaining clusters of up to £5m residual funding from the EAFRD (European Agricultural Fund for Rural Development);**
- Funding of up to £1.5m from Herefordshire's broadband programme is allocated to lots H21 and H18 and awarded to Airband under the contract awarded in recommendation (a).**

Alternative options

1. That the bidders are awarded contracts solely for what they bid with the residual funding returned to DEFRA. In relation to recommendation (b) this would reduce the opportunity to use all the funds available and reduction in potential coverage.
2. That the decision to award the initial lots is delayed until the procurement process has been extended enabling all lots to be approved at the same time. This is not recommended as it means a delay in areas that are in need of superfast broadband. The EAFRD funded projects must be completed by summer 2020 and the decision will enable this to happen. Given the relatively low level response to procurement there is little evidence that a re-run of the procurement would see more suppliers bidding. It is therefore proposed to use the current procurement process to explore what more can be contracted within the available funding envelope.

Key considerations

3. Herefordshire Council is working in partnership with Gloucestershire County Council on the Fastershire project. Fastershire aims to improve the broadband network across the two counties to enable businesses, communities and individual households to benefit from faster broadband. The emphasis of the programme has been to extend the reach of high speed broadband as deeply into rural areas as possible, as urban areas are more likely to benefit from commercial delivery.
4. The project is working towards this aim by implementing the [Fastershire Broadband Strategy](#) which breaks the task into 4 Stages. Stage four is focused on accessing EU funding to reduce the residual coverage gaps following the major contract delivery of earlier stages.
5. The Cabinet member for economy and corporate services endorsed Herefordshire Council's bid for EAFRD funding as well as accepting the Council's role of accountable

body and lead organisation for the Marches and Gloucestershire Viable Clusters Broadband Project (MGVCBP) on 12th September 2017.

6. The Viable Clusters Broadband Project (VCBP) forms one element of stage 4 of the [Fastershire Broadband Strategy](#) and aims to target EAFRD funding at residual pockets of properties which are clustered to the degree that they could, given the required subsidy, present a viable market opportunity for an alternative provider to offer solutions to those areas.
7. DEFRA approved £10.5m of funding for the project in February 2018 distributed across the participating counties. For Herefordshire the allocation is a minimum of £3,918,478.
8. The £11m MGVCBP OJEU open procurement process was launched in March 2018 and closed on 14th May 2018. Two submissions were received by the deadline.
9. Airband bid for 11 Lots (across Herefordshire, Shropshire and Telford & Wrekin). They propose a primarily FTTP (fibre to the premise) solution with some FWA (fixed wireless access) infill and served by radio backhaul. In the region of 4,300 eligible premises could be reached for c. £6.5m of public subsidy. Airband's bids covering Herefordshire exceed the Herefordshire ring fenced budget by c. £1.5m. The illustration below shows the spread of cluster areas in the county (green where bids have been received).



10. Voneus bid for 3 lots solely in Gloucestershire. They propose FWA and could reach around 800 eligible premises for £460,000 of public subsidy.
11. The evaluation concluded that both bidders were technically and financially compliant and that subject to funding and BDUK endorsement, all lots bid for were awardable.
12. 42 Lot areas did not receive a bid, moreover, a cumulative c.£5m of EAFRD funding remains available.

Herefordshire				
Rank	Cluster	THP	Bidder	Subsidy
1st	H12	259	Airband	495,000
2nd	H10	154		
3rd	H8	778	Airband	927,000
4th	H9	475	Airband	797,000
5th	H1	269	Airband	418,000
6th	H22	256	Airband	510,000
7th	H2	472	Airband	298,000
8th	H15	292		
9th	H21	307	Airband	601,000
10th	H3	171		
11th	H11	239		
12th	H18	756	Airband	890,000
13th	H19	175		
14th	H14	200		
15th	H6	209		
16th	H4	114		
17th	H13	158		
18th	H20	105		
19th	H7	138		
20th	H17	224		
21st	H5	178		
22nd	H16	130		

