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From: Yvonne McCarthy
Sent: 27 June 2007 13:26
To: 'Alexander.RIEDL@ec.europa.eu'; 'Lambros.Papadias@ec.europa.eu'
Cc: Kenneth Spratt; 'Eric Tomkins'; 'Majella.ODea@dfa.ie'
Subject: Draft PN 47/2007 – NBS Ireland
Importance: High
Sensitivity: Confidential

Dear Alexander and Lambros,
Firstly, please accept my apologies for the delay in sending the draft pre-notification National Broadband Scheme (NBS) documents. Please find attached the draft pre-notification document (Draft PN 47 2007 – NBS Ireland) and supporting documents (Appendix A, B and C).

As you are aware the tender process for the NBS is currently underway, as a result an early meeting with DG Competition to discuss the Department's proposed approach to grey areas (outlined in Annex 1 of the draft pre-notification) would be very helpful. We are available Wednesday 4th July for a meeting in Brussels, alternatively we are available for a conference call earlier next week. If you have any queries do not hesitate to contact me.

Kind Regards,
Yvonne

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Dublin 2

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PART I. GENERAL INFORMATION

STATUS OF THE NOTIFICATION

Does this notification concern:

a notification pursuant to Article 88 (3) EC?

This is a draft pre-notification document, submitted for the purpose of pre-notification discussions between the Irish authorities and the European Commission.

Standard form for notification of State aids pursuant to Article 88 (3) EC and for the provision of information on unlawful aid

This form shall be used by Member States for the notification pursuant to Article 88(3) EC of new aid schemes and individual aid except for the State aid to fisheries and aquaculture where a specific form exists. It shall also be used when a non-aid measure is notified to the Commission for reasons of legal certainty.

Member States are also requested to use this form when the Commission requests comprehensive information on alleged unlawful aid.

The present form consists of three parts:

General Information: to be completed in all cases

Summary Information for publication in the Official Journal

Supplementary Information Sheet depending on the type aid

Please note that failure to complete this form correctly may result in the notification being deemed as incomplete. The completed form shall be transmitted on paper to the Commission by the Permanent Representative of the Member State concerned. It shall be addressed to the Secretary General of the Commission.

If a Member State intends to avail itself of a specific procedure laid down in any regulations, directives, frameworks and other texts applicable to State aid, a copy of the notification shall be sent addressed to the Director General of the Commission department responsible.

1. IDENTIFICATION OF THE AID GRANTOR

1.1. Member State concerned

Ireland

1.2. Region(s) concerned (if applicable)

Southern and Eastern Region and Border Midlands and Western Region.

Responsible contact person:

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1.3. Responsible contact person at the Permanent Representation

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If you wish that a copy of the official correspondence send by the Commission to the Member State should be forwarded to other national authorities, please indicate here their name and address:

Name: Eric Tomkins, Commission for Communications Regulation
Address: Block DFF-Abhey Court, Irish Life Centre, Lower Abhey Street, Dublin 1

2. IDENTIFICATION OF THE AID

2.1. Title of the aid (or name of company beneficiary in case of individual aid)

The National Broadband Scheme (the 'NBS') - Ireland

2.2. Brief description of the objective of the aid.

(a) *The background to the NBS*

Ireland is notifying the Commission of its intention to introduce a National Broadband Scheme (the "NBS"). The objective of the NBS is to encourage and secure the provision of broadband services to certain target areas in Ireland in which broadband services are not currently available and are unlikely to be available in the near future. It is envisaged that the NBS will lead to a broadband product being available to fixed locations in these areas which is affordable, sustainable and scalable. It is intended that the broadband service delivered under the NBS will be broadly comparable to the products enjoyed in the majority of currently served areas, now and in the future.

Based on market assessments conducted by the Department of Communications, Marine and Natural Resources (the 'DCMNR') it is understood that approximately 10%-15% of the geographical area of Ireland remains unserved by broadband for reasons of technical or commercial feasibility. It is estimated that up to 10% of the population do not currently have access to broadband services. Although this figure indicates that the majority of the population are already benefiting from a competitive broadband market, the unserved parts of Ireland illustrate the ongoing presence of a 'digital divide', where a number of communities in isolated areas are disadvantaged because of lack of access to affordable broadband services.

Typically, these unserved areas of Ireland are rural in nature and have low population densities to the extent that commercial operators see no commercial incentive to invest in the necessary infrastructure development for the provision of broadband services in these areas.

In order to address this broadband deficit, a new broadband scheme entitled the National Broadband Scheme is proposed. The DCMNR has commenced an open tender process through which it will use the competitive dialogue procedure under EU procurement rules. Interested service providers will submit bids and the DCMNR will select a successful service provider who will be required to provide broadband services to consumers, businesses and other operators (at a wholesale level) in certain target areas in Ireland for which funding will be provided by the State. The level of funding necessary to ensure the delivery of affordable broadband services will be determined during the procurement process.

The DCMNR considers that in the absence of intervention by the State in the form of the support to be made available under the NBS, service providers are unlikely to

invest in these areas within a reasonable timeframe, with the consequence that consumers and businesses in primarily rural and isolated areas will be denied access to and the benefits of broadband. The NBS is therefore designed to address a genuine market failure.

(b) **The objectives of the NBS**

The objective of the NBS is to facilitate the provision of broadband services to users in geographic areas that are unlikely, in the absence of government intervention or support, to have services commercially provided by the market. The NBS will result in the provision of a service to homes and businesses in these unserved areas which is affordable, sustainable and scalable. Ideally, the products provided will be broadly comparable to the products enjoyed by the majority of users in areas (such as urban Dublin) currently served by broadband. It is envisaged that prices charged for services delivered under the NBS will be benchmarked to those in areas where broadband services are already provided. The DCMNR wishes to ensure that the NBS is designed to contribute to the development of a competitive market for broadband services in the NBS areas.

(c) **Policy context - European broadband objectives**

The NBS objectives are closely aligned to those at a European level where the importance of broadband services has been identified as an important project of common interest. At a European level, the European Commission (the "Commission") has outlined in both its Communication '2010 - A European Information Society for growth and employment'³ and the eEurope Action Plan 2005⁴, that it actively supports the widespread availability of broadband services. In order to achieve better broadband coverage, the Commission encourages Member States to put comprehensive national broadband strategies in place⁵. The key area of the Commission's focus includes "...increasing deployment in under-served areas, where market forces do not deliver the necessary investment".³

A number of similar initiatives aimed at addressing the deployment of broadband in underserved areas have taken place in other EU member States including Wales, Scotland, Spain and Greece. The objectives of the NBS are in line with 12010 objectives.

(d) **Policy context - National Broadband Objectives**

The NBS objectives are integral to the Economic and Social Infrastructure Priorities set out in Ireland's National Development Plan 2007-2013, namely 'To promote the availability of competitive broadband services and to achieve nationwide broadband coverage by the end of the Plan period'.³

³ COM(2005)229 final '2010 - A European Information Society for growth and employment', 1 June 2005

⁴ COM(2002)263 final, 'eEurope 2005: An information society for all', 28 May 2002

⁵ COM(2004)369, 'Connecting Europe at High Speed - National Broadband Strategies', 12 May 2004

Ireland operates a regulated, liberalised telecommunications market where services are provided by private companies to business and residential users. The State is not a service provider in this market, however, where market failure occurs or national objectives cannot be met, the Irish authorities seek to facilitate the provision of services through a combination of regulation and, where regulation is insufficient, direct State funded intervention.⁶

Examples of previous State interventions in broadband in Ireland include the Metropolitan Area Networks (MANs) and the Group Broadband Scheme (GBS). The MANs Phase II and III were initially notified to the Commission in June 2005, in August 2006 the Commission published their decision⁷ that the aid was compatible with Article 87(3) (c) of the EC Treaty.

