

Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

**CHILDREN AND YOUNG PEOPLE SCRUTINY COMMITTEE
CABINET**

**20 JULY 2006
24 JULY 2006**

East Midlands Broadband Consortium

Future Strategy for Leicester City

Report of the Corporate Director of Children and Young People's Services

1 Purpose of the Report

- 1.1 To brief Cabinet on the current position of the East Midlands Broadband Consortium (EMBC) and to seek approval to the establishment of new East Midlands Broadband Consortium arrangements. This is to provide broadband connectivity and related services to Leicester City schools post March 2007 when the contract with the current contractor expires.

2 Summary

- 2.1 EMBC is a partnership of nine Local Authorities established by a legal agreement in 2000 to gain Government funding to deliver broadband connectivity to all schools within the region. Northamptonshire are the lead authority.
- 2.2 EMBC's contract with its current suppliers expires on March 31st 2007. The existing contract was awarded to Fujitsu Services in January 2001 and expires on 31st March 2007 with notice to the current suppliers to be given in September 2006. Northamptonshire have indicated that they no longer wish to take the role of Lead Authority. Procedures are currently underway to tender for a new provider.
- 2.3 Legal advice has been received that the best way forward is to form a company limited by guarantee. This company would be underpinned by a member's agreement.
- 2.4 Local Authorities continue to be tasked by the DfES to ensure schools meet defined broadband standards for connectivity and have access to the National Education Network.
- 2.5 Consultation has taken place with a cross cutting Local Authority group.

- 2.6 Schools have been briefed and a survey carried out on the quality of the current EMBC service.
- 2.7 Consultation has taken place with the DfES and Partnerships for Schools (BSF).
- 2.8 The Service Director Planning, Commissioning and Performance commissioned a report from SOCITM to assess the position.

3 Recommendations

- 3.1 The Children and Young People Scrutiny Committee is asked to consider this report and refer any comments to Cabinet as appropriate.
- 3.2 Cabinet is recommended to agree that Leicester City remains part of a regional broadband consortium in order to provide connectivity to Leicester City Schools post March 2007.
- 3.3 Leicester City becomes a member of a new company limited by guarantee established to act as a vehicle for the EMBC to procure a new supplier contract.
- 3.4 Approve the method of procurement through the EMBC company, as described in this report, and that contract procedure rules be waived accordingly.
- 3.5 Authority be delegated to the Corporate Director of Children and Young People's Services, in consultation with the lead Cabinet member for CYPS and the Town Clerk, to take any action they consider necessary to give effect to these decisions, such authority to include the power to:-
- Agree the members agreement to be entered into between the members of the company
 - Make funds available to the company which will represent the City's proportion of the procurement cost of approximately £30,000 to allow the company to run the procurement exercise
 - Agree the contracts for post March 2007 for core broadband connectivity and services including the setting up of framework agreements for related services.
- 3.6 Establish a cross cutting LA group to work together to ensure that at the end of this contract Leicester City are in a position of strength to move forward. This will ensure the best solution for Broadband connectivity and access to the NEN for Leicester City schools.

4 Headline Financial and Legal Implications

4.1 Financial

- 4.1.1 It is estimated that the cost of procuring the new contract through the new EMBC company would be in the region of £500,000; Leicester City Council's share of this would be approximately £30,000. It would be advisable to ensure that the predicted expenditure is capped at £500,000.
- 4.1.2 It is not clear from the report how or whether the loan will be repaid; if it is unlikely to be repaid then it should be treated as direct expenditure as it is necessary to

consider the substance of the transaction. This can be funded from the Connectivity and Learning Systems Standards Fund as outlined in Appendix A; this grant is £490,000 in total for 2006/07 and is aimed at providing and maintaining broadband connectivity and access to the National Education Network for every school by 2006. The grant is available to spend up until August 2007.

- 4.1.3 If this expenditure does count as a loan then this would be treated as a balance sheet item and not a charge to expenditure in the year it is made. However, if at a later stage, it was clear that it would not be repaid then this would need to be written off at that time. It is important to ensure that there would be funding available to cover this if this were to occur in the future.
- 4.1.4 It should be noted that each school on broadband incurs an annual revenue charge of £6,500 for schools connected at 2mb and £12,500 for schools connected at 8/10 mb.

