



TELSTRA CORPORATION LIMITED

National Broadband Network
Panel of Experts

Telstra Submission

Criteria for RFP

30 March 2008

1. Introduction

Telstra welcomes the appointment of the Panel of Experts to advise the Government on selection of the builder of the National Broadband Network. Telstra also strongly supports the Government's commitment to provide up to \$4.7 billion and to make the necessary regulatory changes to facilitate the roll-out of a new open access, high-speed, fibre-based broadband network, making available speeds of at least 12 megabits per second to up to 98 per cent of Australian homes and businesses.

In this paper, with the Government's objectives in mind, Telstra:

- describes a proposed model for the competitive assessment process; and
- sets out proposed criteria for Request for Proposals (RFP).

2. Importance of getting the process right

The Minister has indicated that the Government expects the new network to:

- deliver speeds of at least 12 megabits per second;
- use fibre-to-the-node or fibre-to-the premises architecture;
- be available to 98 per cent of Australian homes and businesses;
- require no more than a \$4.7 billion investment by the Government;
- have uniform wholesale pricing that offers consumers real value for money;
- provide open access to wholesale broadband services on transparent, equivalent and genuinely pro-competitive terms and conditions; and
- be under construction by the end of 2008.¹

The essence of the Government's overall objective is that all Australians have equitable access to the benefits of competitive supply of high-speed broadband services as soon as possible. This is not a simple objective; the infrastructure project undertaken to deliver the National Broadband Network will involve:

¹ Senator Stephen Conroy, "Government announces Panel of Experts to assess National Broadband Network proposals", Press Release, 11 March 2008. Note that in the same press release the Minister announced that \$95m would be made available for metro comparable broadband in remote communities.

- many billions of dollars worth of private sector investment and hence will require regulatory and pricing certainty given the long payback period and lifespan of the project;
- hundreds of technical and operational decisions to ensure the optimal technologies are implemented by a workforce of thousands, building the network over a number of years; and
- migrating millions of services onto to the new infrastructure while minimising service disruption.

The building of the National Broadband Network will be the biggest single investment ever undertaken in Australia². In short this is a huge undertaking which will require substantial technical, operational and financial capability.

Yet quite rightly the Government also wants to expedite this process. After years of delay and obstruction it is crucial for Australia's economic and social development that this project be underway by the end of calendar 2008.

The tension between the complexity and scale of the project on one hand and the need for an expeditious process on the other means that it is crucial that the tender process is carefully designed. Specifically, Telstra believes the tender process must:

- specify at the outset with absolute clarity what the Government's fundamental objectives are. Where objectives are potentially in conflict, flexibility must be afforded so that innovative solutions can be proposed to optimise the Network to deliver the Government's priorities (including, if necessary, effecting trade-offs between the objectives to do so).
- ensure that all potential serious proponents actually submit bids **but** that non serious proponents and spoilers are excluded from the process from the outset. A prime example of the problems which can be encountered with inadequately designed tender process is the licensing of the satellite pay TV licences. The licence rules initially provided only for a nominal \$500 deposit. Albert Hadid placed cascading proposals on the two licences. Although the rules were changed as the proposals cascaded to include the requirement for a more meaningful deposit, Hadid outlaid only \$6 million in deposits and made a profit

² The largest single infrastructure project to date was Telstra's own Future Mode of Operation (FMO) project (1993-98), a \$3 billion project which won the Engineers Australia Engineering Excellence Award for its execution and would be most comparable to the National Broadband Network in terms of logistics, scale and technology complexity. Other single large infrastructure investments in Australia are BHP's Ravensthorpe Nickel project, Alcan's Gove Refinery and Eastlink in Victoria, which range from \$2.5b to \$2.8b. The oft-cited Snowy Mountains Scheme was a \$1 billion project.

of \$40 million when he arbitrated the licences on to other parties including Australis. Kerry Packer was quoted as saying “[t]hey should all be forced to pay a deposit of \$20 million. That’ll sort out who’s serious and who’s not”.³;