Despite these interventions there are some areas in the State, where service providers consider that it is not commercially viable to deploy broadband infrastructure and these parts of the country remain disadvantaged. The NBS will focus on the delivery of services to consumers and businesses in those areas of the country where service providers do not provide services and that are unlikely to have broadband services provided commercially within a reasonable timeframe. The DCMNR recognises that it will be necessary to provide funding for the construction of some infrastructure under the NBS, however the primary focus of the NBS will be on the delivery of active services to consumers and businesses. The DCMNR intend to ensure that this focus on consumers and businesses is reflected in the payment mechanism negotiated with the successful service provider.

Please indicate primary objective and, if applicable, secondary objective(s):

- | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Services of general economic interest
<input checked="" type="checkbox"/> Execution of an important project of common European interest | Primary objective
<i>(please tick one only)</i>
<input type="checkbox"/> | Secondary objective
<input checked="" type="checkbox"/> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------|

⁶ The Commission for Communication Regulation (ComReg) was established by the State and is the independent authority with responsibility for the regulation of the electronic communications market.

⁷ State Aid number N 284/2005 - Ireland Regional Broadband Programme: Metropolitan Area Networks, phases II and III

⁸ A secondary objective is one for which, in addition to the primary objective, the aid will be exclusively earmarked. For example, a scheme for which the primary objective is research and development may have as a secondary objective small and medium-sized enterprises (SMEs) if the aid is earmarked exclusively for SMEs. The secondary objective may also be sectoral, in the case for example of a research and development scheme in the steel sector.

Scheme - Individual aid*

1. Does the notification relate to an aid scheme?

No

2. Does the notification relate to individual aid?

Yes

➤ If yes, please tick the following appropriate box

aid based on a scheme which should be individually notified

Reference of the authorised scheme:

Title:

Aid number:

Letter of Commission approval:

individual aid not based on a scheme

3. NATIONAL LEGAL BASIS

3.1. Please list the national legal basis including the implementing provisions and their respective sources of references:

Community Support Framework (CSF) underpinning the National Development Programme (2007-2013), and Ministers and Secretaries Acts 1924 to date

3.2. Please indicate the document(s) enclosed to this notification:

A copy of the relevant extracts of the final text(s) of the legal basis (and a web link, if possible)

A copy of the relevant extracts of the draft text(s) of the legal basis (and a web link, if possible)

3.3. In case of a final text, does the final text contain a clause whereby the aid granting body can only grant after the Commission has cleared the aid (stand still clause)?

The initial tender documentation for the NBS has been published. This documentation states that the NBS contract award is subject to State aid clearance. Please see section 3.4 of the Information Memorandum in Appendix (A), for further details. The final NBS contract will contain a similar clause.

According to Article 1(e) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1), individual aid shall mean aid that is not awarded on the basis of an aid scheme and notifiable award of aid on the basis of a scheme.

BENEFICIARIES

✓ **Location of the beneficiary(ies)**

✓ **mixed: specify**

Beneficiaries will be selected as part of the competitive dialogue process to select a successful service provider.

The DCMNR has commenced an open tender process using the Competitive Dialogue procedure as set out in the European Communities (Award of Public Authorities' Contracts) Regulations 2006, which implements Directive 2004/18/EC. Interested parties have been asked to submit proposals for the provision of broadband services in the unserved areas of Ireland (the "NBS Areas"). A copy of the OJEU Notice can be found at the following link <http://ted.europa.eu/FXESS/noticeDetail.do?noticeId=141D6R37C685C6761CD8E69DB625C5394&instance=1>
http://DataFlow>ShowPageAll&Template=TED/N_one_result_detail_curr.htm&docnumber=105759-2007&docId=105759-2007&StatLang=EN and the associated tender documents are attached at Appendix [B].

The DCMNR intends, subject to receiving State aid approval, to award a contract to the bidder whose solution meets the NBS requirements and offers the most economically advantageous tender.

The open tender approach ensures that there is transparency for any service provider wishing to participate in the competition to award the NSB contract. Equally so, it provides that the level of funding to be provided by the State under the NBS contract is subject to a competitive bidding process which should result in minimising the level of funding required to deliver the NBS requirements.

Sector(s) of the beneficiary(ies):

✓ 64 Post and telecommunications.

In case of an aid scheme:

Type of beneficiaries:

✓ **the following beneficiaries:**

Beneficiaries will be selected as part of the competitive dialogue process. The DCMNR have adopted a technology neutral approach with respect to procuring services for the NBS. The successful service provider chosen by the DCMNR for the NBS contract will be required to provide broadband services to residential and business locations in areas covered by the NBS within a defined timeframe. The Information Memorandum (IM) sets out anticipated NBS requirements, please see section 10 of this notification for details of the areas included in the NBS and also Appendix [A] for details.

Estimated number of beneficiaries:

✓ under 10

S. AMOUNT OF AID / ANNUAL EXPENDITURE

In case of an aid scheme, indicate the annual amount of the budget planned and the overall amount (in national currency):

The budget will be determined during negotiations as part of the competitive dialogue process to select the successful service provider. The amount will not be known until conclusion of the competitive dialogue process.

For tax measures, please indicate the estimated annual and overall revenue losses due to tax concessions for the period covered by the notification:

The measure is not a tax measure.

If the budget is not adopted annually, please specify what period it covers:

The DCMNR anticipates awarding a contract for five years, which is the estimated timeframe for implementation of the NBS requirements and roll-out of services to the NBS target areas. It is anticipated that the majority of the budget is likely to be paid during the initial years of the NBS contract, with an amount being retained up to the end of the contract for performance guarantee purposes.

7. DURATION

7.2. In the case of an aid scheme:

Indicate the date from which the aid may be granted

The date on which payments will commence is subject to negotiations during the competitive dialogue process. The DCMNR anticipates that the NBS contract will be awarded in January 2008, and that milestone payments will be granted to the successful service provider when agreed targets (in terms, for example, of reaching the agreed roll-out targets and numbers of consumers and businesses receiving active service) have been reached.

Indicate the last date until which the aid may be granted

This date is subject to negotiations during the competitive dialogue process. The DCMNR anticipates that the contract will end in 2013. However, the DCMNR wishes to ensure that final payments will only be made once the threshold number of consumers and businesses receiving active broadband service has been reached. It is anticipated that the majority of the budget is likely to be paid during the initial years of the NBS contract, with an amount being retained up to the end of the contract for performance guarantee purposes.

FORM OF THE AID AND MEANS OF FUNDING

Specify the form of the aid made available to the beneficiary(ies) (where appropriate, for each assure):

Direct grant

To ensure that the successful service provider is not over-compensated in the event that demand for broadband in defined areas grows beyond projected targets, the DCMNR will be inserting a reverse payment mechanism, (also termed a 'claw back' mechanism) in the NBS contract. Given the different financial and commercial issues associated with the various technology solutions that could be deployed by the successful service provider the exact details of the mechanism will be determined as part of the competitive dialogue process.

Specify the financing of the aid: if the aid is not financed through the general budget of the State/region/municipality, please explain its way of financing:

Other (please specify)

Financed through the general budget of the State and/or EU funding.

CUMULATION OF DIFFERENT TYPES OF AID

Can the aid be cumulated with aid received from other local, regional, national or community schemes to cover the same eligible costs?

No

so, describe the mechanisms put in place in order to ensure that the cumulation rules are respected:

Not applicable

9. PROFESSIONAL CONFIDENTIALITY

Does the notification contain confidential information which should not be disclosed to third parties?

Yes

If so, please indicate which parts are confidential and explain why:

The Department envisages that the final formal notification will include confidential information. That confidential information will be identified as such in the formal notification.

If no, the Commission will publish its decision without asking to the Member State.

10. COMPATIBILITY OF THE AID

Please identify which of the existing regulations, frameworks, guidelines and other texts applicable to State aid provide an explicit legal basis for the authorisation of the aid (where appropriate please specify for each measure) and complete the relevant supplementary information sheet(s) in part III.

