

CABINET – 16th MAY 2006

REPORT OF THE DIRECTOR OF CHILDREN AND YOUNG PEOPLE'S SERVICE

EAST MIDLANDS BROADBAND CONSORTIUM (EMBC) – FORMATION OF COMPANY LIMITED BY GUARANTEE

PART A

Purpose of Report

1. The purpose of this report is to seek the Cabinet's agreement to the establishment of new East Midlands Broadband Consortium arrangements, to provide broadband connectivity and related services to Leicestershire schools and to the wider educational and public sector field post March 2007 when the contract with the current contractor expires.
2. A new vehicle will be required to take this forward and legal advice has been received that this would best be achieved in the form of a company limited by guarantee. This report seeks approval to the County Council becoming a member of the company and taking a full decision making role within it.
3. It is proposed that the new company would be underpinned by an arrangement between the embc authorities either in the form of an agreement similar to the current consortium agreement or via a formal structure of a joint committee, and this will be the subject of a further report to the Cabinet, at a future date.
4. A full OJEU procurement exercise needs to be undertaken to secure a contractor for the Post March 2007 services. It is intended that ESPO will lead on the tendering process with legal advice from Eversheds.

Recommendations

5. The Cabinet is recommended to agree that:-
 - a) the County Council remains part of a regional broadband consortium in order to provide broadband connectivity to Leicestershire schools and the wider educational and public sector ;
 - b) the County Council becomes a member of a new Company Limited by Guarantee established to carry out the functions of the embc
 - c) authority be delegated to the Director of Children and Young People's Service, in consultation with the County Solicitor, to take any action he considers necessary to give effect to these decisions, such authority to include the power to:-

- appoint an officer to act as a Director and other staff as necessary to represent the Council on the company
- sign the new post March 2007 contracts including the setting up of framework agreements for the related services
- indemnify those officers of the Council who take on a role within the new company to enable the Council to take a full decision making role within the company
- take an active role in the tender process for the Broadband connectivity and related services for its consenting schools and the wider educational and public sector field in relation to the post March 2007 contracts
- accept suitable tenders arising from the OJEU procurement exercise (including any where the value exceeds £1,250,000)

d) a loan be made to the company which will represent the County Council's proportion of the procurement costs and that the Director of Resources be authorised, in consultation with the Lead Member for Resources to agree the terms of the loan which will be repaid to the County Council with interest.

Reasons for Recommendations

6. The current contract for broadband connectivity and other related services will end on March 31st 2007; Northamptonshire County Council, who currently act as the lead authority on behalf of the East Midlands Broadband Consortium, does not wish to continue in that role at the end of the existing contract.
7. The local authority needs to secure future provision on behalf of schools.

Timetable for Decisions (including Scrutiny)

8. The proposals contained in this report could be considered by the Education Scrutiny Committee.

Policy Framework and Previous Decisions

9. This report deals with proposals which may substantially affect the way in which Broadband connectivity and services are delivered to schools in Leicestershire.
10. This will involve a change to the existing consortium structure and governance from that agreed in the report to Cabinet on 17th October, 2000.

Resources Implications

11. As a member of a company limited by guarantee the liability of the Council would be limited to its contribution of a guaranteed sum of money which could be as little as £10. It is possible that, in view of the fact that the Company Limited by Guarantee will have little by way of assets, a new network provider contracting with the company for the post March 2007 service may wish the member authorities of the company to provide some financial security, such as a call on assets or provision of a bond. This would be a fixed amount rather than the potential unlimited liability as at present.
12. It is expected that the Limited Company by Guarantee will be VAT registered to allow recovery of VAT thus reducing the charge to end users.
13. The local authorities, through the East Midlands Broadband Consortium, have contributed to building a private network in the East Midlands region; much of the funding has been used for capital expenditure, in line with Standard Funds rules. The funding made available to embc since 2000 has been £75.9m, of which £37.9m was funded by the DfES.
14. The consequence of full connectivity is that the on going charges to schools will be revenue charges only and should potentially stay the same or reduce over time.
15. Whilst bringing schools onto the network there has been a base line agreement that all nine Local Authorities are charged the same 'on going' costs for their schools (£6,500 and £12,500 per annum in 2006/07), irrespective of the technology used, across the region. This has resulted in cross subsidy in various ways across the whole region so that **all** Local Authorities win and lose but **all** benefit from reduced costs.
16. The actual 'on going' connection cost varies according to the connection type deployed in a school. This standard charge has been to the benefit of rural authorities since generally the technology required is more expensive. The new contract is likely to result in the actual costs for on going rental of circuits are passed to Local Authorities rather than being averaged across the region.
17. Schools in more rural areas (often smaller schools) have higher on going connectivity costs than schools in market towns (larger schools). The Local Authority can then recommend, through forum/schools, whether to charge schools actual costs or even out the costs to all schools in a fairer way.
18. Standards Fund has been use to deliver this network however there is uncertainty about the use or availability about Standards Fund 121 in 2007/8. Therefore it is expected that schools will be paying for the on going running costs.

