

National Broadband Network Request for Proposal Process

Audit Report No.20 2009-10

Opening comments by Matt Cahill, Group Executive Director PASG

JCPAA Review 11 March 2010

1. Chair, Members of the Committee, in May 2008, the Australian National Audit Office (ANAO) conducted a preliminary review of the National Broadband Network (NBN) Request for Proposal (RFP) process in response to concerns raised by the Hon. Bruce Billson MP. The Auditor-General concluded that, to date, and recognising that it was early in the NBN procurement process, nothing had come to the ANAO's attention to suggest that the arrangements put in place did not provide the basis for the RFP process to accord with the Commonwealth Procurement Guidelines (CPGs).
2. On 7 April 2009, the Minister terminated the NBN RFP process. Later that month, Senator, the Hon. Nick Minchin wrote to the Auditor-General requesting that he give consideration to conducting an audit into the NBN RFP process. On 1 May, the Auditor-General responded to Senator Minchin that in light of his correspondence, the ANAO would undertake a preliminary review of the RFP process that would commence in mid-May.
3. Subsequently, on 4 June 2009, the ANAO wrote to the Secretary of the Department of Broadband, Communications and the Digital Economy (DBCDE or the department), Senator Minchin and Minister Conroy advising that the preliminary review had been terminated and a performance audit designated, as foreshadowed in the ANAO's *Planned Audit Work Program 2008-09*.

4. The objective of the audit was to examine key aspects of the NBN RFP process, including:
 - the background to and conduct of the RFP process;
 - the management of key risks associated with the process and outcome; and
 - stakeholder consultations.
5. The audit began in late-June 2009 and was tabled in Parliament on 3 February this year.
6. Despite the RFP process' complexity and short timeframe, the Panel and the department conducted the formal process well, within the parameters of the Government's broadband policy and in accordance with the CPGs. As the RFP process progressed, the department advised the Minister that the prospects of a successful outcome were reducing. At the end of the RFP process, there were no successful proposals.
7. The RFP process has come at a significant cost to the Government and proponents, with costs incurred being in excess of \$30 million. DBCDE's costs were some \$17 million and the proponents' costs (where advised) ranged between \$1 million and \$8 million. In reviewing the process employed and in light of the outcome, there are a number of observations that can be made:
 - early in the process, most NBN stakeholders considered that a two-stage process to select proponent(s) for the NBN would have improved the prospects of a successful outcome and may have reduced proponents' costs;

- requesting proponents to outline their preferred regulatory environment for their NBN was unusual for an RFP process and made a complex commercial transaction considerably more complicated;
 - a non-Telstra proposal was unlikely to build and operate a commercially-viable NBN in circumstances where the proponent was responsible for the risk of paying compensation to Telstra;
 - the global financial crisis significantly reduced the prospects of a successful outcome by affecting the viability of the proposed NBNs; and
 - using fibre-to-the-node (FTTN) technology for the network limited its potential scalability.
8. The department has informed the ANAO that the Government was made fully aware of all of the key risks and their significance for a successful outcome to the RFP process. While it is the case that the key risks and their broad significance were identified in early advice to the Government, the department did not fully assess the consequences of some of these risks until relatively late in the RFP process. These included, in particular, the possible magnitude of: the potential payment of compensation to Telstra should a non-Telstra proposal using FTTN technology be successful; and the consequences for investment in FTTN equipment, which largely would become obsolete, should the network be upgraded to fibre-to-the-premises (FTTP) technology. The design of the Government's approach to the market would have been better informed had the department provided timely advice on these issues ahead of the RFP process being settled.

9. As it was, the Government decided to seek binding offers from the market through a one-stage RFP process and give proponents wide scope to request regulatory changes to facilitate their proposals. This approach was not conventional for a competitive assessment process of this size, nature and risk. Given the amount of government funding on offer, Telstra was the proponent most likely to be in a position to build and operate a viable fibre-based NBN. The likely impact on the prospects of a successful RFP outcome had Telstra lodged an eligible proposal, is indeterminate. As the outcome of the RFP process showed, no other proponents were successful either.
10. Chair, the audit has not made any recommendations to the department as the RFP process has been finalised. Nevertheless, the audit emphasises the importance of departments gaining, as early as possible, a sound understanding of the implications of those risks that are critical to the success of major tender processes, amongst the many risks that are required to be managed. This is particularly challenging in a one-stage process that is seeking binding offers.
11. I have Barbara Cass (Executive Director) and Grant Caine (Audit Manager), who both worked closely on the audit, with me today and we would be happy to answer questions from the Committee.