Kate McGee
Financial Services Manager – Schools
Children and Young People’s Services

4.2 Legal

- 4.2.1 Appointment to the post of Director of any company are, by virtue of the Council’s Constitution decided by the Town Clerk in consultation with the Whips (see local choice functions) and can be anyone (including officers and members).
- 4.2.2 Indemnities from the Council to appointees as company director are provided automatically under the resolution of Cabinet 15th May 2006, subject to the agreement of the scope of the appointment and a briefing on responsibilities.
- 4.2.3 (Part V) of the Councils’ constitution contains requirement on working with partners to ensure that standards applicable e.g. on transparency and probity are maintained.

Legal Implications of Local Authority companies:

- 4.2.4 As all the members of the proposed company will be local authorities, the company will be a local authority controlled company for the purposes of Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995.
- 4.2.5 The latter Order imposed two levels of control on regulated local authority companies. Prior to the introduction of the prudential borrowing regime, some financial transactions of regulated companies had to be treated by local authorities as their transactions for the purposes of the capital finance regime imposed by Part IV of the Local Government and Housing Act 1989. This would impact on the Council’s borrowing limits under that regime. With the introduction of the new prudential borrowing regime the impact of this level of control has been diminished.
- 4.2.6 The 1995 Order also imposed propriety and publicity controls on companies which are local authority regulated and these are still in effect and are:-

- a regulated company must advertise the fact that it is controlled by a local authority on all “relevant documents” (business letters, notices, official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods signed by or on behalf of the company, bills of parcels, invoices, receipts and letters of credit);
- a regulated company must not pay remuneration or expenses to a regulated director in excess of the maximum which a local authority itself could pay;
- a regulated company must not publish any material which a local authority would be prohibited from publishing by section 2 of the Local Government Act 1986;
- if a director becomes disqualified from membership of a local authority otherwise than by being employed by a local authority or a controlled company, a regulated company must make arrangements for a resolution for the removal of that director;
- a regulated company must provide information to the local authority’s auditor for the purposes of audit of the local authority’s accounts and to any person authorised by the Audit Commission for the discharge of any function under Part III of the Local Government Finance Act 1982;
- a regulated company must provide information to members of the local authority which they reasonably require for the discharge of their duties (but not if this would involve breach of an enactment or an obligation owed to any person);
- a controlled company must obtain the consent of the Audit Commission to the appointment of an auditor;
- a controlled company which is not an arm’s length company must make available for inspection by any member of the public a copy of the minutes of any general meeting of the company for four years after the meeting (but not if this would involve breach of an enactment or an obligation owed to any person).

4.2.7 Regardless of whether a company is regulated the following requirements apply by virtue of it having local authority membership.

- The local authority must not take any action nor refrain from exercising any rights which would result in a person who is disqualified from local authority membership from becoming a member or a director of the company or acting as the local authority’s official representative at general meetings of the company
- The local authority must make arrangements to enable members of the local authority to put questions about the activities of the company to a member or officer who acts as the local authority’s official representative at general meetings of the company (but confidential company information is exempt from disclosure);
- Any member or officer who has become a member or director of the company by virtue of nomination by the local authority, election at a meeting of the company at which voting rights were exercisable by the authority or appointment by directors of a company the majority of whom became directors

because of nomination by the authority or election at a meeting of the company at which voting rights were exercisable by the authority must make a declaration to the authority about the receipt of any remuneration or expenses from the company in such form as the authority requires.

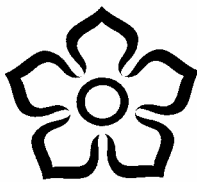
- 4.2.8 Since all members of the proposed company are local authorities, the local authority controlled nature of the company cannot be avoided. Since the change to the borrowing regime, the consequences for the Council of being a member of such a company are not sufficient to outweigh the potential benefits of the company and it is therefore recommended that the controlled nature of the company should not prevent taking up membership of such a company.

Joanna Bunting
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Resources Department

- 5 Report Author/Officer to contact:**
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DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)



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East Midlands Broadband Consortium

Future Strategy for Leicester City

SUPPORTING INFORMATION

1 Report

1.1 Background

1.1.1 The East Midlands Broadband Consortium (EMBC) was established in January 2000 as a consortium of nine local authorities, to provide true broadband connectivity (2mb symmetrical) to all schools in the region. Funding was provided by the Department for Education and Skills (DfES), with matched funding from LAs and an annual contribution from connected schools. Northamptonshire act as the lead authority. DfES extended the connectivity targets (all schools are connected by December 2006 with secondary capacity increased to 8mb symmetrical) and funding. 87% of Leicester schools already take their internet connection through EMBC, with the rest planned to do so by the end of 2006.