19. The new core contract would be between the successful contractor and the Company Limited by Guarantee which in turn would contract with the Local Authorities, including the Council. The schools would arrange for provision of the services with the Council.
20. There is an option within the current contract for technical support that Leicestershire currently takes up. There may not be sufficient demand in the future which could make it cost prohibitive, therefore there may be a need for the Local Authority to provide first line technical support to schools; this could be delivered by expansion of the LEAMIS team and charges passed onto schools. If the LEAMIS team needed to expand, or a service needed setting up, there would be an associated accommodation requirement.
21. It is acknowledged in the Prior Information Notice and Invitation To Tender there will be an option for all nine Local Authority Corporate ICT to take advantage of the new contract, if they so wish, in the future as well as the wider educational and public sector field.
22. Legal services have been involved throughout the original consortium agreement and current proposals. Appendix A summarises the current legal position.
23. Working collectively across the region could lead to efficiencies in the price of the contract and contribute to the Gershon agenda.
24. The new company would be a 'regulated' company which means any borrowing would count as that of the Constituent Authorities if the Government were to use its reserve power to reintroduce controls on borrowing in place of the current prudential regime.
25. The Director of Resources has been consulted in the preparation of this report.

Circulation under Sensitive Issues Procedure

26. None

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PART B

Background

27. East Midlands Broadband Consortium (embc) is a consortium agreement between the 9 Local Authorities (Derby City, Derbyshire, Leicester City, Leicestershire, Northamptonshire, Lincolnshire, Nottingham City, Nottinghamshire and Rutland) with Northamptonshire as the current lead authority. This consortium delivers broadband and associated services to schools in the East Midlands region.
28. The East Midlands Broadband Consortium secured DfES funding for the tendering process to let a contract to develop a new infrastructure in the East Midlands. This contract is to deliver broadband (2 Mb synchronous) connections and services to all schools (about 2100 schools) in the East Midlands area.
29. The contract was awarded to Fujitsu (ICL as was) in 2000 with Synetrix, Affiniti (KiB as was) and Ramesys as the main subcontractors, this contract is due to expire 31st March 2007.

embc Funding (Leicestershire)

30. The Standards Fund for Connectivity has been, and continues to be, used from 2000-2007 to build a communications infrastructure to run services across the region in order to meet DfES targets of all schools; this is being connected to a minimum 2 Mb synchronous broadband connection with services providing safe access to the Internet.. In the first year of connection schools contribute £2,000 towards set up costs and then schools pay revenue on going costs for connectivity and services. The Standards Fund is part DfES and part Local Authority funding.
31. The current infrastructure has a 'book' value that could be transferred to a new supplier.
32. The embc contract is not just an Internet connection; it also includes services to schools such as e-mail for all pupils and staff, appropriate education filtering content and emails, anti spam, access to content, tools to create content and access to the National Education Network. The annual cost is not just the connectivity cost.

National Expectations

33. It is a DfES expectation that all schools will be connected to the National Education Network via a regional broadband connection (rbc) by 2006.
34. DfES is expecting the National Education Network to serve as a secure private network for all school in England and Wales. This is not the same as the unregulated environment of the World Wide Web. This expectation will be used for the Every Child Matters agenda.

35. Leicestershire has been part of embc for the last 6 years and it was expected that all schools will connect via embc before the end of the current contract to meet DfES targets.
36. Schools not part of embc, or any rbc, are unable to connect to the National Education Network via other service providers

Current Arrangements

37. Although Northamptonshire will act as interim lead and not jeopardise the setting up of a new contract it does not wish to continue to be the lead authority beyond the end of March 2007. Therefore new governance arrangements will need to be made.
38. The new contract and change to governance will coincide with the changing role of the Local Authority from April 2007. East Midlands Broadband Consortium will be the first regional broadband consortium to go to tender under the new arrangements. As such it is anticipated that DfES and Becta will be closely involved in this tender to help produce the business case for other regional broadband consortia.
39. EMBC continues to take advice from solicitors, Eversheds, who were appointed as a result of a tendering exercise and the Northamptonshire procurement team.
40. A Prior Information Notice (PIN) was placed in the Official Journal of the European Union earlier this year giving notice of the intended procurement.
41. The ITT is likely to be for core services and connections. Services running over the core network will be within a Framework Agreement that schools can select from. A framework agreement is where a supplier agrees a 'product' at a given price and customers 'call' on that agreement as they purchase the product. The supplier has no guarantee of volume purchase.
42. Leicestershire's position regarding the new contract has always been that we can only put schools forward if they agree; all schools have been written to for their consent to be part of the tender. Currently we have 247 returns of which 243 schools have agreed.
43. This infrastructure could transfer from Fujitsu ('novate') to a new supplier. However this can only 'novate' as a working entity, we cannot divide the current infrastructure into 9 'lots'. A legal entity needs to be in place to hold the contract which, if approved, will be the Limited Company by Guarantee.