- ensure that, once the serious proponents are identified, they and the Panel quickly move to detailed discussions on what is being proposed and how it meets the Government’s objectives, and then negotiate on any potentially contentious issues. Given the scale of this project, the novel nature of many of the technical, service and commercial issues involved and the Government’s ongoing role, it is unlikely that it will be possible to comprehensively specify the requirements up front in the RFP document, especially in the limited time available for its preparation. There will need to be an interactive process between the Panel and bidders. This process must be a dialogue, not a monologue (in either direction). It must include decision-makers on both sides and will require flexibility within clear parameters to ensure that both the Government and the proponent’s objectives are met and the process reaches a successful conclusion.

In short, what is required are strong gating mechanisms to ensure that only serious and qualified proponents move through the process to the final stage and that these proponents have absolute clarity on what the Government’s fundamental requirements are. But once through a gate, it is important that there is the flexibility and strong negotiating capability on all sides to ensure that this massively complex process is brought expeditiously to a conclusion in a way that meets both the Government’s and the winning proponent’s interests.

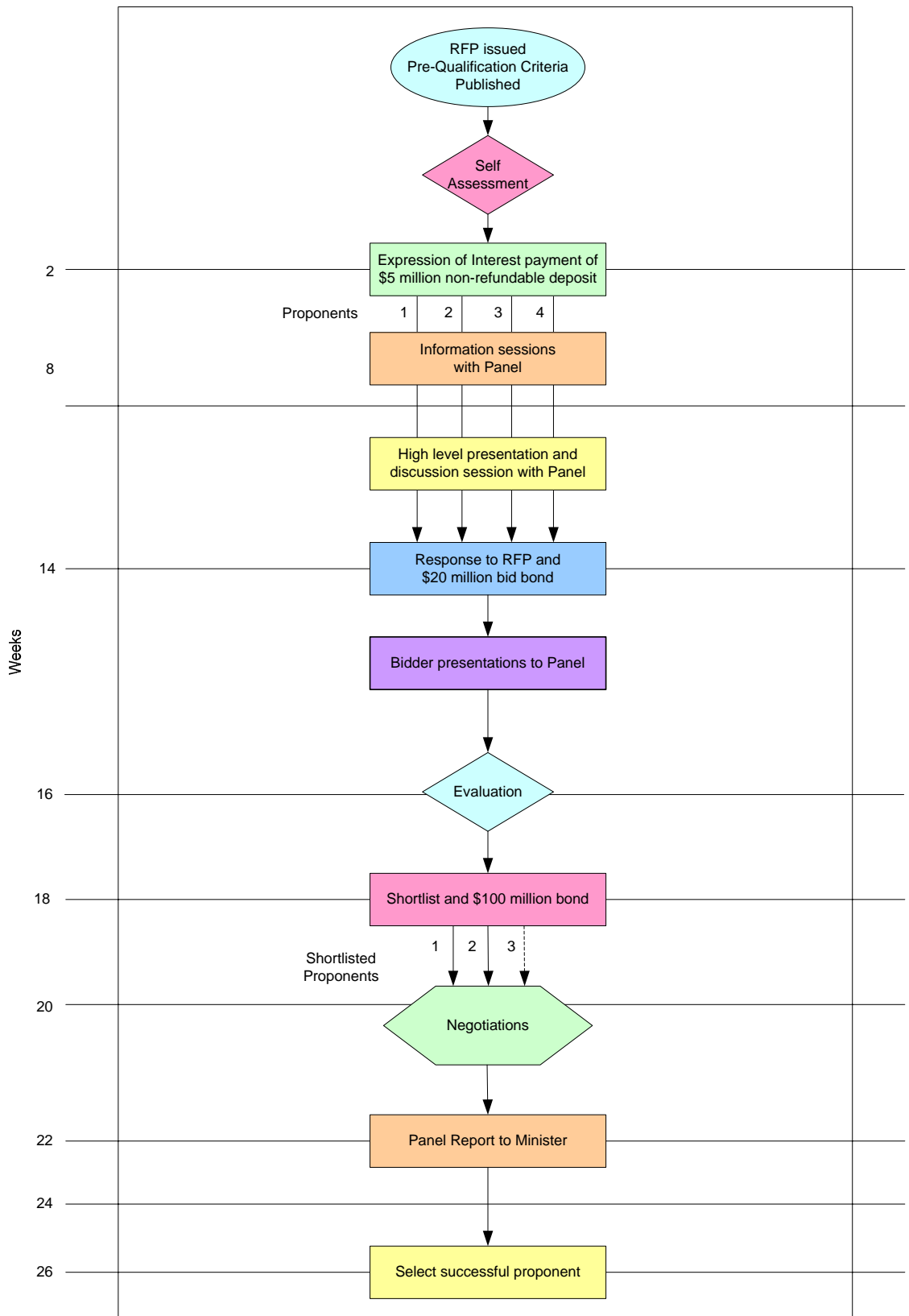
Telstra’s proposed process is based upon tendering best practice, adapted to the unique challenges of this project.