Where the existing regulations, frameworks, guidelines or other texts applicable to State aid not provide an explicit basis for the approval of any of the aid covered by this form, please provide a fully reasoned justification as to why the aid could be considered as compatible with EC Treaty, referring to the applicable exemption clause of the EC Treaty (Article 86(2), Article 87 2 (a) or (b) , Article 87 paragraph 3 (a), (b), (c) or (d)) as well as other specific provisions relating to agriculture and transport.

Scope of the NBS

The Irish authorities consider that they are acting to address a clear market failure to provide broadband services in Ireland. It is clear that in the absence of intervention by the DCMNR, in the short term, the market will be unable to deliver broadband services to approximately 10% of the population Ireland. In order to identify the extent of the market failure and to limit the NBS to what is strictly necessary to address the market failure, the DCMNR has undertaken the scoping exercise outlined at section 4 [below].

Current broadband market figures in Ireland

There has been considerable progress in the roll-out of broadband in Ireland recently. According to the latest ComReg¹⁰ quarterly report¹¹ the total number of broadband subscribers at the end of Q1 2007 was 602,000. Q1 2007 saw the highest number of new subscribers added in any single period since the launch of broadband services in Ireland. An additional 84,000 new subscriptions occurred between December 2006 and March 2007. DSL remains the largest broadband access platform in terms of subscribers, accounting for 72% of all broadband subscriptions, while Fixed Wireless Access broadband provision accounts for 16%, cable accounts for 11% and other technologies including satellite and fibre account for 1%.

eircom, the incumbent provider, has 1149 exchanges in Ireland. The DSL enablement status of these exchanges (on the basis of information provided to DCMNR by eircom in March 2007) is as follows:

- 463 exchanges have been DSL-enabled

- A further 112 exchanges are to be enabled in the period up to Q1 2008, with eircom recently having stated (subsequent to the announcement of the NBS) that an additional 319 exchanges are to be completed during the period up to 2009.
- the remaining 254 exchanges are not within any of eircom's enablement plans.

Barriers to broadband in Ireland

Despite the above current and intended DSL roll-out, given technology and network limitations, a number of households and businesses will still be outside of the reach of the DSL service. The DCMNR has identified the following additional barriers to universal broadband provision:

- Cable broadband services in Ireland are limited to large urban areas and it is unlikely that cable operators will extend their infrastructure or services to sparsely populated rural areas as there is no commercial case for development in areas with low population density.
- Wireless service providers will not address the rural, sparsely populated areas, as there is no commercial case for broadband services in such areas.
- eircom has been designated as having Significant Market Power in the market for Wholesale Unbundled Access and is obliged, among other things, to provide access to LLU services. However, it is clear that the economics of providing broadband services via LLU in the remote rural areas are not viable and it is therefore unlikely that other service providers will avail of LLU to provide services in these areas.
- eircom has been designated as having Significant Market Power in the market for Wholesale broadband Access. eircom has indicated that it does not intend to enable 254 exchanges in the remote areas on the basis that it would not be commercially viable. As a consequence, no wholesale (or retail) broadband service is available from eircom in these areas.

Scope of the NBS / Market Analysis completed

To identify where broadband services are not being provided by the market the NBS team, comprised of members of the DCMNR and ComReg, undertook the following comprehensive mapping process:

Step One

The DCMNR and ComReg contacted service providers and requested details of their current and planned broadband coverage. Representative samples of the following categories of service providers were contacted:

- licensed fixed service providers
- licensed wireless service providers
- known licensed exempt wireless service providers
- mobile service providers
- GBS service providers

Step Two

The data received from service providers was inserted on a broadband coverage map. In order to achieve as complete and accurate a map as possible, the NBS team then consulted with the Irish Regional Authorities to ask that they confirm as far as possible, the broadband coverage information provided in the maps,¹² and that the list of all service providers included in the mapping process was comprehensive. The Regional Authorities were requested to provide any additional information on service providers in their specific areas.

Step Three

The additional service providers identified by the Regional Authorities were contacted by the DCMNR and details of the service providers current and future coverage plans were requested and included in the map.

Step Four

A number of geographic areas are excluded from the scope of the NBS, as the DCMNR has determined that existing coverage is adequate and/or there are already several service providers in the area. As a consequence, the NBS will not address the following areas:

- the 5 largest cities in the State (Cork, Dublin, Galway, Limerick and Waterford),
- areas within which telephone exchanges have been enabled for DSL, subject to a service radius of 4.5Kms, and
- areas served by wireless broadband provision, subject to (where appropriate) the service radius defined by license requirements and having regard to topographical effects on wireless coverage.

The Indicative Map

The resulting broadband coverage map is the "indicative map"¹³, please see Appendix C for the latest version of the map, the initial map is available on the DCMNR's website at: www.dcmnr.ie/communications. The indicative map sets out those areas of Ireland which, from information available to the DCMNR (based on the information gathering process outlined above) denotes the following:

- "black areas" are currently served by broadband,
- "grey areas" are currently unserved by broadband, but where service providers have indicated that they plan to provide broadband services in these regions in the foreseeable future, and
- "white areas" have been identified as currently unserved areas. There is currently no broadband service or no prospect (based on indications from service providers) that a

¹² The Irish Regional Authorities have two main functions: to promote the co-ordination of public service provision and to monitor the delivery of EU Structural Fund assistance in the regions. The Authorities have specific responsibility for preparing Regional Planning Guidelines and Regional Economic and Social Strategies and promoting cooperation, joint actions, arrangements and consultation among local authorities and other public bodies.

¹³ Please note that this map has been developed having regard to the information available to the DCMNR at the time of issue of the Information Memorandum on 2 May 2007 and is expected to change and evolve as information becomes available during the course of this procurement process.

broadband service will be provided in the next two years. There is the possibility of a satellite solution in these areas, however, the cost of such services means that the delivery of broadband services which comply with the minimum requirements identified by the DCMNR below in section 6(b) mean that this is a highly unlikely option.

Since the announcement of the NBS a number of service providers have indicated to the DCMNR that they intend to serve new areas of Ireland, resulting in areas previously designated as "white" areas becoming "grey". Having carefully considered the matter, the DCMNR are of the view there is no viable way for the DCMNR to assess the commercial viability of service providers' future plans. Any such assessment would involve a cumbersome administrative burden and entail substantial administrative costs. It is thus not possible for the DCMNR to establish whether plans indicated by service providers are likely to result in the availability of broadband services to consumers in the short to medium term. The DCMNR is considering a number of options to address this problem, and these are set out in Annex 1 "NBS Proposed Approach to Grey Areas" to this draft notification. We would welcome the Commission's comments on the options discussed in this Annex.

Compatibility of the Aid with Article 87(3)(c) of the EC Treaty

If the Commission takes the view that there is State aid within the meaning of Article 87(1) involved in the NBS, Ireland considers that the NBS is compatible with the Treaty on the basis of the exception laid down in Article 87 (3) (c). The objective of the NBS funding is to facilitate the development of specifically identified NBS target areas where there is market failure. The NBS has been designed to minimise any distortive impact, by consulting with the market and taking service providers current (and planned) broadband coverage into consideration when identifying the NBS target areas.

The Commission has already noted (N264/2006, Broadband for Rural Tuscany) that there is clear evidence of regional economic development benefits resulting from greater broadband deployment, including job creation and retention as well as improved health and education services. In order to achieve better broadband coverage, the Commission encourages Member States to put comprehensive national broadband strategies in place. The measure at hand forms an important part of the broadband strategy in Ireland. By improving broadband access for citizens and businesses in areas of Ireland where these services are not yet available, the measure helps achieving greater cohesion and is therefore in line with the common interest.