1.1.2 Local Authorities have been tasked by the DfES to:

- ensure all schools are connected to broadband by December 2006
- ensure all schools are connected to the NEN (National Education Network). DfES is expecting the NEN to serve as a secure private network for all schools. 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 to ensure safe and secure access to educational resources for all children and young people
- the minimum requirement for primary schools is a 2mb symmetrical connection
- the minimum requirement for secondary schools is a 8mb symmetrical connection
- Broadband connections should be supplied through an LA or a Regional Broadband Consortium (RBC). Current grant conditions do not allow

commercial ISPs to connect to the NEN. East Midlands Broadband Consortium is our Regional Broadband Consortium.

See Appendix A for funding guidance.

See Appendix B for draft summary of DfES's vision for the NEN.

1.1.3 The current contract, which was awarded in January 2001 to Fujitsu Services, and the consortium agreement between the 9 local authorities expire on March 31st 2007. Northamptonshire, the lead authority under the consortium agreement, have indicated that they are no longer willing to continue in this position beyond this date.

1.1.4 Over the past 5 years we, together with our partner LAs, have made a huge investment in order to construct a new network, ensuring connectivity for all schools across the region. This will transfer as part of the new contract. We are now in a position to benefit from this investment, as development costs cease and are replaced with operational costs. Connected schools receive these services:

- Internet connection
- Access to the NEN and associated resources
- Filtering
- Firewall
- Virus Protection
- Helpdesk
- E-mail
- Community Gateway giving personal portfolio space
- Hosting of school website
- Video conferencing across the network

1.1.5 For the post March 2007 period, the EMBC is seeking to secure:

- Core contract for connectivity with a single supplier (this will include filtering, firewall and virus protection). To ensure best value for money, the contract will need to be for at least 3 years which will take us past known Government commitment to funding (2008).
- Framework contracts potentially with a number of suppliers, for optional services (e.g. e-mail, web hosting, learning platform).

The intention is to allow increased flexibility both at LA and school level. Potential charges should either stay the same or decrease.

1.1.6. Legal advice has been received, that if a single contract for connectivity were to be procured by a lead authority, each of the other LAs in the consortium would need to go through an EU compliant procurement process to purchase services under that contract. Crucially there is at present no member of the Consortium prepared to act as lead authority. This is due to the risks of becoming party to the contract for all members of the Consortium, and relying on a consortium contract to secure the necessary funding from other consortium members.

1.1.7 To overcome this difficulty it is proposed that the members of the Consortium establish a company limited by guarantee to undertake the procurement. This

company would contract with the supplier for the connectivity and establish frameworks for the optional services. The consortium, in reaching this position has taken advice from Eversheds LLP which confirms this approach, as does Leicester City Legal Services, provided that it complies with the 'Teckal' case.

- 1.1.8 A Local Authority group comprising of the Service Director Planning, Commissioning and Performance, and representatives from Learning Services, BSF, Corporate IT, Legal, Financial and Corporate Procurement Services met on April 10th 2006 to consider the position for Leicester City. Their unanimous decision was that we needed to move forward collectively.
- 1.1.9 In reaching this recommendation the following alternative courses of action were considered by officers:
- Procuring through BSF
 - Procuring on our own as a single authority
 - Replicating the current EMBC arrangements having a lead authority and consortium agreements with a steering group
 - Forming a joint committee
 - Forming a limited liability partnerships as opposed to a limited company
- 1.1.10 The current grant conditions encourage purchasing to be through a shared vehicle with the relevant LA participants. This achieves, it concluded:
- Greater purchasing power
 - Shared procurement costs
 - Shared resources and developments
- 1.1.11 One authority within the region has opted for a stand alone approach, but in Leicester City's case there are cost and resourcing issues. Furthermore there would be no guarantee that the existing network (the infrastructure of which is still viable) would be available to a stand alone authority procuring a contractor. Under the present contract a fragmenting of the consortium would frustrate the benefit of the clauses in the contract giving the consortium the benefit of a smooth handover to a new provider.
- 1.1.12 None of the participating authorities were prepared to become a lead or administrating body. The current thinking is that participating authorities would be prepared to second staff to the proposed EMBC company.
- 1.1.13 The advice received was a guarantee company was a well known vehicle to the market, for example YHGFL is already established as functioning for the procurement of educational broadband and can be established very quickly. There are no fiscal advantages from choosing a limited liability partnership because all the members are, and are always intended to be local authorities. It should also be borne in mind that the "Teckal" case covers local authority companies.
- 1.1.14 Community Interest Companies are intended as a "trust" vehicle and hold assets on behalf of a community and are not known as a purchasing organisation/vehicle.
- 1.1.15 BSF was considered as an option but it was unlikely that connectivity could be achieved within the timescales (BSF schools are on an 18month build programme from financial close) and DfES guidance was that we should procure through the