3. Summary of competitive assessment process

Figure 1 summarises the competitive assessment process that Telstra submits will allow the greatest scope for the fulfilment of the Government’s and proponent’s objectives. The figure includes an indicative timescale which Telstra believes is conservative and could be expedited:

³ Mark Westfield, “The Gatekeepers” Pluto Press, Sydney 2000 at page 168

Figure 1 - Proposed competitive assessment process



4. Self-assessment pre-qualification

A **self assessment** against straightforward pre-qualification criteria will efficiently screen out proponents that demonstrably would be unable to deliver such a large-scale infrastructure project. This will ensure that the resources of potential proponents and the Panel are not wasted on proposals which patently could not meet the Government's requirements.

Pre-qualification will deliver a substantially more efficient, expedited process for all parties, because:

- 1 The cost of preparing a Proposal will be substantial. Clarity upfront as to the basic "must-have" capability means participants can either proceed with confidence to subsequent stages, or avoid wasting resources in circumstances where there is no prospect of success;
- 2 Similarly, the process required of the Panel to assess proposals, particularly within the required timeframe, will be considerable. Even demonstrably weak proposals cannot be dismissed out of hand by the Panel without risking strategic litigation which derails the whole process. A pre-qualification step will avoid time being wasted by the Panel dealing with proposals that could not meet the must-have criteria and hence reduce the time taken overall for the process to reach conclusion;
- 3 A pre-qualification step could be completed quickly at low cost, and does not require any additional work by the Panel. If the criteria are clear enough, the assessment can be undertaken by prospective tenderers themselves who then certify to the Panel that they meet those criteria. No separate, discretionary evaluation is required from the Panel; and
- 4 Pre-qualification should provide some protection against spoiling tactics by providing a transparent, objective process to screen out those who will not invest the substantial effort required to prepare a serious proposal. Leaving the screening out to more discretionary evaluation processes much in later tender not only is more inefficient but carries

appreciably higher legal risk, particularly when coupled with as demanding a timeframe as set by the Government for this tender.

A pre-qualification process is widely used by governments in a range of industries, and is typically employed in best-practice guidelines. For example the Commonwealth, State and Territory governments agreed in 1998 to use a pre-qualification process in the construction industry. The advantage of this was articulated as:

“expedites the tender review process, minimising the cost of tendering to industry and government and it facilitates industry development. The criteria for prequalification should allow reliable and objective assessments to be made of a contractor’s capacity to complete a project in terms of time, cost and quality.”⁴

The Federal Department of Finance and Administration also had a Pre-qualification scheme for authorised deposit-taking institutions that satisfy the Financial Management and Accountability Act 1997.⁵