Cohesion objective and market failure considerations

Lack of broadband coverage is due, among others, to some of the typical economic problems associated with networks industries. Due to economics of density, broadband networks are generally more profitable to roll-out where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs, unit costs escalate dramatically as population densities drop. Remoteness also plays a role, requiring bridging longer distances in the backhaul and in the last mile. The Commission has pointed to estimates that suggest approximately 65-70% of the costs associated with the deployment of broadband in the access network is related to civil infrastructure. In addition, although equipment costs have fallen as volumes increase, they remain a significant cost and major barrier to roll-out. In areas where demand is not very developed and coverage of cost is

uncertain, private operators might find it difficult to find a source of funding for broadband infrastructure, which has a long life and amortisation period.

Hence, by providing financial support for the establishment of infrastructure to provide basic wholesale and retail broadband services in areas of Ireland where broadband is currently not available, the Irish authorities pursue genuine cohesion and economic development objectives.

This section sets out the principles which have been applied by the DCMNR in designing the NBS. Ireland considers that these principles will ensure that no market distortions will arise from the implementation of the NBS.

(a) The aid measure is aimed at a well-defined objective of common interest.

As stated above in response to section 2.2, the proposed measure is part of an integrated approach consistent with EU and national policy including the Commission's 'i2010 - A European Information Society for growth and employment'¹⁶ and Ireland's Economic and Social Infrastructure Priorities set out in the National Development Plan 2007-2013, namely 'To promote the availability of competitive broadband services and to achieve nationwide broadband coverage by the end of the Plan period.'¹⁷

In order to define the objectives of the NBS, Ireland has undertaken an extensive analysis of the market for the provision of broadband services, and the NBS is designed to remedy only the lack of broadband coverage identified by that analysis.

(b) The aid measure is well designed to deliver the objective of common interest. In particular:

- The NBS is an appropriate instrument, as there are no other better-placed instruments.

The NBS is integral to the DCMNR's integrated approach to dealing with the problems encountered in the delivery of broadband in the State. Ireland considers that there is no alternative to the grant of direct funding to overcome the lack of service provision.

Ireland has also engaged in regulatory activity to address some of the barriers to broadband provision. eircom, the incumbent provider, has been designated as having Significant Market Power in the market for Wholesale Broadband Access and is obliged, among other things, to provide access to wholesale bitstream services. However, this is unlikely to result in the provision of broadband services to the unserved areas, and it is unlikely that regulatory activity alone will be adequate to address the ongoing digital divide. The Commission has already recognised that the 'market evidence shows that regulation has so far neither ensured effective

competition in various Irish markets for electronic communications nor led to sufficient investments to bridge the "broadband gap"....¹⁶

Ireland has also taken steps to generate considerable demand-side encouragement to address the broadband gap, and a wide range of e-governance services are available to the public online and supported by the Government, please see www.reach.ie and www.citizensinformation.ie for details. However, such measures are not sufficient to solve the demonstrated problems on the supply side.

Ireland considers that in view of the severe broadband gap that continues to exist in rural areas in Ireland, the development of wholesale services with government support is the only appropriate instrument to achieve the objectives of EU and National policy.

- Is there an incentive effect, i.e. does the aid change the behaviour of firms?

The NBS will ensure that bidders tendering for the NBS will indicate the amount of aid they consider necessary to carry out the required investment on the basis of the anticipated total investment, operating costs and anticipated revenues. The design of the programme aims to provide a neutral, open, wholesale infrastructure and wholesale service to reduce the high fixed cost of establishing a network. In areas of low population density this high cost represents the most important barrier to market entry to alternative service providers. Ireland's objective in this regard is that the State aid provided will provide a direct and appropriate investment incentive limited to the amount required for the successful service provider. It is hoped that at the end of the contract period the market will deliver broadband services to all consumers.

Is the aid measure proportionate, i.e. could the same change in behaviour be obtained with less aid?

In order to ensure that the NBS operates in a proportionate manner, the DCMNR has designed the NBS on the following core principles:

Open tender process: The NBS contract will be awarded on foot of a competitive bidding process which will minimise the level of funding required to deliver the NBS.

Duration: The DCMNR anticipates awarding a contract for a duration of five years, which would include the timeframe for roll-out of services to the NBS target areas. A five-year contract is considered necessary to provide a balance between providing the successful service provider with the opportunity to construct a solid business case for infrastructure investment. The actual contract length will be determined as part of the competitive dialogue process once the implementation timescales are agreed between the DCMNR and the successful service provider, to ensure that a reasonable period for monitoring operational performance is available to the DCMNR. Public funding under the NBS will be limited to the provision of services to consumers and businesses in areas where the market has indicated that, without intervention, it will not provide broadband service in the near future.

¹⁶ COM(2005)229 final 'i2010 - A European Information Society for growth and employment', 1 June 2005
Ireland National Development Plan 2007-2013

¹⁷ State aid No. N 284/2005 - Ireland Regional Broadband Programme: MANS, phases I and II at para. 68.

Claw-back mechanism to avoid over-compensation: To ensure the winning service provider is not over compensated if demand for broadband in defined target areas grows beyond anticipated levels, the DCMNR will be inserting a reverse payment mechanism into the contract. The DCMNR considers that these principles will ensure that the potential distortions of competition arising from the implementation of the NBS are minimised.

Use of existing infrastructure: In order to avoid any duplication of infrastructure, the NBS will not fund the provision of any infrastructure unless the service providers have stated the need for such infrastructure. The DCMNR considers that service providers are best placed to identify infrastructure requirements and therefore the bidding process will be used to ensure that there is no duplication of infrastructure provision. During the competitive dialogue process, discussions with prospective service providers will examine network plans and the DCMNR will insist on a breakdown of costs. Technical consultants on behalf of the DCMNR will analyse bids with the intention of eliminating any duplication of infrastructure.

Technological neutrality: The NBS is technology neutral. Bidders are entitled to propose the provision of broadband services using whatever technology they choose.

Detailed service agreements: The precise details of the service agreements with service providers will be discussed during the competitive dialogue process. However, the DCMNR intends to ensure that the contract contains a performance link based on the service providers' delivery of broadband services to consumers. This will aim to ensure that while a proportion of the funding is provided to the successful service providers up front for the delivery of necessary infrastructure, the delivery of further fixed sums agreed under the contract will take place on the achievement of certain milestones (such as the number of consumers with active service) by the successful service provider. During the conduct of the procurement process the DCMNR will seek to ensure that the NBS contract provides for the retention of 15% of the contract price until agreed performance targets are achieved.

Wholesale access: There will be a requirement for the successful service provider to provide a wholesale product, at an appropriate wholesale price, which will be available to other operators in the market. This product will be made available on a non-discriminatory basis and it is envisaged that the wholesale pricing will be set at a reasonable margin to allow competition. A Reference Offer and an associated wholesale Service Level Agreement will also be required. These details will be developed during the competitive dialogue process.

Benchmarking consumer product with similar services in urban areas: It is intended that the product to be provided by the NBS will be benchmarked with tariffs and products typically available in the existing market for broadband services. To that end, and subject to negotiations with bidders, it is intended that the product will have the following characteristics:

- always on service (no charge by connection time);
- downstream (i.e. Internet to subscriber) speed of 1024kbit/s (1Mbit/s) whereby the service must allow peak speeds up to 1024kbit/s;

- upstream (i.e. subscriber to Internet) speed of 128kbit/s whereby the service must allow peak speeds up to 128kbit/s;
- a maximum contention ratio equivalent to 48:1 (by reference to the technology employed by the successful service provider);
- minimum monthly limit on download capacity (uncharged) per retail subscriber connection of 10GB; and
- latency requirements such that common Internet Protocol (IP) applications such as Virtual Private Network (VPN), Voice over IP (VoIP) and gaming may be supported by the broadband service.
- To ensure prices in NBS areas remain comparable with those of services available in urban areas, the DCMNR intends that pricing in the NBS areas will broadly reflect that which is available in the served areas.

