



Outside In Programme Very Large Frameworks (Type C) Market Engagement

Context for Discussion

January 2021

If you are an operator or market entrant who would like to discuss the Type C procurements in more detail please contact bduksuppliers@dcms.gov.uk.

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Background

The Future Telecoms Infrastructure Review (FTIR) identified the Government policy objective and the overall strategy for delivering world class digital infrastructure in the UK. In October, the Chancellor set out plans to invest £5bn to support the investment into gigabit capable connectivity in the hardest to reach 20% of the country, with £1.2bn available to reach 5 percentage points by 2025, with more available if the market can go faster. The majority of this funding will be invested through the Outside In programme.

The procurements under the Outside In programme will target the premises least likely to benefit from commercial build, in line with our FTIR policy objectives and validated with network operators. BDUK carried out a series of market engagement activities throughout 2019 and 2020 with suppliers interested in providing gigabit capable connectivity.

As a result of these engagements, suppliers have had extensive input into the approach and contractual terms, highlighting how the programme can be best shaped to maximise efficiencies within the market and complementary to existing commercial build plans.

Purpose of this document

This document sets out the key areas of the contract, highlights where BDUK anticipates commonality with Type A/B procurements, and areas which will need to be developed further.

These form BDUK's areas for discussion with suppliers ahead of entering into the Type C procurement process, anticipated to start in May 2021.

Following extensive market engagement, BDUK's revised, hybrid procurement approach is as follows:

Procurement type A: Dynamic Purchasing System and call-offs. Smaller operators still have an appetite to offer innovative solutions for rural areas surrounding their footprints, but have limited capacity and funding. These areas will be addressed using the originally planned DPS, available to all operators, generating contracts for individual bundles of between 1k and 8k premises.

Procurement type B: Large, multi-bundle contracts. We will address larger areas using contracts incorporating a larger number of bundles, encouraging competition between larger operators, generating contracts of varying sizes from c.40k to 80k premises. These will be procured using the Restricted Procedure.

Procurement type C: Very large framework and call-offs. We are proposing to award a small number of very large frameworks that would cover multiple areas that are not covered by Type A/ B or built commercially. These frameworks could cover c500k premises. These will be procured using the Restricted Procedure.

It is anticipated that the terms of the contract of Type C procurements will be materially consistent with Type A & B, with adjustments to reflect the size and scale of contracts and therefore changes relating to risk profiles, operational impacts, governance and administration.

Introduction

BDUK is now preparing to start formal market engagement with suppliers on Type C procurements and contracts. Some suppliers have requested very large contracts to deliver higher volumes and enable a more efficient and effective delivery in regional areas. The purpose of this market engagement, as with type A and B market engagement, is to ensure the procurement approach and framework agreements are attractive to the market and will result in the submission of both viable and competitive bids during procurement.

The Type C framework opportunity aligns with BDUK strategy and DCMS Policy objectives published in Future Infrastructure Telecoms Review 2018. In line with Public Contracts Regulations (PCR 2015) this initial market engagement phase together with DCMS Executive engagement is a pre-procurement phase.

Procurement approach is planned in three phases:

- i) Market engagement and testing;
- ii) Competitive Framework procurement for single supplier;
- iii) Evaluation, standstill and contract signature

Priorities and Outcomes

BDUK anticipates launching a framework for procurement in May 2021. The initial framework is anticipated to cover c500k premises and include an initial call-off of c100k premises, dependent on data analysis and discussions with suppliers with future call-offs for further interventions (tbc bi-annually/annually).

However, procurement Type C could be postponed if an agreement is not reached with suppliers. In this instance, engagement would likely proceed after some Type A and B contracts have been released.

BDUK wishes to jointly agree a tailored contractual solution that considers suppliers' existing commercial build, capability and capacity and expands network in rural areas, taking account of government and local authority priorities. In return BDUK seeks recognition of the financial benefits in co-investment gap funding models at scale, within the constraints of PCR and government policy.

BDUK will take a strategic approach, looking for mutual gains wherever possible, focussing on underlying interests on both sides. The goal is to produce an agreement that stands the test of time and external scrutiny: meeting legitimate interests to the extent possible; resolving conflicting interests fairly; and respecting the interests of all stakeholders.