Gloucestershire				
Rank	Cluster	THP	Bidder	Subsidy
1st	G3	561		
2nd	G1	300		
3rd	G6	961		
4th	G10	243	Voneus	180000
5th	G5	279		
6th	G9	370		
7th	G8	208		
8th	G4	244		
9th	G7	320		
10th	C2	275		
11th	C5	188	Voneus	140000
12th	C1	372	Voneus	140000
13th	C3	312		
14th	C6	136		
15th	C4	426		
16th	COT2	214		
17th	COT1	188		
18th	COT3	115		

Shropshire				
Rank	Cluster	THP	Bidder	Subsidy
1st	S16	479	Airband	953,000
2nd	S15	197	Airband	545,000
3rd	S14	44		
4th	S4	26		
5th	S6	24		
6th	S3	51		
7th	S7	48		
8th	S5	29		
9th	S10	178		
10th	S8	31		
11th	S9	33		
12th	S1	80		
13th	S2	36		

Telford & Wrekin				
Rank	Cluster	THP	Bidder	Subsidy
1st	T1	45	Airband	84,000
2nd	T3	62		
3rd	T2	73		

13. The decision to award the lots to the winning tenders in each area is a natural consequence of the conclusion of the procurement process. The bids meet the State Aid provisions and are both technically and financially compliant. There are no impediments therefore to awarding contracts.
14. After taking advice from Herefordshire Council's commercial and legal teams vis a vis the procurement regulations, Fastershire are able to enter into further negotiations with the two bidders to see what additional work (if any) can be contracted within the parameters of the ITT and procurement regulations.
15. With delegated authority to award the additional Lots, the Assistant director communities will:
 - a. Award any further Lots to the highest scoring bidder up to the maximum (county ring-fenced) budgets and in ranking order.
 - b. To ensure that the additional bids remain value for money, include an additional test to show that;

- i. the costs per unit of any standard solution components are consistent with the original bids submitted (+/- 5% of the previous outliers),
 - ii. Project Management / Administration costs are consistent with the original bids submitted (+/- 10% of the previous outliers), and that
 - iii. any deviation of the average Intervention Ratio (supplier contribution) from the original bids is adequately explained (and demonstrated) for instance on a lower anticipated level of take up.
16. Legal and procurement advice has confirmed the approach remains within the current procurement regulations. Both Department of Culture, Media and Sport (DCMS via BDUK) and the funders RPA/DEFRA (Rural Payments Agency and the Department for Environment, Food and Rural Affairs) have also been consulted.
17. Lot G8 was explicitly rejected by the bidders on the grounds of viability and therefore would not benefit from the process outlined in recommendation (c). However, the demand registration exercise that was conducted prior to the funding approval identified it as the highest nucleus of demand of any of the Gloucestershire Lot areas. Given its proximity to the Gigaclear contracted area and agreement by Gigaclear that it could be accommodated while maintaining the overall intervention rate of the contract, this approach may be the only and best way of achieving coverage there. As the Lot 2/3c contract was procured in line with the 2016 National Broadband Scheme and the value is low enough to be accommodated within the change control headroom of the Lot 2/3c contract, this approach is technically possible. Therefore this Lot will be progressed through the agreed change control mechanism.

Community impact

18. Investment in the broadband network by local and national government was to reach premises that were not being covered by commercial providers. This is predominately in the rural areas of the county, and the contract with BT has seen thousands of homes and businesses benefiting from some of the best broadband connection in the country.
19. 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.
20. Herefordshire Council's corporate plan includes the priority of supporting the growth of the county's economy. In addition to increasing the number of premises with the potential to access superfast broadband services, improved connectivity will assist with delivery of other corporate plan activity including:
 - Growing businesses, jobs and wage levels
 - Improved provision of information and signposting
 - Increase in self-serve web transactions.
21. Improvement to broadband was identified as a key element of the Marches local enterprise partnership strategic economic plan. An economic impact assessment has been developed to estimate the significant impact on the local economy which may result

from the project. It estimates a gross value added (GVA) uplift for Herefordshire of £13m per annum and a cumulative GVA uplift of £120m over ten years.