Regional Broadband Consortium EMBC arrangements, and secure best value for money. Steve Moss (Education ICT Adviser, Partnership for Schools – BSF) states:

“The reason for not including connectivity in the BSF procurement was to avoid wasting money building “parallel motorways” when all LAs should already have robust broadband infrastructure for their secondary schools procured through the RBCs in most cases.”

BSF is only for Secondary schools, broadband connectivity targets cover all. The current proposal is for a 3 year contract and options (including asking the LEP to provide) can be considered at the time the new contract is coming to an end. It is a clear requirement of the LEP ICT partner to work with the RBC to ensure quality and reliability of WAN circuits to BSF school.

The local authority group concurred with this advice. A derogation from the BSF exclusivity arrangements has been agreed.

- 1.1.16 Provided that the company is appropriately established, each individual LA would not need to go through an EU compliant process to contract with the company, because it could make use of a case law exemption to the EU procurement rules established in the case of Teckal, that as long as a company meets certain criteria it is treated as if it were an in-house part of the LA’s own organisation. The company will take advantage of new provisions in the latest procurement regulations to act as a Central Purchasing Body for the other members of the Consortium and school.
- 1.1.17 By establishing a company we would ensure:
1. that the procurement complies with the latest EU regulations
 2. that the LAs get the benefit of large scale purchasing and
 3. that LAs share the cost of procurement
- 1.1.18 The company has the advantage of limited liability which the existing contractual based consortium structure does not have. However, for commercial reasons to do with attracting contractors to the contract, the LAs would need to put sufficient funds into the company to reassure potential contractors that the company was a sound financial basis with which to do business in that it could resource the contract in terms of contract price, liabilities and administrative overheads. We have no confirmation of that sum yet. Once the company is formed, discussions will take place concerning the governance arrangements underlying the company and the terms of any members’ agreement between the consortium members as how the company would be run, the funding and financial guarantee required from members and provisions for the event that any member wishes to leave the consortium, bearing in mind that certain financial commitments would not be recoverable.
- 1.1.19 The Service Director for Planning, Commissioning and Performance commissioned a report from SOCiTM to consider our position. Their advice was that:

“On balance, our recommendation is that Leicester continues its engagement with EMBC as it reconstitutes itself”, to ensure connectivity and access to the NEN post March 2007.

- 1.1.20 The LA is not in a position to replace the broadband connectivity to schools with an alternative solution within the timescales. The Service Director Information and the Head of Technology Services are of the view that the proposal contained within this report will protect continuity of service provision. To make the best use of the existing EMBC investment, and to ensure that Leicester Schools' long term requirements are best served it is important that the Learning Services and Planning, Commissioning and Performance Divisions, along with technical experts from Information Services pay an active role within the partnership over the coming months and years.
- 1.1.21 For BSF schools the LEP will provide a managed ICT service which includes broadband services for example email, learning platform, personalised web space but not connectivity. It is possible that in the future the LEP may procure for all broadband needs including connectivity. However a decision must be taken now to ensure continuous connectivity for schools from April 2007 and this timetable is incompatible with the LEP provision. Advice from Partnerships for schools is that
- 1.1.22 We need to take a decision as making no decision will leave our schools without Broadband connectivity and access to the NEN. Access to the NEN for schools is crucial to the Governments e-strategy and transformational agenda.

2 Financial Implications

See previous section.

3 Legal Implications

See previous section.