(c) *Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?*

On the basis of the principles outlined above, Ireland considers that the NBS will only provide aid to the extent necessary to develop the offer of broadband services in areas where a market failure has been clearly identified. The proposed intervention by the Irish authorities has been designed to ensure that there is no distortion of the market for broadband services, as service providers will ultimately be in a position to offer broadband services on a competitive basis.

11. OUTSTANDING RECOVERY ORDERS

Has any potential beneficiary of the measure received state aid which is the subject of an outstanding recovery order by the Commission?

No

12. OTHER INFORMATION

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under State aid rules.

Please see Annex I, appended to the end of this document for details of the NBS Proposed Approach to 'Grey Areas'

13. ATTACHMENTS

Please list here all documents which are attached to the notification and provide paper copies or direct internet links to the documents concerned.

NBS Tender Documents: Please see Appendix A, B and C for details
NBS Proposed Approach to 'Grey Areas': Please see Annex I for details
NBS OJEU Notice can be found at the following internet link:
<http://ted.europa.eu/efn/procurementDetail.do?sessionId=DEFD6B37C685C6761CD8F69DB625C5394&instance=1>
DataFlow=ShowPage.dfl&Template=TED/N_one_result_detail_curr.htm&docnumber=105759-2007&docId=105759-2007&StartLang=EN

Please note other documents will become available during the courses of the competitive dialogue procedure process, for example the NBS Contract, these documents will be made available to the Commission when finalised.

14. DECLARATION

I certify that to the best of my knowledge the information provided on this form, its annexes and its attachments is accurate and complete.

Date and place of signature

Signature :

Name and position of person signing

NBS Proposed Approach to 'Grey Areas'

1. Requirement for broadband services

The DCMNR has analysed all available options for addressing the provision of broadband services to the unserved areas of Ireland. The DCMNR, subject to state aid approval, intends that the NBS will address the provision of broadband services in both the white areas and grey areas for the following reasons:

- **White areas:** There is currently no service provider providing broadband services in these areas and service providers have no plans to provide broadband in these areas in the next 24 months. The mapping process has indicated that the market will not provide broadband services in the white areas.
- **Grey areas:** The DCMNR wishes to address the grey areas as it is, in its view, unlikely that service providers planned coverage will materialise. The DCMNR has grave concerns that, in some instances, where service providers have indicated that they will roll out affordable broadband services in a region, there is no evidence that such claims are based on commercial reality. The DCMNR is concerned that if such areas are excluded from the NBS, this will result in further delays in the delivery of broadband services to already isolated rural areas and in an ever-widening digital divide in regional areas of Ireland.

As a result of the difficulty in estimating the likelihood of service providers' planned coverage materialising the DCMNR has identified two workable options.

2. Options available to address market failure

Option 1

To freeze the current indicative broadband coverage map and address both the white and grey areas immediately in the NBS. Potential NBS service providers will be invited to bid for a level of funding to provide broadband in the white and grey areas. The successful service provider will proceed to roll-out broadband services in both areas as soon as possible. This is the DCMNR's preferred option.

Option 2

Address the white areas immediately, with plans to address those grey areas in which a broadband service has not been provided by service providers within a reasonable timeframe.

This option would also involve requesting bidders to bid for a level of funding to provide broadband in both the white and grey areas. However, the delivery of the broadband services by the successful service provider would occur in two phases:

PART II: SUMMARY INFORMATION FOR PUBLICATION IN THE OFFICIAL JOURNAL

Number of aid:		(to be completed by the Commission)	
Member State:			
Region:			
Title of aid schemes or name of company beneficiary of an individual aid (aid based on a scheme which is however notifiable individually and aid not based on a scheme):			
Legal basis:			
Annual expenditure planned or overall amount of individual aid granted: (In national currency)	Aid scheme	Annual expenditure planned:	Euro ... million
	Individual aid	Overall amount:	Euro ... million
		Overall amount of each measure:	Euro ... million
Duration:			
Maximum aid intensity:			
Economic sectors:	All sectors:		
	or Limited to specific sectors as mentioned in the "General information", (Part I, par. 4.2.)		
Name and address of the granting authority	Name:		

Phase I: potential NBS service providers will be invited to bid for a level of funding to provide broadband in both the white and grey areas. Services will be delivered in the white areas as soon as possible in Phase I.

Phase II: the successful service provider would cover the remaining grey areas at a later date once the market had been given a reasonable timeframe within which to deliver proposed broadband services. This timeframe would also have to be balanced against the degree to which the timeframes for the implementation of the white and grey areas can be operationally aligned (for example, depending on the size of the white areas to be covered and, assuming a contract is awarded in January, it could take 6 months to roll-out services initially to the white areas after which the focus would turn to grey areas) and the degree to which such an approach can be catered for in the procurement process. The contract entered into with the successful service provider would provide that the DCMNR could exercise the option to require broadband coverage in those grey areas where commercial operators' plans to deliver broadband had failed to materialise within the defined timeframe. Under this option, the DCMNR would review the actual broadband coverage in these grey areas during, say Q2 2008. Those areas remaining unserved at the end of this period would be included in the NBS rollout by the exercising of the coverage option discussed above, and the successful service provider would proceed to deliver such services during the latter half of 2008.



Department of Communications, Marine and Natural Resources
Roinn Cumarsáide, Mara agus Acmhainn Náúúrtha

DEPARTMENT OF COMMUNICATIONS, MARINE AND NATURAL RESOURCES

NATIONAL BROADBAND SCHEME

INFORMATION MEMORANDUM

2 May 2007

Task	Estimated Timescales
Issue OJEU Notice	May 2007
Deadline for Receipt of POQ Responses	July 2007
Pre-qualify candidates and issue ITPCD	July 2007
Initial Proposals submitted	August 2007
Dialogue	August and September 2007
Shortlist and Issue ITT	September/October 2007
Evaluate ITT Responses	October/November 2007
Award Preferred Bidder Status	November 2007
Final Contract Discussions	November/December 2007
Award NBS Contracts	December 2007

3.4 State Aid

Given the nature of this procurement, the DCMNR are taking steps to ensure there is no inappropriate State Aid.

With a view to ensuring legal certainty, this project is in the process of being notified to the European Commission as potentially involving State Aid. This notification process will run in parallel with the procurement process and candidates should be aware that the award of the NBS Contract is dependent upon a favourable State Aid decision being obtained.

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number of candidates have participated, the number of solutions or candidates (as the case may be) will be reduced to a shortlist of the solutions/candidates which the DCMNR considers are best placed to meet the DCMNR's requirements having regard to the NBS award criteria. The number of solutions/candidates so shortlisted will be determined by the DCMNR having regard to the desire to ensure effective and genuine competition in the procurement process. At this stage it is envisaged that, where appropriate, three solutions/candidates will be so shortlisted. The award criteria that will be used to complete this short-listing will be set out in the ITPCD.

3.2.4 Invitation to Tender

When the DCMNR is satisfied that it can identify and define its requirements and that the competitive dialogue stage should end, the DCMNR's final requirements will be documented in an Invitation to Tender (the "ITT") document, which will be issued to the candidates which have been short-listed to tender as outlined in paragraph 3.2.3.

Tenderers will be required to prepare a composite and detailed response to the ITT containing full details of their final tender. This response will be evaluated against award criteria set out in the ITPCD in order to select a preferred bidder.

3.2.5 Preferred Bidder

It is anticipated that the bidder offering the most economically advantageous tender will be awarded preferred bidder status. Following completion of permissible post-tender clarifications and confirmation of commitments the NBS Contract will be signed (subject to observation of the required 14 day standstill period) and the implementation stage of the NBS project will commence.