The RFP should therefore include an EOI stage with self-assessment against threshold criteria to ensure pre-qualification admits only proponents with sufficient technical and financial capability to deliver a project of this magnitude. The current turbulence in credit markets means that it is crucial that potential bidders only pass this point if they have the financial wherewithal to fund the project through to completion. If this does not occur, serious bidders may be dissuaded from participating further. Compliance with the following should be certified by proponents as a precondition to lodging a proposal:

Category	Criteria
Technical capability	<ul style="list-style-type: none"> • Proponent (and/or consortium members) must have successfully designed, constructed and operated a large scale wholesale and retail broadband network in Australia or overseas with capital expenditure of more than A\$3 billion in the last 5 years; and • Proponent (and/or consortium members) currently manages a broadband access network in Australia or overseas with more than 500,000 customers.

⁴ Australian Procurement and Construction Ministerial Council, National Pre-qualification Criteria Framework, 1998.

⁵ NSW Department of Commerce, Contractor Pre-qualification Scheme for Construction and Related works 2005-2007, July 2007. Department of Finance and Administration, Agency banking: Market Testing Toolkit, Pre-qualification scheme, October 2003

Category	Criteria
Financial capability	<ul style="list-style-type: none"> • Proponent (or consortium members) have revenues in Australia or overseas in excess of A\$8 billion; • The types and the sources of funding commitments (i.e. named institutions and nature of funding or specific public markets and mechanisms) to the project must be specified by the proponent (or consortium members) and must total at least A\$5 billion (including construction and working capital for a national project) in addition to the Government's contribution.

5. Ensuring financial capability and commitment

Proponents would lodge an Expression of Interest (EOI) within two weeks of the RFP being released in which they would warrant compliance against a set of criteria to demonstrate their own capability and financial standing. The EOI should be accompanied by a significant, but not prohibitive, non-refundable proposal fee to ensure that only serious proponents receive the proposal documents. A fee of \$5m may be appropriate. The non-refundable deposit recognises the costs to the taxpayer of participants that are not serious proponents.

Additionally, upon lodgement of a proposal, a \$20m refundable proposal bond should be required as a further demonstration of the seriousness and commitment of a proponent to participate in the RFP process. The proposal bond would be repaid if the proponent withdrew from the process after its RFP was lodged or after it was not short listed by the Panel.

Telstra notes that sizeable deposits have been required in spectrum auctions. The usual approach is to require a deposit of 10% of the reserve price, which was approximately \$20m in the case of the 3G auctions. The deposit was not refundable if a participant withdrew before the auction commenced and was refundable if it withdrew or lost during the auction process.

Given the value of this project compared to the amounts paid for 3G spectrum, Telstra believes its approach of a \$5m non-refundable deposit and \$20m refundable proposal bond is very reasonable.

Telstra also proposes a \$100m refundable bond by short listed proponents to further demonstrate their commitment and financial capabilities, as a condition of entry to the negotiation phase.

The financial commitment by proponents should incrementally step up as the tender moves from one stage to the next and the field narrows. This is a fair reflection of the increasing effort required from the Panel and proponents and ensures the process has the best chance of meeting the tight timeframe set by the Government. In addition to demonstrating financial capability, this bond will demonstrate the ready ability of a proponent to commence funding a large scale roll-out quickly. The Panel should only have to negotiate with proponents that are committed to winning and have the resources to deploy the network within a short timeframe.

The proposed bond amount represents roughly 2% of the Commonwealth's maximum contribution of \$4.7B and is a similarly small proportion of the additional capital required from the proponent, which will run to many billions of dollars.

The terms of such a bond would be that it is placed on deposit with the Reserve Bank of Australia and that the proponent receives the RBA's standard interest rate, paid monthly. The bond would be repayable if a proponent withdraws from negotiations or the Government notifies the proponent that it is no longer under consideration or has lost the tender. For the successful proponent(s), the bond would then become a performance bond, repayable on successful completion of the first major milestone of the project, to be set out in the final project documentation.