Through supplier engagement, BDUK aims to:

- reach a contractual position that is acceptable to potential suppliers of Type C whilst protecting the DCMS policy objectives (above), jointly ensuring Value for Money and compliance with the subsidy control regime (2021),
- confirm the continued use of a gap funded contractual model with many of the proven delivery and management controls with developments in a small number of areas, or explore others if they represent significantly better value for money,
- maintain and enhance the standards of management information and cost transparency successfully managed by suppliers with BDUK to date.

Principles of Discussion

Governance - BDUK seeks to work with suppliers to design a joint corporate and BDUK governance framework reflective of an up to £1bn acquisition or co-investment and appropriate executive and operational governance structures with appropriate board reporting (note to suppliers that this would replace current Supplier Management Board process operating under the Superfast Programme).

This governance framework should reflect the ambition for:

- Partnership given opportunity, size and scale of investment
- Opportunity to further support suppliers' deployment and coverage strategies in Area 2 and 3

Charter - DCMS will develop a supplier charter that reflects the government's ambition for national gigabit capable coverage and government's £5bn investment to support the hardest to reach areas. This will include commitments on sharing of data, transparency of build plans, the commitment not to overbuild BDUK funded intervention areas and supplier commercial deployments while we collectively work towards our shared national coverage target, and a commitment to supporting switching and competition.

Coverage

- BDUK wishes to create a model that ensures 100% of the eligible intervention area can be contracted and built
- Build must support government and local authority partner policy objectives i.e. targeting sub-superfast premises first, showing build in as many areas as possible
- Procurement solution, Stage 1 network detailed design and due diligence will be key opportunities to flag f1% exceptions
- The contracted period for build under each call off is up to 3 years

Contract management

- Appropriate risks allocation in the contract and a claims process to ensure cost effective modelling (equity, economy)
- Opportunities to reduce administrative overheads and reduce change related costs for management of the framework (efficiency)
- Management controls and management information reporting automation – data suite to the cloud for reporting and controls (purchase to payment golden thread)
- Transparency / Reporting - provision of management information regarding coverage and costs (actual and forecast), and digital reporting transformation opportunities
- Supporting a Stage 1 planning / due diligence process to ensure 100% commitment to delivery of intervention area volumes contracted.

Finance

- Open book costing and reporting; transparency and visibility of costs incurred for the subsidised infrastructure along with appropriate clawback mechanisms to ensure risk is mitigated for both parties
- Embedded BDUK cost/contract manager within the supplier organisation to support transparency, reporting and payment
- BDUK encourages an efficiency savings (innovation) target over the life of the framework

- BDUK will have requirements for future call-offs under the framework. At each call-off, BDUK will share the scope with the supplier and will require documentation consistent with Type A & B including:
 - A Project Plan
 - A Financial Model
 - The Network Detailed Design
- BDUK plans to procure the framework via the restricted procedure. Suppliers will be evaluated against a set of defined evaluation criteria. Once awarded, each call-off response will be evaluated in line with the stated evaluation process and criteria. At this stage it is envisaged that the evaluation for the first call off will be done in parallel with the framework evaluation to allow the first call off to be awarded in tandem with the framework.
- BDUK would welcome supplier comments on developments to finance processes to ensure common objectives that minimise 'gaming' and encourage efficient build, and equitable and timely payment for eligible capital expenditure incurred in bringing the infrastructure into use in contracted intervention areas.

Key Commercial Terms

Type A/B contract terms have been developed using government standards Terms and Conditions, adapted as required for the specifics of the programme. It is intended that the Type C contract will continue to remain consistent with this approach. The key features of each procurement type are set out in the table below:

	Type A	Type B	Type C
<i>Procurement and contract</i>	DPS and subsequent call offs	Restricted Procedure to award a contract	Framework and subsequent call offs
<i>Intervention area</i>	1k-8k	40k - 60K	Framework for c.500k with call-off of c.100k
<i>Build time</i>	2-3 years per call off	3 years per contract or drawdown within the contract	3 years per call off
<i>Exclusivity</i>	Per call off	Per contract	Per call off
<i>Ability to re-sequence delivery</i>	No	Yes, within later drawdowns	Yes, for each call off
<i>Funding approach</i>	Gap funding	Gap funding	Gap funding

In the table below, we have referred to commonality with Type A only, as these are the draft documents shared with suppliers at present.