3.3 Timescales

The table below provides estimated timescales for the procurement of services under the proposed NBS. These timescales are indicative only and may be subject to change at any time. These timescales will be reviewed throughout the procurement process and, where appropriate, reviewed timescales will be communicated to pre-qualified/short-listed candidates.

Important Notice

The Department of Communications, Marine and Natural Resources (the "DCMNR") has prepared this Information Memorandum and the accompanying Pre-Qualification Questionnaire (together the "Pre-Qualification Documents") for the sole purpose of inviting expressions of interest from potential candidates for the National Broadband Scheme (the "NBS"). The information set out in the Pre-Qualification Documents is being made available on condition that it is only used in connection with this qualification exercise and for no other purpose whatsoever. It is provided as a guide only and does not purport to contain all the information that a candidate may require in connection with the NBS. In particular, the information in this Information Memorandum is preliminary and indicative only and will be superseded by information set out in the Invitation to Participate in Competitive Dialogue and during the competitive dialogue process. The information provided in the Pre-Qualification Documents is offered in good faith for the guidance of candidates but no warranty or representation, express or implied, is given as to the accuracy or completeness of any of the information set out in the Pre-Qualification Documents or on which the Pre-Qualification Documents are based. The DCMNR and its advisers shall not under any circumstances whatsoever have any liability for any error, mis-statement or omission in the Pre-Qualification Documents or for any other written or other communication made available either at the briefing session (see section 3.2) or otherwise during the course of the qualification process including, without limitation, for any loss, damage, cost or expense incurred or arising as a result of reliance on such information or communication. Where information in the Pre-Qualification Documents is cited from a third party source, such information has not been independently verified. Any summaries or descriptions of documents or contractual arrangements contained in any part of the Pre-Qualification Documents cannot at this stage be and are not intended to be comprehensive.

Nothing in the Pre-Qualification Documents is, or shall be relied upon as, a promise or representation as to the DCMNR's ultimate decision in relation to the award of the contracts which are the subject of this competition, or as a representation of fact or promise as to the future. None of the information contained in the Pre-Qualification Documents shall constitute a contract or part of a contract between the DCMNR and any candidate. No legal relationship or other obligation shall arise between a candidate and the DCMNR unless and until a contract has been formally executed in writing by the DCMNR and the relevant candidate where such candidate is the successful tenderer for this competition and any conditions precedent to the effectiveness of such document have been fulfilled.

- Commercial model including assumptions for capital expenditure, operating expenditure, revenue and pricing
- Service provision, operational procedures and processes, billing and customer care. The initial project proposal will provide details of how the Candidate would implement the NBS in accordance with the DCMNR's Initial Statement of Requirements. Candidates will also be afforded the opportunity to comment on the DCMNR's Initial Statement of Requirements and to indicate their suggested changes.
- Quality of service and monitoring

The initial project proposals will be reviewed and through a process of structured dialogue, feedback will be provided to candidates on the areas of strength and weakness of their proposal having regard to the DCMNR requirements under the NBS. The dialogue will also be used as a forum for the DCMNR to take note of candidates' comments and suggested changes to the proposed NBS terms and requirements.

Once the initial round of dialogue has been completed, the DCMNR's Initial Statement of Requirements (the "ISR") and accompanying documentation may be revised and updated to take account of the suggestions made during the process.

Candidates will receive the revised ISR and accompanying documents and will be invited to submit revised proposals, which take account of any changes in the NBS design and the feedback received on the initial proposals.

It is envisaged that candidates' revised proposals will be evaluated in accordance with the award criteria at this stage and suggested solutions or, where appropriate, candidates, may be eliminated at this point in the process. Elimination is addressed further in the final paragraph of this section.

If the DCMNR considers it appropriate one or more iterations of the dialogue / submission of revised proposals process outlined above will occur and elimination of solutions/candidates may occur after the first or any subsequent such iteration.

Further details regarding this stage of the procurement process will be set out in the ITTCD. During the competitive dialogue stage, it is envisaged that, provided a sufficient number of solutions have been proposed or, where appropriate, a sufficient

provided a sufficient number of candidates are qualified, a minimum of 3 and a maximum of 8 candidates will be pre-qualified.

3.2.3 Invitation to Participate in Competitive Dialogue

Pre-qualified candidates will be issued with an invitation to participate in Competitive Dialogue ("ITPCD"). The competitive dialogue will involve a number of technical, financial, legal and/or commercial meetings between the DCMNR, the DCMNR's advisors and candidates. The ITPCD will provide candidates with details of the DCMNR's requirements and initial proposals on how the DCMNR considers these requirements may be met. The ITPCD will include:

- Instructions to Candidates
- Initial Statement of Requirements
- Award Criteria
- Initial draft form of NBS contract

In response to the ITPCD, candidates will design their initial solutions, and document them via an initial project proposal. It is envisaged that the initial project proposal will require detailed information from candidates on items such as (without limitation):

- Retail Product Provision
- Wholesale Product Provision
- Future proofing - that is, the potential of the Service Provider to continue to provide retail and wholesale broadband products in the target areas which are largely equivalent to those enjoyed by the vast majority of broadband users in the Irish market.
- Solution Design
- Rollout Plan
- Contract

The DCMNR may terminate this competition (or any part thereof), choose not to proceed with any element of the National Broadband Scheme, change the basis of and the procedures for the bidding process at any time, or procure the National Broadband Scheme by alternative means if, in the opinion of the DCMNR, it appears that the National Broadband Scheme can thereby be more advantageously procured. The most economically advantageous or any tender will not automatically be accepted. The DCMNR shall not under any circumstances whatsoever be responsible for any costs, charges or expenses incurred by candidates during the competition.

The DCMNR reserves the right to amend any information contained in the Pre-Qualification Documents at any time by notice in writing contained on the www.etenders.gov.ie website. Candidates who have already requested and obtained the Pre-Qualification Documents prior to any such amendment will be notified in writing of the amendment.

Irish law is applicable to the Pre-Qualification Documents and the Irish courts will have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Pre-Qualification Documents.

3.2 Procurement Stages

3.2.1 Briefing session for interested candidates

A briefing session for candidates, who propose to submit an expression of interest for the NBS project, will take place at **10.00 am (local Irish time) on Thursday 17 May 2007** at the DCMNR, 29-31 Adelaide Road, Dublin 2. The purpose of the briefing session will be to provide potential service providers with an overview of the NBS project and the proposed procurement process for this competition. The briefing session will be limited to potential service providers/consortia only. In order to attend the briefing, interested candidates must have purchased the **Pre-Qualification Documentation** and register their proposed attendance by contacting Yvonne McCarthy by email at the address below.

Email: Yvonne.McCarthy@dcmnr.gov.ie

Registrations must be received by the DCMNR **no later than 12.00pm on Wednesday 16th May 2007**. Attendance by potential service providers/consortia at the briefing is limited to a maximum of two persons. The DCMNR reserves the right, at its sole discretion, to refuse admittance to the briefing session to those parties who have not purchased the Pre-Qualification Documentation and registered their proposed attendance.

Candidates should note that the DCMNR will discuss at the briefing session only that information which is set out in this IM. Information set out in this IM shall prevail over any information, which may be given at the briefing session.

3.2.2 Pre-Qualification

The Pre-Qualification stage will be used to identify, from all candidates that respond to the OJEU notice, the candidates that have the appropriate technical and professional ability and economic and financial standing to meet the DCMNR's requirements.

Candidates will be required to complete and return a PQQ. For full details, please consult the PQQ accompanying this IM.

The objective and non-discriminatory selection criteria to be applied by the DCMNR for the pre-qualification of candidates are set out in the PQQ. It is envisaged that,

1. Background and Introduction

The Minister for Communications, Marine and Natural Resources has announced his intention to introduce a National Broadband Scheme (the "NBS"). It is understood that approximately 10-15% of the country is unserved by broadband for reasons of technical or commercial feasibility. In light of this, the main objective of the NBS is to ensure that broadband is made available in those parts of Ireland that are unlikely to be served by any broadband service provider in the foreseeable future. Affordability is an important consideration. The NBS is intended to complement other government broadband initiatives. Further information is available at <http://www.dcmnr.gov.ie/communications>.