Proponent commitment to Proposals

Given the refundable nature of the bid bonds, it is possible that a proponent would participate in the process with the intention to present a very attractive proposal but which it had little capability of actually delivering or where it hoped to use its bid to gain itself a better deal as an access seeker, with no real intention of wanting to be ultimately selected as the successful builder. Given recent experience, Telstra therefore considers that the bona fides of proponents needs to be formally confirmed when proposals are lodged.

Hence, Telstra suggests that upon lodgement of its proposal, each proponent must provide certification from its Board (or, in the case of consortia, the Boards of each

consortium member), together with the evidence of the relevant Board resolutions, confirming that if accepted in full and without alteration, its proposal:

(a) is a legally binding commitment; and

(b) that the Board is satisfied that the proponent will fulfil its obligations contained in the proposal should it be selected as the winning bidder

6. Interactive information exchange

Telstra proposes that, shortly after the lodgement of the EOIs and payment of the non-refundable deposit, bidders would meet with the Panel for one-on-one briefing sessions. This would allow the Panel to provide more information to bidders on its expectations and the process and for bidders to ask questions or seek clarification of the RFP.

Telstra also proposes a further series of one-on-one meetings between bidders and the Panel 3 to 4 weeks before the lodgement of the RFP response. This would provide bidders with an opportunity to present a high level outline of their proposals to the Panel and for the Panel to provide initial feedback and further clarification. Bidders will be able to test out their proposals and to obtain any further information needed before finalising their RFP proposals.

Rather than bidders going off to prepare their submissions in a black box, this interactive process is more likely to ensure the development of proposals which meet the Government's objectives and bidder's expectations.

7. Lodgement of proposals in response to RFP

Upon lodgement of proposals it would be sensible for each proponent to meet again with the Panel to outline their proposal and answer any questions. This will ensure that the Panel fully appreciates the features of the proposed solution, together with the choices made by the proponent in preparing their proposal and the reasons for them, and is able to clarify any initial issues.

8. Short listing

Upon receipt of proposals, it is likely that the Panel may want to narrow the field to a short list of proponents with whom it will conduct further detailed negotiations. Short listing several proponents keeps competitive tension in the negotiation process.

In Telstra's view the short listing should be mainly based on the objective attractiveness of the technical, service and funding capability aspects of the proponents' proposals. Other issues, such as pricing and regulatory requirements, would be better addressed in the bilateral negotiations.

The benefits of this approach to the short-listing stage are:

- 1 The Panel avoids the inherent difficulty, delay and complexity of a full scale weighting of a diverse range of selection criteria in circumstances in which proposals may be innovative and diverse;
- 2 The Panel can apply straightforward criteria to all proposals, ensuring a transparent short listing process which has efficiency benefits, as well as, again, minimising the prospect of spoiling tactics such as strategic litigation;
- 3 The resources to be devoted by the ACCC to preparation of a report on the pricing and competition issues can be efficiently focused on reviewing only the short-listed proposals; and
- 4 The short listing reinforces the primary importance given to innovation and other end user benefits in selecting the successful tenderer. While, of course, price and regulatory issues are crucial, it is the potential for a step change in the technology and services made available to more Australian consumers which is the main reason for deploying a fibre-based network.

The criteria for the short listing stage would allow the Government to winnow down the proposals to those which best met its service, coverage and technology objectives. While some qualitative assessment by the Panel would be required, the assessment should be capable of completion in 3-4 weeks if the criteria are relatively factual or engineering-based.

As noted above, the current credit market turbulence has seen a marked reduction in the level of risk that lenders are prepared to accept, in addition to a significant increase in the cost of funding for even the most creditworthy borrowers. Telstra considers that funding is therefore deserving of particular scrutiny lest a proposal be selected that ultimately turns out not to be fully funded. If that were to occur, it is the Government that would end up as lender of last resort or see the project fail to meet its objectives – a clearly unacceptable situation.