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
1.	Parties	The Secretary of State for Digital, Culture, Media and Sport (" BDUK "); and [Insert name of Supplier] (the "Supplier")	N/A
2.	Background	Background to policy objectives Brief description of Supplier's experience	N/A

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
		Explanation that the fulfilment of the Authority's policy objectives will be the consideration under the contract.	
3.	Definitions and Interpretation	As per Clause 1 of the DPS Contract (note that Schedule 1 will require amendment to reflect updates to processes and amend terminology where required.)	N/A
4.	Purpose	As per Type A with necessary amendments.	N/A
5.	Term/ Duration	From the effective date of the contract until the end of the clawback period.	It is expected that the framework will be valid 4 years with call off contract period c.3 years
6.	What needs to be carried out/scope of the programme	Consistent with existing contract drafting Provisions may be dependent on the finalised technical specification.	N/A
7.	Specification	Consistent with existing contract drafting	N/A
8.	Responses to OMRs and Requests for Information	Supplier shall provide mapping and deployment data in respect of the Intervention Area.	N/A
9.	Rights and Protections	Supplier to provide warranties, representations, and indemnities and comply with covenants as per Clause 6 of the DPS.	N/A
10.	Change of Control	Consistent with existing contract drafting	N/A
11.	Planning Activities	The requirements of planning activities will remain consistent with those in Type A.	N/A

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
12.	Project Plan and Delays	Project Plan - there will be one Project Plan submitted with the Supplier's ITT response for each call off Delays – as per Type A	N/A
13.	Testing and Achievement of Milestones	Type C will be expected to use a milestone delivery process consistent with Type A	Milestone definition/identification may be different within Type C contracts, reflecting the higher number of milestones and potential activity across multiple regional supply chains.
14.	Completion of Stage One	BDUK will have the right to break after completion of Stage One within each call off.	N/A
15.	Call Off process	Consistent with the Type A call off approach, BDUK will follow the same process to identify and determine the intervention area to ensure consistency with the wider Outside In programme.	There is a dependency on suppliers continuing to update BDUK on their commercial deployment plans
16.	Operational Integration	Given the scale of the very large frameworks, efficiencies are expected to be gained.	Approach to realising efficiencies and delivering benefit to supplier and BDUK.
17.	Financial Schedule	The principles of the financial schedule (including commitment to cost categories and adherence to qualifying expenditure) are expected to remain consistent with Type A.	An Open book approach will be implemented and the impacts of this are to be discussed.
18.	Stage One Payments	As per Type A. Payment for Stage One will be made upon completion.	For discussion given the scale of Very Large Frameworks and supplier flexibility in sequencing (e.g. reflecting regional supply chains).
19.	Stage Two Regular Payments	Consistent with Type A, BDUK is committed to a regular payment solution which minimises financial exposure for both the Authority and the supplier.	It is expected that the regular payment approach is consistent with Type A procurement, however there are some changes required as a result of the Open Book approach.

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
			This will be discussed as part of the engagement.
20.	Stage Two Key Milestone Payment	Consistent with Type A, BDUK would like to use Key Milestones and will true-up of costs upon completion of build. Consistent with point 13 however, the impact of both the size of the contract and the Open Book approach may require changes to this wording.	It is expected that the regular payment approach is consistent with Type A procurement, however there are some changes required as a result of the Open Book approach. This will be discussed as part of the engagement.
21.	Claims Procedure	The processes supporting evidencing costs and being eligible for payment are expected to be consistent with the Type A contracts.	It is expected that the regular payment approach is consistent with Type A procurement, however there are some changes required as a result of the Open Book approach. This will be discussed as part of the engagement. The parameters for claims and profile of payment is to be discussed.
22.	Clawback	Active Services Clawback – as per the Financial Schedule Passive Services Clawback – as per the Financial Schedule.	Clawback principles will remain consistent with Type A. Specifics of the calculation may be impacted by the Open book approach and therefore any required adjustments will be discussed as part of engagement.
23.	Wholesale Access Pricing	Remains consistent with Type A	N/A
24.	Subsidy control regime	Remains consistent with Type A	All parties acknowledge that the replacement UK subsidy control regime is not fully developed and this may have an impact.
25.	Liquidated Damages	Type A contracts currently assume LDs apply at a daily rate if the supplier fails to reach its Stage 2 Build Complete milestone.	Liquidated damages will still apply however this may be impacted by any changes to the milestone identification/definitions and as a result of the actual costs associated with the scale of the framework.