Implications for schools

44. Schools are still required to meet DfES targets for the following that can be facilitated through a regional broadband consortium:

- 100% broadband connectivity by 2006
- Learning platform through regional broadband consortia (rbc) to meet BECTA standards by spring 2008
- Connection to the National Education Network via a regional broadband consortium
- Authenticated single sign on (Shibboleth)
- Network standards as agreed by Becta as part of the National Digital Infrastructure
- Pupil home access to ICT

Some Risks of withdrawing from East Midlands Broadband Consortium are as follows

45.

- 288 schools without connectivity and a requirement to buy and install new equipment, connectivity and services.
- LEAMIS uses embc for its internet connection and access to the embc network to provide remote support for schools. It would no longer be able to provide remote support for schools resulting in additional travel and visits increasing cost to schools.
- No email and on line support for LEAMIS including, access to Capita on line support, resulting in additional costs for LEAMIS to run their service which would result in increased ICT support costs to schools.
- Travellers Education Service use the embc network for the project with fairground children. If East Midlands Broadband Consortium ceased to exist the GPRS system will be withdrawn.
- Local Authority non school sites are connected to the embc network. If the network no longer exists alternative arrangements will have to found for those sites e.g. Beaumanor, Quorn Hall and Comenius. This would result in no connectivity at Beaumanor within rooms booked out for use, at Quorn Hall for students and Comenius staff based at Quorn Hall.
- Provision of access to a Local Authority provided/brokered service – remote management (Research Machines, Viglen) and support for in-school network.
- Any schools currently using 'my folder' in Community Gateway in order to easily transfer work between school and home, or access work from any internet connection, will have to individually purchase a Learning Platform, or similar, in order to replicate current available functionality.

Risks of continuing with East Midlands Broadband Consortium

46. Standards Fund 121 is expected to be available in 2007-08 however neither the detail nor the amount is available from DfES. It is expected part or most of this funding will be to assist schools to have a Learning Platform by March 2008. This has not yet been confirmed by the funding division at DfES.

47. Schools will need to meet the full costs of on going connectivity.

Equal Opportunities Implications

None arising directly from this report.

Background Papers

None.

OPTIONS FOR THE LEGAL STRUCTURE FOR EMBC 2007 AND BEYOND

1. Company Limited by Guarantee

EMBC Ltd would ensure a degree of independence, that is, as a separate legal entity it would have the ability to contract directly with the post 2007 service provider (i.e. without one authority undertaking a lead authority role). Each authority would be a member of the company and the company could be underpinned with a purely “inter-authority” layer via a formal structure of a Joint Committee or a Members’ Agreement similar to the current Consortium Agreement arrangement dealing with issues such as if one member wants to leave. The question of which form of arrangement is appropriate will require further discussion with partner authorities and further advice from Eversheds. It will therefore be necessary to report back to Cabinet at a later date on this.-

As a member of a limited guarantee company the liability of the Council would be limited to its contribution of a guaranteed sum of money which could be as little as £10, reducing the risks on a single authority. However, in view of the fact that EMBC Ltd will have little by way of assets it is possible that a new network provider contracting with the company may wish the member authorities of the Company to provide some financial security, such as a call on assets or by way of a bond. This would be a fixed amount rather than the potential unlimited liability as at present.

Procurement activities would be undertaken in the name of the company. The company would also employ staff, enter into contracts and undertake all the business undertaken by the existing contractual arrangement. This would relieve a single authority of the burden.

2. Joint Committee

An administrative arrangement involving the local authorities which enables formal Member involvement/democratic involvement.

Functions can be delegated by the authorities to the Joint Committee so that it is a Joint Committee responsibility (delegations can be subsequently revoked).

Primary disadvantages of a Joint Committee are that no new legal entity is created, it has no limitation of liability and it needs to operate through one or more local authorities. At the present time no authority has agreed to, or has the capacity to, take on the lead role.

Legal advice from Eversheds suggests that a Joint Committee, (assuming one of the authorities was prepared to take on the role of

the lead authority) may involve additional procurement activity and/or contracting arrangements having to be undertaken and that this could lead to fragmentation of the overall contracting arrangements. These are legal difficulties that would not apply to a company structure.

3. Contractual Arrangements

This is the current arrangement for EMBC. The authorities agree to pool resources and expertise and share some functions.

The final two bullet points under the last heading apply to contractual arrangements – see above.

4. Service Provided through ICTS Current Provider

If the company limited by guarantee is not agreed the Local Authority may need to look to supplying broadband connectivity and services on its own. Advice from the Head of ICT is that the current provider of the Wide Area Network for the County Council may not be able to provide a full service e.g. email and curriculum services.

Any contract would need to be tendered in accordance with Procurement Regulations.

5. An Arrangement between other groups of Local Authorities

This would still require an EU tender exercise given the value of the contract or it may be possible to call off a framework agreement set up in accordance with the EU rules by the Office of Government and Commerce.

Would need an arrangement between the authorities e.g. a contractual/consortium arrangement, joint committee or company – the same points as discussed above would apply to these structures.