The RFP must specify measurable, comprehensive and sufficiently detailed requirements, with adherence to be comprehensively documented by proponents, to enable the Panel to readily and fairly compare and evaluate different proposals.

Telstra proposes the following short listing criteria:

Category	Criteria
<p>Technical, Operational and Organisational Capability</p>	<ul style="list-style-type: none"> • must demonstrate the following capabilities required to undertake the project: <ul style="list-style-type: none"> – project management capabilities; – engineering expertise; – experience in the deployment of large scale broadband networks; – operational skills to manage the infrastructure and systems for their entire life-cycle; and – the means to develop the human and material resources required to undertake the project; <p><i>supporting material</i></p> <ul style="list-style-type: none"> • a project management plan and a risk management plan; • the proponent must verify the arrangements with vendors and major suppliers, demonstrating availability of equipment and materials fit for purpose; • examples of the proponent's relevant experience in building and operating large-scale broadband infrastructure; • the proponent must provide a resourcing plan, including details on availability of appropriate skilled labour force to implement the project and demonstrating how planning, design and construction resources will be developed and deployed over time to allow the project to be completed within a reasonable timeframe; and • the proponent should provide an infrastructure and systems operations plan.
<p>Financial Capability</p>	<ul style="list-style-type: none"> • must have the financial resources to successfully undertaking the construction, operation and continuing upgrade of the network; and • must have a shareholder, governance and management structure which will prove durable and efficient over the term of the project.

Category	Criteria
	<p><i>Supporting material</i></p> <ul style="list-style-type: none"> • if a consortium proposal, the proponent must describe the legal, management and operational structure of the consortium and must provide a copy of the shareholder or joint venture agreement; <p>the proponent must indicate the amount of equity capital it will invest and whether such equity has already been raised. If it has not been raised, then the proponent must specify the timing and basis on which it expects to raise that equity, together with details of any underwriting it has obtained. The proponent must also provide specific evidence of the proponent's ability to raise any additional debt required to reach the A\$5 billion total funding requirement by providing documentary evidence of each source of funds, the terms on which that funding has been obtained, and given current credit market uncertainty, independent expert certification of the proponent's ability to meet its obligations to its financiers and so retain that funding. ;</p> <ul style="list-style-type: none"> • the proponent must set out its cash-flow projections, including funding requirements for working capital and its sources of funds over the life of the project; and • the proponent must provide a refundable bond of \$100m.
Services	<ul style="list-style-type: none"> • the RFP must specify the detailed characteristics of the services that must be supported by the network – for example, the network must support voice and broadband access services which, at a minimum, provide reasonable substitutes for the services currently available, and meet stated specifications which address at least the following: <ul style="list-style-type: none"> – service capabilities and characteristics by reference to recognised standards, backward compatibility with existing broadband services, points of interconnect interface definition, downstream and, if applicable, upstream speed capabilities), committed bandwidth for each service type; feature sets, eg. For voice services; • the RFP should also specify applicable target service performance requirements, such as availability, resiliency/reliability, grades of service requirements, specific service targets (eg. re delay, jitter, loss); and • for each service type, the RFP should detail the

Category	Criteria
	<p>required system and operational capabilities including service qualification, activation, assurance, wholesale customer self-service and network monitoring.</p> <p><i>supporting material</i></p> <ul style="list-style-type: none"> • specify the speeds which will be achievable in different locations across the network and if the standard speed is not available to all customers, specify the minimum guaranteed line rates achievable for those customers and any migration pathway to achieve higher speeds for those customers; and • provide network performance and availability commitments – these may be in the form of service level agreements
Coverage	<ul style="list-style-type: none"> • the proponent’s plan (alone or in conjunction with other proposals) provides a National Broadband Network <p><i>supporting material</i></p> <ul style="list-style-type: none"> • a detailed roll-out plan which identifies geographic areas and timing of rollout; • details of the technology/ies to be deployed to meet the required coverage; • identify any interim solutions to meet the Government’s objectives over the course of its rollout plan; • provide a plan for how it will meet USO obligations in its FTTN area; and • if the proponent’s plan is not for a National Broadband Network, the proponent must indicate how the balance of the Government’s objective of a National Broadband Network would be met.
Technology and Architecture	<ul style="list-style-type: none"> • predominantly fibre-based network; • must be robust technological solution with proven track record in Australia or overseas; • specified requirements of the proof of concept for all required services; • must provide an efficient upgrade pathway which can support future innovative services; and