4 Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph within this report	References
Raising Standards	Yes	1.4 through access to the NEN and personal learning space	
Equal Opportunities	Yes	1.4 through access to the NEN and personal learning space	
Policy	No		
Sustainable and Environmental	No		
Crime and Disorder	No		
Human Rights Act	Yes	1.4 through access to the NEN and personal learning space	
Elderly/People on Low Income	No		

2. Background Papers – Local Government Act 1972

N/A

3. Consultation

Steve Hogger, DfES Programme Manager Connectivity, Infrastructure & Learning Management Systems, Learning Technologies Division

SOCiTM Consulting

Steve Moss, Education ICT Adviser, Partnerships for Schools (BSF)

Cross Cutting LA Group comprising:

Adrian Paterson, Jill Craig - Corporate IT, Geoff Organ - Corporate Procurement, Joanna Bunting - Legal, Jen Johnson - E-Services, Kate McGee - Finance, Barrie Woodcock - Finance, Brian Glover - BSF, Christine Springett - Learning Services, Helen Wright - Learning Services

Leicester City Secondary Heads

Schools

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APPENDIX A

Connectivity and Learning Systems Standard Funds (SF121)

Guidance:

The aim of this funding is for Local Authorities to:

- ensure that all schools are connected to Broadband by 2006 and to connect all schools to the National Education Network (NEN); and
- ensure that by spring 2008, all schools have available to them a learning platform service with at least core functionality as defined.

Funding for Grant 121 for 2007-08 has been secured but not yet allocated. The Department will be in dialogue with RBCs and Local Authority representatives in spring 2006, to agree how the funding should be best deployed. These discussions will take account of the need to ensure sustainable broadband connections for schools, their accessibility to a core learning platform service and a reliable, cost effective National Education Network.

How to use this Grant:

Broadband connections should be supplied through an LA or a Regional Broadband Consortium (RBC). If an LA has not joined an RBC, or wishes to discontinue its membership of an RBC, equivalent funding must be devolved to schools in full. In such cases it will be for the LA to make the case to the Department – on both educational and economic grounds – for adopting such an approach.

A National Educational Network is being constructed to enable pupils and teachers in all schools connected to the network to access digital resources in a safe, secure and coherent manner. FE, HE and cultural sector institutions (Museums, Libraries and Archives) are also connected to the NEN, forming a genuinely national educational resource.

This network facilitates easy access to a wide range of high quality online applications and content. More and more content is being made available on this network and this is one reason why connections should be purchased through an approved education supplier i.e. an RBC.

Funding has been allocated to LAs by a formula based on school numbers adjusted by a measure of relative population density to recognise the differing costs of connectivity. The ten RBCs have grouped together to manage the process of procuring broadband connections and network management for schools within their regions, and are also well placed to provide core learning platform service. They are key partners of the DfES in implementing this policy.

A single sign-on solution will enable easier access to a wide range of content by allowing users access to numerous applications using a single password and user name. It will ensure secure access to internet resources from anywhere and at anytime and allow personalisation. This is expected to be deployed over the NEN.

Learning, Teaching and Managing with ICT – Funding Guidance for Schools and Local Authorities 2006-2007, published by the DfES.

The grant guidance also indicates other service are expected to be deployed over the NEN, e.g. a single log-on authentication service, and minimum technical standards are expected to apply to networking to enable, for example, video conferencing.

APPENDIX B

DRAFT

What is the National Education Network and its Promise?

The National Education Network (NEN) is at the heart of the government's ambitions to transform education. It promises to spread best practice, to help schools share limited resources, and to promote the development of online teaching materials crafted explicitly to support all aspects of the national curriculum. It is a vital component of the strategy to promote personalised learning, seen as fundamental to raising achievement by everyone.

The National Education Network is delivered through ten Regional Broadband Consortia, the Local Authorities and the support of their delivery partners UKERNA and Becta.

The NEN's promise

The National Education Network enables a quality learning experience in a safe and secure networked environment.

The National Education Network is a dedicated, educationally focused resource for teaching and learning without constraints of time or location. Harnessing the unique expertise of its providers, the NEN enables a safe, secure, collaborative and creative learning experience for pupils, teachers and parents.

The promise is fulfilled through:

- Access to high quality content, resources and services;
- A coherent approach to the provision of safety and security online for schools and pupils, creating confidence through the evident integrity of the network;
- The provision of technical support nationally and regionally;
- Effective technical standards that create true interoperability across the network;
- Collaboration and communication tools i.e. shared content, resources, templates.