Equality duty

22. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
23. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.
24. When the original 'Borders Broadband Contract Award and Partnership Agreement' (September 2012) was agreed an equality impact and needs assessment was completed, this remains current. That assessment demonstrates a range of positive impacts in tackling the inequality of broadband coverage. Primarily, by improving the broadband network, people will have better access to services and greater equality of opportunity.
25. In meeting the equality duty for this decision the focus is on eliminating the barriers to internet access based on the following:
- 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 courses 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 there have 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.

Resource implications

26. In reference to recommendation (a) and (b) EAFRD funding is being offered at a 100% intervention rate based on award of contract of £10.5m with Herefordshire Council as the accountable body for the partnership between counties.
27. In reference to recommendation (c) Herefordshire has retained and agreed funding (including a mix of local authority and BDUK funds) to be able to target additional coverage. This funding has to be invested in a compliant way, either through an OJEU (Official Journal of European Union) procurement or via marginal changes to OJEU

procured contracts. As the costs of two Lot areas bid by Airband (H21 and H18) were beyond the EAFRD funding allotted to Herefordshire they cannot currently be funded by EAFRD. The proposal is that the council contribute £1,491,000 to bring those Lots into the contract. This would deliver superfast broadband to over 1,000 extra Herefordshire premises. Costs that have and will be incurred to manage the project, particularly on behalf of other councils, have been identified in a Memorandum of Understanding between the partners and pro rata contributions to those costs will be made by both Shropshire Council and Telford & Wrekin Council.

Legal implications

28. 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.
29. The procurement process and contracts that will result from this project have been delivered in line with OJEU procurement requirements, BDUK requirements and the council's contractual procurement rules.
30. State aid is also a key consideration in this project as public subsidy is being given to the telecommunications industry. The European Union state aid rules are designed to ensure that any use of public funding is targeted at areas of market failure and ensuring positive market outcomes while minimising any distortion to competition. In the context of broadband, the state aid rules require using public funding only to extend broadband coverage in geographic areas where there is no current or planned (next three years) provision of superfast broadband. External legal advisers have confirmed that the proposed arrangements are compliant with State Aid law.

Risk management

31. The key risks are tabled below

Risk / opportunity	Mitigation
That delivery slips beyond the summer 2020 deadline leaving a hole in the funding.	The project agreement will have a long stop date which shifts the risk to the supplier. Both suppliers have provided realistic and seemingly achievable deployment plans that fit within the allotted timescales and have confirmed that they have the capacity to deliver the projects.
That some clusters will remain unserved. Given the level of funding likely to be committed in Herefordshire, this is highly likely.	Clusters that do not achieve a solution through this project will need to be considered for alternative solutions in Stage 4, notably the contract extensions and business grant.

32. The risks and performance will be measured through the management framework.

Consultees

33. The council via the Fastershire project undertook a consultation with communities and relevant members not reached through previous deployment stages to understand demand and need.
34. Regarding the Partners, Gloucestershire County Council as a formal partner are in agreement with this approach and Shropshire Council and Telford and Wrekin Council as partners in the EAFRD project are also in agreement.
35. The funders, The Rural Payments Agency and DEFRA, have been consulted and are happy with the recommended approach as are BDUK who will need to sign off the state aid approval.
36. Feedback from political group consultation shows strong support for reaching further premises with superfast broadband. However, emphasised that there are still areas (including the cluster areas) that need to be part of any further deployment and investment. To also direct residents and businesses to the fastershire website (including from the council website) to raise awareness that a service can be ordered, timescales for next stage delivery, or raise a problem ordering.
37. Response to political group consultation: the project will continue to seek solutions for premises that have to date not received a superfast broadband connection. Links will be made from the Herefordshire Council website to Fastershire, along with wider promotion to raise awareness of the ability to order a service, raise an issue or understand next stage delivery.

Appendices

None

Background papers

None identified