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
26.	Authority obligations to the Supplier	Remains consistent with Type A	N/A
27.	Representatives	Remains consistent with Type A	N/A
28.	Meetings	<ol style="list-style-type: none"> 1. Performance Management Board - Monthly 2. Strategic Board - Quarterly 3 Assurance and Risk mgt. meeting - Monthly 4. Exec Mgt. Review - senior Steering review. (Bi-annual) <p>Schedule to include attendees (BDUK and Supplier), Purpose and function, frequency, key reports specified. Links to Escalation process and Governance and Assurance</p>	<p>Given the scale and complexity of Type C contracts, it is assumed that the attendees at these meetings will be of appropriate seniority and this would be reflected in the contracts.</p> <p>Additionally, given the scale of investment from BDUK there may be some additional oversight of wider operations sought.</p>
29.	Reports	<p>The following reports will remain consistent with Type A reflecting any content changes already noted above:</p> <ul style="list-style-type: none"> ● Status Report ● Stage One Output ● Stage Two Progress Report ● Stage Two Output ● Social Value and Supply Chain Report ● Take-up Report ● Stage Three Report ● Wholesale Prices Benchmarking Report 	<p>Expected level of aggregation is higher and therefore reports may need to be revised. However, the key information requirements remain the same.</p> <p>An Open Book approach has been proposed and the impacts of this on the level of supporting evidence required alongside reports is to be discussed.</p>

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
30.	Records	Remains consistent with Type A	N/A
31.	Audit	Remains consistent with Type A	N/A
32.	Financial Distress	Remains consistent with Type A	N/A
33.	Guarantee	Remains consistent with Type A	N/A
34.	Rectification Plan Procedure	Remains consistent with Type A	N/A
35.	Relief Events	Remains consistent with Type A	N/A
36.	Exceptional Engineering Difficulties	Remains consistent with Type A	N/A
37.	Supplier Staff and Subcontractors	Remains consistent with Type A	N/A
38.	IPR	Remains consistent with Type A <ul style="list-style-type: none"> • new IP vests in Supplier; • Supplier grants licence to Authority which allows use of Stage 1 Outputs beyond the term of the agreement. 	N/A
39.	Termination	Remains consistent with Type A	N/A
40.	Resolution planning	Type A Contracts require minimal Resolution Planning information.	Given the scale of the framework, the supplier will need to provide Resolution planning documentation consistent with Cabinet Office guidance. This includes Corporate resolution planning documentation.

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
41.	Liability	Remains consistent with Type A	The liability requirements will have to align to central government requirements and may need updating to reflect these.
42.	Insurance	Remains consistent with Type A	Appropriate limits for the size of the agreement will be included under guidance from the Cabinet Office.
43.	Cyber Security	Remains consistent with Type A	N/A
44.	Data Protection	Remains consistent with Type A	N/A
45.	Confidentiality	Remains consistent with Type A	N/A
46.	Transparency and FOIA	Remains consistent with Type A	N/A
47.	Publicity and Branding	Remains consistent with Type A	N/A
48.	Force Majeure	Remains consistent with Type A	N/A
49.	Social Value	Remains consistent with Type A	As Very Large Frameworks are likely to cross multiple LAs, BDUK will work with LAs to establish the Social Value themes required from the supplier.
50.	SMEs	Remains consistent with Type A	N/A
51.	High Risk Vendors	Remains consistent with Type A	N/A
52.	Compliance	Remains consistent with Type A	N/A
53.	Tax	Remains consistent with Type A	VAT assumptions remain consistent with Type A procurements.

No.	Clause	Type A/B commonality	Areas for discussion/ opportunities for efficiency
54.	Change Control Procedure	Remains consistent with Type A	N/A
55.	Change in Law	Remains consistent with Type A	N/A
56.	Notices	Remains consistent with Type A	N/A
57.	Indemnity claims	Remains consistent with Type A	N/A
58.	Boilerplate provisions	Remains consistent with Type A	N/A
59.	Governing Law and Dispute Resolution	Remains consistent with Type A	N/A