Category	Criteria
	<ul style="list-style-type: none"> • must meet current requirements for emergency services, natural disasters and national security. <p><i>supporting material</i></p> <ul style="list-style-type: none"> • detailed architecture description and technical specification including POI protocol and supported standards, and key capabilities; and • a detailed 'proof of concept' that meets the specified requirements for the technology selected and for each service specified.
Open Access and Pricing	<ul style="list-style-type: none"> • must make access and interconnection services available to access seekers; • these services must be supplied on an equivalent basis to all access seekers (including to any downstream retail service unit of the proponent or consortium members); • must provide certainty for access seekers and Government by providing a specified mechanism by which prices and non-price terms of access and interconnection services will be set over the duration of the project; and • must specify what pricing, commercial and operational risks the proponent accepts and what risks are to be passed to customers and government, and if so, how those risks are passed on. <p><i>supporting material</i></p> <ul style="list-style-type: none"> • describe the arrangements for access and interconnection, including a technical description of the initial access services; the number and location of points of interconnection; the technical specifications of the OSS interfaces; the proposed access prices or the method for setting those prices and if prices can be varied over the duration of the project, a model of possible pricing outcomes; and the non-price terms; and • outline project risks and conditions, and how they are to be borne, must be specified – eg (eg: input price risk, technology risk, competitor risk, demand risk, financial risks and regulatory/sovereign risk)
Migration	<ul style="list-style-type: none"> • must have credible plan to migrate current retail and wholesale customers from existing networks to the new National Broadband Network, minimising service

Category	Criteria
	<p style="text-align: center;">disruptions and risks</p> <p><i>Supporting material</i></p> <ul style="list-style-type: none"> • the proponent must provide a customer migration plan to cutover all customers to the new infrastructure, minimising service disruption and ensuring continuity of service, access to emergency services and customer premises equipment functionality; and • the proponent should provide a product plan to demonstrate the migration path for existing services reliant upon Telstra's copper CAN which may be incompatible with FTTN

9. Negotiation phase

Each proponent's proposal would be required to set out its specific plans on the following matters, together with supporting material where indicated. The Government could screen out proponents at the short-listing stage on the basis of the incompleteness or unacceptability of these proposals, but Telstra anticipates that the proponents' proposals on these matters would be mainly used to form the negotiating agenda for the bilateral negotiation phase. This phase would commence with the Panel of Experts providing detailed feedback to proponents on their proposal.

A. *Government financial assistance sought*

Proposals should explain the form and extent of any assistance sought from the Commonwealth, including the amount of any financial contribution, the terms on which that financial contribution would be made (including rate of return) and the structure of any financing arrangement. This should be supported by provision of a draft MOU between the proponent and the Government. Telstra would recommend that the mechanism by which Government financial assistance be supplied should be left open for discussion to ensure that all innovative solutions are canvassed. However, if there are certain 'no-go' options for Government this should be made clear in the RFP.

B. *Open access commitments*

This should include at least the following information in a separate document:

- Wholesale service descriptions;
- Pricing – the price schedule and details of the economic basis for the pricing; and
- Any other pro-competitive features of the proponent's proposal, together with evidence for the claims made.

Telstra understands that this material would be referred for assessment and advice to the Panel by the ACCC and, subject to appropriate confidentiality safeguards, may be subject to public consultation. The RFP should set out the process for this.

