

Better Broadband for Norfolk Contract Award Decision

Key Decision Notice

In accordance with the decision of Norfolk County Council's Cabinet of the 17 September 2012, and

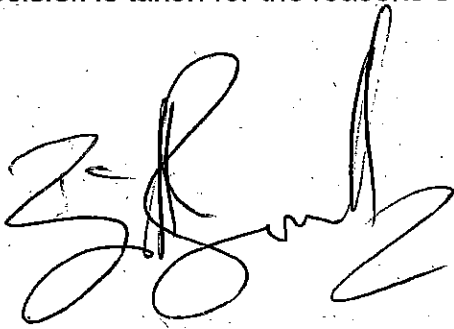
- in consideration of the matters set or referred to in the Report of the Programme Director dated 21 November 2012 ("the Programme Director's Report"), and the alternative options set out in paragraph 8 of the Programme Director's Report; and
- in consultation with the Better Broadband for Norfolk Steering Group,

We have decided to authorise the award of the Better Broadband for Norfolk contract to British Telecommunications Plc, subject to the conditions set out the Programme Director's Report.

This decision is taken for the reasons set out in paragraph 9 of the Programme Director's Report

Signed

Acting
Leader

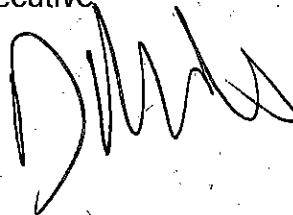


Date

22 November 2012

Signed

Chief Executive



Date

22 November 2012

Better Broadband for Norfolk Contract Award Decision

Report by the Better Broadband for Norfolk Programme Director

Summary

On 17 September 2012 Norfolk County Council's Cabinet considered the report "Better Broadband for Norfolk (BBfN) Contract Award" and agreed the following recommendations:

- To appoint British Telecommunications Plc (BT) as the preferred supplier
- To delegate to the Chief Executive and the Leader, in consultation with the Steering Group, authority to approve the award of the BBfN contract to BT, upon completion of clarifications, and subject to Broadband Delivery UK (BDUK) and State Aid approval
- To delegate to the Chief Executive and the Leader, in consultation with the Steering Group, authority to agree any clarifications to the bid, provided these do not materially alter the parameters of the contract offering set out in this report (Cabinet Report 17 September 2012) including those required as part of the BDUK and State Aid approval processes, and to enter into the Contract with BT at the conclusion of the standstill and approval processes.

Recommendation:

The Chief Executive and the Leader, in consultation with the Steering Group, approve the announcement of the award of the BBfN contract to British Telecommunications Plc subject to a ten day standstill period and also subject to:

- State aid approval for the project being received;
- BDUK approval processes
- Finalisation of such clarifications that remain to be agreed as at the date of the announcement of award letter.

1 Background

- 1.1 At its meeting on 17 September 2012 Norfolk County Council's Cabinet delegated authority to the Chief Executive and the Leader, in consultation with the Steering Group, to approve the award of the BBfN contract to British Telecommunications Plc (BT), upon completion of clarifications, and subject to BDUK and State Aid approval.
- 1.2 Contract finalisation has now been substantially completed and this report now seeks approval for the award of the BBfN Contract to BT and this will be a Key Decision for the purposes of the Local Authority's (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.
- 1.3 At its meeting on the 17th September, Cabinet also delegated authority to agree any clarifications to the bid and to enter into the Contract at the conclusion of the standstill and approval processes. A further report ("the Pre-Signature Report") will be made to confirm when these processes have been completed and to recommend contract signature.

2 Clarification, BDUK and State Aid approval

- 2.1 **Clarification** – since Cabinet the Better Broadband for Norfolk Project Team and BT have substantially completed clarifications to the bid including those required as part of the BDUK and State Aid approval processes. These do not materially alter the parameters of the contract offering set out in the report to Cabinet on 17 September 2012. Clarifications concerned:
- 2.1.1 **Speed and Coverage** – remains as described in the Cabinet Report of 17 September 2012.
- 2.1.2 **Commercial/Financial clarifications** – remains as described in the Cabinet Report of 17 September 2012, save that at the time of this report whilst the majority of these have been completed, certain clarifications remain subject to discussion with BDUK at national level. It is not expected that these will have a material impact on the project, but the resolution of these will be reported to the Leader and Chief Executive in the Pre-Signature Report.
- 2.1.3 **Legal clarifications** – the Framework Terms and Conditions have been adopted, except for specific items where a local definition is required. The Framework Terms and Conditions have been subject to a national procurement process. One of these terms is that the contract allows the supplier to make what are known as survey assumptions as to the conditions for delivering the works required. The purpose of this is to avoid each bidder incurring the costs of carrying out full survey work prior to submitting a bid. If these survey assumptions are not met, then the contract contains a formula to allow the parties to agree whether one of them should meet any additional costs, or whether the project should be re-designed. The majority of these assumptions have been evaluated and tested and considered to be reasonable. However, at the time of writing one assumption is still subject to discussion with BDUK at national level. It is not expected that this will have a material impact on the project, but the resolution of these will be reported to the Leader and Chief Executive in the Pre-Signature Report
- 2.1.4 **State Aid clarifications** – it has been confirmed that prior to designing the solution to deliver at least 2 Mbps for those premises where it is not technically or financially possible to implement a Next Generation Access (fibre based) solution the BBfN Project will consult with the county's existing Wireless Providers to ascertain evidence of the coverage they provide. The BBfN Project will not replicate infrastructure from these existing Wireless providers that is proven to be delivering on an affordable basis at least 2 Mbps in a postcode area.
- 2.2 **BDUK approval** - Checkpoint C is the review which BDUK undertake to establish that a project is "Ready to Contract". This process involves BDUK officers reviewing a range of evidence including, the contract, Value for Money and State Aid compliance. A report is then submitted to the BDUK Assurance Board. Approval is expected to be given to Better Broadband for Norfolk to proceed to contract award (subject to State Aid approval) in December 2012.
- 2.3 **State Aid approval** – the European Union has approved the UK Umbrella State Aid Notification on 20 November 2012. BDUK will now act as the UK's Broadband Centre of Excellence, with the authority to approve UK projects under the Umbrella State Aid Notification. The BBfN Project completed a detailed State Aid submission to BDUK which is compliant with the expected UK Umbrella State Aid Notification. BDUK will provide confirmation of State Aid approval as part of its Checkpoint C Review, at which point contract signature can take place.

