



## **Australian Government**

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### **Department of Broadband, Communications and the Digital Economy**

#### **REQUEST FOR PROPOSALS NO. DCON/08/18**

#### **REQUEST FOR PROPOSALS TO ROLL-OUT AND OPERATE A NATIONAL BROADBAND NETWORK FOR AUSTRALIA**

#### **CLARIFICATION NUMBER 11**

**QUESTION:** At the time of pre-qualification, it is likely that the final corporate structure, consortium membership and financial participants for a Proponent will not be known.

What flexibility does the RFP have to enable those structures to be determined after submission of the bond and confidentiality deed (including, if required, change in the actual Proponent and identity of consortium members)?

Further, where a Proponent is a special purpose vehicle, is one bond and signed confidentiality deed required to be lodged and signed by the Proponent, and the shareholders of the Proponent only required to execute Deeds of Acknowledgement?

**ANSWER:** Clause 8.1 of the RFP sets out that a Proponent must lodge a bond and confidentiality deed with the Contact Officer in Canberra by 5:00pm 23 May to be eligible to submit a Proposal.

Clause 2.2 of the RFP defines a Proponent as “any entity which submits a Proposal or ... where a Proposal is submitted jointly by one or more entities the Proponent is taken to include each entity”. A Proponent could be a special purpose vehicle established by one or more entities or a consortium that comprises more than one entity.

Clause 9.2 allows more than one Proponent to submit a Proposal, jointly.

The RFP does not permit a Proponent to change its identity after the bond and confidentiality deed have been lodged.

The RFP affords flexibility for Proponents with respect to restructuring after the lodgement of the bond(s) and confidentiality deed(s), depending on the structure of the Proponent at the time it lodges the bond(s) and confidentiality deed(s).

If a Proponent is a single entity, including an SPV, it is required to lodge one bond and one confidentiality deed, in the name of the Proponent, in accordance with clauses 8.1.1 and 8.1.4 of the RFP.

Clause 2.2 allows a consortium that comprises more than one entity to be a Proponent. Under clauses 8.1.1 and 8.1.4 of the RFP such a consortium could lodge one bond and one confidentiality deed on behalf of its members.

Clause 9.2 of the RFP allows more than one Proponent to submit a Proposal, jointly, as a consortium Proposal. In this case, each Proponent must have provided a separate bond and confidentiality deed in accordance with clauses 8.1.1 and 8.1.4 of the RFP. The RFP does not prohibit such a consortium from forming after the bonds and confidentiality deeds are lodged provided that all members have separately met the requirements of clause 8.1 of the RFP.

Before the Proponent can disclose any Confidential Information to any of its members or associates, those members or associates must first have provided the Commonwealth with an executed deed of acknowledgment in the prescribed form.