C. Third party infrastructure

To the extent that a proponent's proposal necessitates the use of third party infrastructure, the proponent should outline the infrastructure to which it seeks access and the proposed terms and conditions of access to that infrastructure that it has assumed in its proposal.

To the extent that the proponent anticipates that, if the proponent's proposal is accepted and implemented, compensation may be payable to certain parties for stranded or expropriated assets, the proponent should set out the rationale for paying compensation, the basis for calculation of the amount of compensation likely to be payable, and the proponent's proposal for the funding of that compensation.

D. Regulatory framework

The proponent must outline the modifications to the current regulatory regime proposed by the proponent for the purposes of providing regulatory certainty and facilitating implementation of the project. Ideally the proponent would also make recommendations as to the regulatory and/or legislative instruments by which the Government can efficiently and effectively implement the required regulatory framework.

Given the vast scale and timeframe over which this project is to operate; the risks faced due to fast technological change; multiple competing HFC and wireless networks; and the long term political and regulatory risks that proponents and their investors and bankers will need to factor in, Telstra considers it vitally important that there is certainty in wholesale access pricing. This is necessary not just for the proponent (and its investors), but also for the Government, Access Seekers and

ultimately consumers in a time of rising inflation. In Telstra's view, a lack of access pricing certainty over the life of the project will result in attempts to shift all risks to customers (as was the case with the G9 formula-based pricing proposal in 2007) or alternatively make the project potentially unbankable due to regulatory/pricing uncertainty (as is the case if there were to be an ACCC controlled reset mechanism every 3 years). Telstra also notes that the ACCC's reluctance to depart from existing short term access pricing models is increasingly out of step with overseas regulators, such as Ofcom in the UK (in its NGA review).

In Telstra's view, the tender process will fail if access pricing is left to be subsequently addressed, or any agreement between the successful proponent and the government can be undone. In Telstra urges the Panel and the Government to give this matter its fullest consideration and to ensure that the regulatory and wholesale pricing framework is aligned to the long lifetime and payback periods of the project.

Rural and remote service is another area that is deserving of focus. In addition to outlining how they will meet the USO within the National Broadband Network footprint, proponents should address the issues of who will bear the obligation to supply and the source of funding of communications services in all high-cost areas, including outside the National Broadband Network footprint.

Proponents should also address the future of other social and consumer obligations which currently apply to the PSTN. Specifically proponents should indicate whether obligations such as the Universal Service Obligation, the supply of emergency calling services, priority assistance, the national relay service, the Customer Service Guarantee Standard and the Network Reliability Framework would continue to apply, and if so, upon which parties the obligations should be imposed and the source of funding for the obligations.

Telstra understands that the Government proposes to undertake public consultation on the regulatory framework for the National Broadband Network.

10. Intellectual property

Competitive tension and confidence in the probity of the competitive assessment process necessitate that the Government protect the valuable intellectual property in the proposals and all supporting documentation it receives. The RFP must set out how the Government will protect the intellectual property in proposals from

unauthorised use or disclosure. At a minimum, there should be protections in place to assure proponents that:

- Proposals will be treated as confidential, made available only to the Government and the Government's advisers and will not be disclosed to any third parties (including other proponents) except as required by law;
- Proposals will only be used for the purpose of evaluating those Proposals to select and award a contract to the winning Proposal for the National Broadband Network, and that neither the Government nor any of its advisers will be permitted to use the Proposal for any other purpose;
- That the Government and its advisers will return all copies of the Proposal to the proponent upon the proponent's withdrawal from the competitive assessment process or the Government notifying the proponent that it is no longer under consideration; and
- The Government accepts liability for any compensation payable to a proponent, or its suppliers, for loss or damage arising from the unauthorised disclosure or use of the Proposal.
- "Proposal" in this context includes the contents of a proponent's proposal and any supporting material provided to the Government in support of the proposal.

Telstra anticipates that the identity of the short-listed proponents and the substance of their regulatory reform proposals will be made public, and has no objection to this.