- 2.4 **Implication of State Aid delay** as the State Aid approval has been delayed longer than anticipated (two months) this is expected to have a corresponding effect on the implementation timescale for this project. It being agreed with BT at this stage how the Implementation timescale will be revised as a result of this. The resolution of this will be reported to the Leader and Chief Executive in the Pre-Signature Report.
- 2.5 **Next Steps** - following the decision to award the Better Broadband for Norfolk contract, the contract signature will take place following receipt of State Aid approval from BDUK.
- 2.5.1 Shortly after contract award detailed planning of the rollout schedule will take place and the project team will provide information to Norfolk residents and businesses. A detailed publicity programme is being prepared in anticipation of contract signature.

3 Resource Implications

- 3.1 **Finance:** Formal approval for the scheme and the £15 million of Council funding was given by Cabinet and County Council as part of the 2012/13 Capital Programme.

The DCMS Grant Agreement, under which the BDUK £15.44 million contribution will be governed, places reporting requirements on NCC, these obligations will be overseen by the BBfN Programme Director with support from the ETD Finance Team. Audit obligations will be delivered via Norfolk Audit Services.

- 3.2 Details of other implications for **Staff, Property and IT** were considered in the report to Cabinet of 17 September 2012 and have not changed.

4 Other Implications

- 4.1 **Legal Implications:** This award decision will signify the Council's intention to sign the agreed contract. It allows a 10 day standstill period to commence, prior to contract signature taking place. As this is an award of a contract from a Framework Agreement a standstill period is not required by the relevant regulations. However, it is a procedural requirement of the Framework Agreement.
- 4.2 **Human Rights, Equality Impact Assessment, Communications, Health and Safety, Environmental and Any Other implications** were considered in the report to Cabinet of 17 September 2012 and have not changed.

5 Section 17 – Crime and Disorder Act

- 5.1 This project has no implications in relation to Section 17, Crime & Disorder Act.

6 Risk Implications/Assessment

- 6.1 A risk assessment has been completed using the Corporate Risk Management Framework. Risks will continue to be managed throughout the implementation phase of the project. This will be a joint NCC and BT responsibility.

7 Overview & Scrutiny Panel Comments

7.1 Not applicable.

8 Alternative Options

8.1 Norfolk County Council decided to use the BDUK Framework as opposed to a separate procurement because:

- Pooling Norfolk and BDUK resources was more efficient
- The technical capabilities of those suppliers that are on the Framework have been tested
- Reduced legal, procurement and State Aid risks for Norfolk
- Using the Framework will allow Norfolk to benefit from the 'Umbrella' State Aid Notification.

At this stage, the alternative option available is to not proceed to contract award. If this option is followed, then Norfolk's requirements would need to be re-procured, either via the BDUK Framework or another procurement method.

9 Reason for Decision

9.1 The award of the BBfN contract will implement a substantially improved broadband infrastructure across Norfolk during the next three years. Broadband is identified as a key element of the Council's Economic Growth Strategy and the implementation of BBfN will provide significant economic benefits, along with wider community benefits.

9.2 The decision to appoint BT as preferred supplier has already been made by Cabinet on the basis of the matters set out in Cabinet Report. Since then, the contract finalisation and clarification process has been substantially completed. This was the final stage in the procurement process prior to the decision to announce the award of contract. As set out in paragraph 2.1 above, the clarification process has not materially altered the parameters of the contract offering from BT and on the basis of the matters as set out in the Cabinet Report, the proposed contract represents the best option for Norfolk to secure improved Broadband services, with the economic and social benefits that entails.

10 Recommendation

10.1 The Chief Executive and the Leader, in consultation with the Steering Group, approve the announcement of the award of the BBfN contract to British Telecommunications Plc subject to a ten day standstill period and also subject to:

- State aid approval for the project being received;
- BDUK approval processes
- Finalisation of such clarifications that remain to be agreed as at the date of the announcement of award letter.

10.2 A draft decision notice is annexed.

Background Papers

Cabinet Report 17 September 2012.

Officer Contact

If you have any questions about matters contained in this paper please get in touch with:

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If you need this Agenda in large print, audio, Braille, alternative format or in a different language please contact Karen O'Kane 0344 800 8020 or 0344 800 8011 (textphone) and we will do our best to help.

Annex – Draft decision notice

In accordance with the decision of Norfolk County Council's Cabinet of the 17 September 2012, and

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Date of Decision