Where used in the Pre-Qualification Documents, the term "broadband" is generally intended to refer to a service or connection which provides high-speed, always on access to the Internet delivered to residential and business locations and allowing a considerable amount of information to be conveyed.

1.1 Purpose of this Information Memorandum

This Information Memorandum (the "IM") aims to provide interested parties with an overview of the competition for the award of a service contract under the NBS (the "NBS Contract") in order that interested parties can:

- Understand the background to and purpose of the NBS;
- Understand the procurement process being employed, the estimated timeframes involved and the tasks to be carried out by those candidates participating in the tender process; and
- Evaluate whether they wish to participate in the procurement process for the award of the NBS Contract.

The first stage of the procurement process for the NBS Contract is pre-qualification by the DCMNR of appropriately qualified candidates. Interested candidates are requested to complete the Pre-Qualification Questionnaire (the "PQQ") accompanying this Information Memorandum and to return it in accordance with the instructions set out therein by no later than **4pm (local time) on Thursday 5 July 2007**. Please consult the PQQ for full details in this regard.

1.2 Structure of this IM

The next sections of this IM are structured as follows:

Section 2. NBS Objectives and Scope

Section 3. Outline of the Procurement Process

3. The Procurement Process

3.1 Overview of the Competitive Dialogue Process

This competition is being undertaken pursuant to the *European Communities (Award of Public Authorities' Contracts) Regulations 2006* using the competitive dialogue procedure.

Figure 3.1 shows an indicative outline of the competitive dialogue process. Minor adjustments may be made to this process.

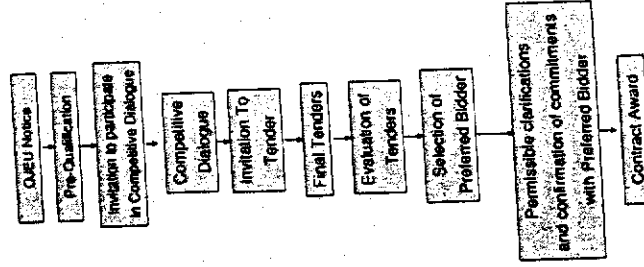


Figure 3.1: Competitive Dialogue Process

The NBS Contract will not prevent the Service Provider from supplying services outside the specified areas, however public funding under the NBS will be limited to the provision of services to areas which are unlikely, without intervention, to have a broadband service in the foreseeable future.

2. NBS Objectives and Scope

The objective of the NBS is to encourage and secure the provision of broadband services to certain target areas in Ireland in which broadband services are not available or are unlikely to be available in the foreseeable future. It is envisaged that the NBS will lead to a broadband product being available to homes and businesses in these areas, which is affordable, sustainable and scalable. Ideally these products should be comparable to the products enjoyed in the majority of currently served areas now and in the future.

The competition for the award of the NBS Contract will take the form of a competitive dialogue procedure as set out in the *European Communities (Award of Public Authorities' Contracts) Regulations 2006*. Details of the competitive dialogue process proposed to be followed are provided in Section 3. It is anticipated that during the competitive dialogue process, various key issues (such as the technological means to be employed to address the DCMNR's requirements for the NBS Contract and the level of required funding to be made available under the NBS Contract) will be discussed with candidates. A full statement of the DCMNR's requirements for the NBS Contract and the matters to be discussed with candidates during the competitive dialogue process will be set out in the Invitation to Participate in Competitive Dialogue and ancillary documents.

By way of indicative summary only, the following sections contain a broad overview of the objectives and anticipated scope of the NBS. PLEASE NOTE THAT THESE MAY BE SUBJECT TO CHANGE DURING THE COMPETITIVE DIALOGUE PROCESS.

2.1 Anticipated Geographic Scope

An indicative map¹ denoting the geographic areas it is anticipated will fall within the coverage requirements of the NBS is available on the DCMNR's website at <http://www.dcmnr.gov.ie/nbs>. The indicative map sets out those areas of Ireland which, from information available to the DCMNR (including, without limitation, based on representations from service providers):

- (i) are currently served by broadband;

¹ Please note that this map has been developed having regard to the information available to the Department at the time of issue of the IM and is subject to change during the course of this procurement process.

- It is anticipated that the Service Provider will be required to ensure that the services it provides pursuant to the NBS Contract are affordable, sustainable and scalable with a view to ensuring that retail subscribers are provided with a broadband service to a specification which is closely analogous to broadband service typically enjoyed by users in urban areas. Service Providers will need to demonstrate that the broadband service proposed is "future-proofed" so as to accommodate and reflect broadband market developments
- The Service Provider will have minimum service level commitments set out in a defined and published Service Level Agreement and will be required to monitor its retail broadband services to ensure that retail subscribers are receiving the required service availability, performance and other specifications as agreed pursuant to the NBS Contract.
- There will be a requirement for the Service Provider to provide a wholesale product, at an appropriate wholesale price, which will be available to other operators in the market. A wholesale Service Level Agreement will also be required.

2.3 Financing Arrangements and Retail Tariffs

The intention is that candidates will be required to bid for a level of government subsidy for the provision of minimum specified NBS services for the duration of the NBS Contract.

It is anticipated that the Service Provider will be paid a percentage of the subsidy at agreed milestones during the rollout of NBS services with the DCMNR retaining an agreed residual percentage until the end of the contract term, which retention amount will be paid if the Service Provider has met the defined performance criteria.

The tariffs the Service Provider can charge to retail and wholesale subscribers together with an agreed mechanism for revising tariffs will be defined in the NBS Contract. It is anticipated that the tariffs will be agreed initially with the DCMNR and reviewed regularly during the contract, based on tariffs charged for similar broadband services available in other parts of Ireland.

2.4 Anticipated Contract Structure and Duration

The Service Provider will enter into the NBS Contract with the DCMNR. It is anticipated that the NBS Contract will be for a duration of five years. This period includes any time required for the rollout/implementation of infrastructure/services.

(ii) DCMNR reasonably believes will be served by broadband in the near future, based on information from service providers; and

(iii) Remaining areas that are not currently served by broadband and can be addressed by the NBS.

The DCMNR are undertaking an ongoing assessment of served and unserved areas for broadband in Ireland. Further maps will be provided in the Invitation to Participate in Competitive Dialogue ("ITPCD") documentation, which will show the indicative target areas which will be addressed by the NBS Contract.

2.2 Anticipated NBS Requirements

The successful candidate chosen by the DCMNR for the NBS Contract pursuant to this competition (the "Service Provider") will be required to provide broadband services to residential and business locations in specified areas within a defined timeframe. At this stage, the DCMNR anticipates that the services to be provided by the Service Provider pursuant to the NBS Contract will be required to meet the following requirements:

- The Service Provider will be required to offer retail subscribers in specified areas a connection to the Internet that meets the following requirements
 - always-on service (no charge by connection time);
 - downstream (ie Internet to subscriber) speed of 1024kbit/s (1Mbit/s) whereby the service must allow peak speeds up to 1024kbit/s;
 - upstream (ie subscriber to Internet) speed of 128kbit/s whereby the service must allow peak speeds up to 128kbit/s;
 - a maximum contention ratio equivalent to 48:1 (by reference to the technology employed by the Service Provider);
 - minimum monthly limit on download capacity (uncharged) per retail subscriber connection of 10GB; and
 - latency requirements such that common Internet Protocol (IP) applications such as Virtual Private Network (VPN), Voice over IP (VoIP) and gaming may be supported by the broadband service.

these regions

where no service
is unlikely to be





Department of Communications, Marine and Natural Resources
Ronn Cumarsáide, Mara agus Acmhairtí Náúirthis

DEPARTMENT OF COMMUNICATIONS, MARINE AND NATURAL RESOURCES

NATIONAL BROADBAND SCHEME

INFORMATION MEMORANDUM

2 May 2007

Task	Estimated Timescales
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Award NBS Contracts	December 2007

3.4 State Aid

Given the nature of this procurement, the DCMR are taking steps to ensure there is no inappropriate State Aid.

