

**NORTH YORKSHIRE COUNTY COUNCIL**

**EXECUTIVE**

**13 OCTOBER 2020**

**SUPERFAST NORTH YORKSHIRE PROJECT**

**JOINT REPORT OF THE CORPORATE DIRECTOR STRATEGIC RESOURCES AND THE  
DEPUTY CHIEF EXECUTIVE NYNET**

**1.0 PURPOSE OF REPORT**

- 1.1 To update Executive members on developments relating to the proposed extension of the Superfast North Yorkshire Project (referred to as Phase 4 of the SFNY Project).
- 1.2 To request delegated authority to award the contract following a Phase 4 procurement and to approve the associated funding of £12.5m.

**2.0 BACKGROUND**

- 2.1 The Executive received a report on 30 July 2016 that described a Phase 3 strategy for achieving further roll out of superfast broadband to the remaining unserved premises in the county.
- 2.2 Phase 3 of the SFNY project is expected to result in delivery of superfast broadband to approximately 92% of premises within North Yorkshire. It is anticipated that a further Phase (4) could increase to between 95% and 97% coverage.
- 2.2 In July 2016 the County Council approved a contribution of £12.18m. The County Council was subsequently awarded a grant of £11.15m from the Rural Development Programme for England (RDPE). Due to the date by which the grant required drawdown this money was substituted in place of the County Council contribution in the Phase 3 programme.
- 2.4 A requirement of the RDPE funding was for the County Council funding (the £12.18m) to be spent on superfast broadband at a later date. Due to the expiry of the National Broadband Scheme 2016 state aid ruling the Phase 4 contract must be signed before the end of 2020.
- 2.5 A Superfast North Yorkshire Governance Board has been set up in order to oversee and direct the progress of the SFNY Programme. This has involved deployment of Phase 3 and development of a Phase 4 strategy and subsequent procurement.

**3.0 PHASE 4 STRATEGY**

- 3.1 Flexibility was built into the Phase 3 procurement to provide for additional headroom in order to increase the number of premises to receive superfast broadband without having to necessarily carry out a separate procurement. Unfortunately, it was established that it was not legally possible to extend the intervention area (ie the coverage of the contract) without running a further procurement.

- 3.2 The SFNY Project Team therefore undertook a discovery exercise and consulted with six telecom operators. The operators were unanimous in concluding that the current model employed in Phase 3 using a single lot was still the most desirable approach.
- 3.3 The Superfast North Yorkshire Governance Board therefore authorised a procurement strategy of a single lot for the available funding level of £12.5m in order to ensure that the RDPE would not need to be returned.

#### **4.0 STATE AID**

- 4.1 The European Commission has approved the use of State funding of BDUK National Broadband Scheme (“NBS”). Phase 4 of the SFNY Project will fall under the NBS.
- 4.2 The NBS will run until the end of 2020, by which time all contracts must be awarded and signed. Defrayal of monies does not have to be complete before the decision expires.

#### **5.0 PROCUREMENT PROCESS**

- 5.1 The procurement process, led by the SFNY Project Team, has been conducted via a Competitive Procedure with Negotiation process (“CPN”). This has involved a selection and qualification stage following which bidders were invited to submit an initial tender for the contract.
- 5.2 On 25<sup>th</sup> September 2020 the SFNY Project Team issued the final Call for Tender to shortlisted bidders with a deadline for a response of Friday 2<sup>nd</sup> October.
- 5.3 Following evaluation of the final tenders the SFNY Project Team will make a recommendation to award the contract to the Corporate Director – Strategic Resources as Senior Responsible Owner for the project.
- 5.4 The contract is expected to be awarded on 23<sup>rd</sup> October with contracts signed in early December 2020 after state aid assurance has been given by the Department for Digital, Culture, Media and Sport.

#### **6.0 SFNY GOVERNANCE ARRANGEMENTS**

- 6.1 An SFNY Governance Board has been created and its purpose is to direct the progress of the SFNY Programme, and in this context to oversee the Phase 4 procurement and its deployment thereafter. The Governance Board reports to the Executive as and when required.
- 6.2 The members of the Governance Board are:

<b>Name</b>	<b>Role</b>
Cllr Don Mackenzie	Executive Member for Access (Chair)
Gary Fielding	Corporate Director Strategic Resources (Senior Responsible Officer)
Robert Ling	Assistant Director Technology and Change
Alastair Taylor	Deputy Chief Executive – NYnet Ltd.
Cllr Carl Les	County Councillor
Cllr David Hugill	County Councillor
Janet Waggott	Assistant Chief Executive – NYCC

- 6.3 The NYnet Deputy Chief Executive, in consultation with the Corporate Director – Strategic Resources has authority to make decisions with regard to the tactical delivery of the procurement, excluding:
- Procurement Gateway decisions
  - Down Selection of Bidders
  - Contract Award
- 6.4 All other decisions required are referred to the SFNY Governance Board and then subsequently to the Executive as required. On this occasion it is necessary to seek Executive approval to enter into contract for the SFNY Phase 4 procurement and to confirm the associated funding.

## **7.0 FINANCIAL IMPLICATIONS**

- 7.1 As identified above, £11.15m has been brought forward from the deployment of the RDPE funding in Phase 3. As such, this element has already been approved by the Executive and any decision at this stage to withdraw this funding would simply require a refund to the RDPE of the same sum.
- 7.2 The County Council receives “overage” from BT for Phases 1 and 2. This is where BT reimburses the County Council for subsidies provided where take up of the service deemed it not to be needed. The latest estimate of overage due to the County Council is £29.8m over the next 5 years. £7.8m was used to fund an element of the Phase 3 contract and it is proposed that a further £1.35m is used for the Phase 4 procurement to increase the overall funding to £12.5m. This will leave further overage due to the County Council which will be available to fund either further SFNY activity or for other core council purposes as it is not ring-fenced.

## **8.0 LEGAL IMPLICATIONS**

- 8.1 The procurement process will be undertaken using the Competitive Procedure with Negotiation process in accordance with the Public Contracts Regulations 2015 and the Council’s Contract Procedure Rules.
- 8.2 Extensive legal advice in respect of the procurement process, and resulting contract, will be provided by NYCC Legal & Democratic Services and Trowers and Hamlins LLP, as external legal advisors. The North Yorkshire Procurement Service will provide advice on the necessary procurement processes.

## **9.0 RECOMMENDATION**

- 9.1 That the Executive:
- (i) approves funding for Phase 4 of the SFNY Project totalling £12.5m as identified in section 7;
  - (ii) delegates authority to the Corporate Director Strategic Resources, in consultation with the Executive Member for Access, and Legal and Democratic Services to award the contract to the successful bidder of the Phase 4 SFNY procurement process;
  - (iii) delegates authority to the Corporate Director Strategic Resources, in consultation with the Executive Member for Access, and the appropriate officer in Legal and Democratic

Services to determine the final terms and then execute and complete the relevant documents to effect the appointment of the successful bidder following the conclusion of the process described in (ii) above.

GARY FIELDING  
Corporate Director, Strategic Resources

ALASTAIR TAYLOR  
Deputy Chief Executive, NYnet Ltd

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Date: 1 October 2020

Background Documents –

Report to the Executive dated 30 June 2016