With a view to ensuring legal certainty, this project is in the process of being notified to the European Commission as potentially involving State Aid. This notification process will run in parallel with the procurement process and candidates should be aware that the award of the NBS Contract is dependent upon a favorable State Aid decision being obtained.

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number of candidates have participated, the number of solutions or candidates (as the case may be) will be reduced to a shortlist of the solutions/candidates which the DCMNR considers are best placed to meet the DCMNR's requirements having regard to the NBS award criteria. The number of solutions/candidates so shortlisted will be determined by the DCMNR having regard to the desire to ensure effective and genuine competition in the procurement process. At this stage it is envisaged that where appropriate, three solutions/candidates will be so shortlisted. The award criteria that will be used to complete this short-listing will be set out in the ITPCD.

3.2.4 Invitation to Tender

When the DCMNR is satisfied that it can identify and define its requirements and that the competitive dialogue stage should end, the DCMNR's final requirements will be documented in an Invitation to Tender (the "ITT") document, which will be issued to the candidates which have been short-listed to tender as outlined in paragraph 3.2.3.

Tenderers will be required to prepare a composite and detailed response to the ITT containing full details of their final tender. This response will be evaluated against award criteria set out in the ITPCD in order to select a preferred bidder.

3.2.5 Preferred Bidder

It is anticipated that the bidder offering the most economically advantageous tender will be awarded preferred bidder status. Following completion of permissible post-tender clarifications and confirmation of commitments the NBS Contract will be signed (subject to observation of the required 14 day standstill period) and the implementation stage of the NBS project will commence.

3.3 Timescales

The table below provides estimated timescales for the procurement of services under the proposed NBS. These timescales are indicative only and may be subject to change at any time. These timescales will be reviewed throughout the procurement process and, where appropriate, reviewed timescales will be communicated to pre-qualified/short-listed candidates.

Important Notice

The Department of Communications, Marine and Natural Resources (the "DCMNR") has prepared this Information Memorandum and the accompanying Pre-Qualification Questionnaire (together the "Pre-Qualification Documents") for the sole purpose of inviting expressions of interest from potential candidates for the National Broadband Scheme (the "NBS"). The information set out in the Pre-Qualification Documents is being made available on condition that it is only used in connection with this qualification exercise and for no other purpose whatsoever. It is provided as a guide only and does not purport to contain all the information that a candidate may require in connection with the NBS. In particular, the information in this Information Memorandum is preliminary and indicative only and will be superseded by information set out in the Invitation to Participate in Competitive Dialogue and during the competitive dialogue process. The information provided in the Pre-Qualification Documents is offered in good faith for the guidance of candidates but no warranty or representation, express or implied, is given as to the accuracy or completeness of any of the information set out in the Pre-Qualification Documents or on which the Pre-Qualification Documents are based. The DCMNR and its advisers shall not under any circumstances whatsoever have any liability for any error, mis-statement or omission in the Pre-Qualification Documents or for any other written or other communication made available either at the briefing session (see section 3.2) or otherwise during the course of the qualification process including, without limitation, for any loss, damage, cost or expense incurred or arising as a result of reliance on such information or communication. Where information in the Pre-Qualification Documents is cited from a third party source, such information has not been independently verified. Any summaries or descriptions of documents or contractual arrangements contained in any part of the Pre-Qualification Documents cannot at this stage be and are not intended to be comprehensive.

Nothing in the Pre-Qualification Documents is, or shall be relied upon as, a promise or representation as to the DCMNR's ultimate decision in relation to the award of the contracts which are the subject of this competition, or as a representation of fact or promise as to the future. None of the information contained in the Pre-Qualification Documents shall constitute a contract or part of a contract between the DCMNR and any candidate. No legal relationship or other obligation shall arise between a candidate and the DCMNR unless and until a contract has been formally executed in writing by the DCMNR and the relevant candidate where such candidate is the successful tenderer for this competition and any conditions precedent to the effectiveness of such document have been fulfilled.

- Commercial model including assumptions for capital expenditure, operating expenditure, revenue and pricing

- Service provision, operational procedures and processes, billing and customer care. The initial project proposal will provide details of how the Candidate would implement the NBS in accordance with the DCMNR's Initial Statement of Requirements. Candidates will also be afforded the opportunity to comment on the DCMNR's Initial Statement of Requirements and to indicate their suggested changes.

- Quality of service and monitoring

The initial project proposals will be reviewed and through a process of structured dialogue, feedback will be provided to candidates on the areas of strength and weakness of their proposal having regard to the DCMNR requirements under the NBS. The dialogue will also be used as a forum for the DCMNR to take note of candidates' comments and suggested changes to the proposed NBS terms and requirements.

Once the initial round of dialogue has been completed, the DCMNR's Initial Statement of Requirements (the "ISR") and accompanying documentation may be revised and updated to take account of the suggestions made during the process.

Candidates will receive the revised ISR and accompanying documents and will be invited to submit revised proposals, which take account of any changes in the NBS design and the feedback received on the initial proposals.

It is envisaged that candidates' revised proposals will be evaluated in accordance with the award criteria at this stage and suggested solutions or, where appropriate, candidates may be eliminated at this point in the process. Elimination is addressed further in the final paragraph of this section.

If the DCMNR considers it appropriate one or more iterations of the dialogue / submission of revised proposals process outlined above will occur and elimination of solutions/candidates may occur after the first or any subsequent such iteration.

Further details regarding this stage of the procurement process will be set out in the ITT/CD. During the competitive dialogue stage, it is envisaged that, provided a sufficient number of solutions have been proposed or, where appropriate, a sufficient

The DCMNR may terminate this competition (or any part thereof), choose not to proceed with any element of the National Broadband Scheme, change the basis of and the procedures for the bidding process at any time, or procure the National Broadband Scheme by alternative means if, in the opinion of the DCMNR, it appears that the National Broadband Scheme can thereby be more advantageously procured. The most economically advantageous or any tender will not automatically be accepted. The DCMNR shall not under any circumstances whatsoever be responsible for any costs, charges or expenses incurred by candidates during the competition.

The DCMNR reserves the right to amend any information contained in the Pre-Qualification Documents at any time by notice in writing contained on the www.etenders.gov.ie website. Candidates who have already requested and obtained the Pre-Qualification Documents prior to any such amendment will be notified in writing of the amendment.

Irish law is applicable to the Pre-Qualification Documents and the Irish courts will have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Pre-Qualification Documents.

provided a sufficient number of candidates are qualified, a minimum of 3 and a maximum of 8 candidates will be pre-qualified.

3.2.3 Invitation to Participate in Competitive Dialogue

Pre-qualified candidates will be issued with an Invitation to Participate in Competitive Dialogue ("ITPCD"). The competitive dialogue will involve a number of technical, financial, legal and/or commercial meetings between the DCMNR, the DCMNR's advisers and candidates. The ITPCD will provide candidates with details of the DCMNR's requirements and initial proposals on how the DCMNR considers these requirements may be met. The ITPCD will include:

- Instructions to Candidates
- Initial Statement of Requirements
- Award Criteria
- Initial draft form of NBS contract

In response to the ITPCD, candidates will design their initial solutions, and document them via an initial project proposal. It is envisaged that the initial project proposal will require detailed information from candidates on items such as (without limitation):

- Retail Product Provision
- Wholesale Product Provision
- Future proofing - that is, the potential of the Service Provider to continue to provide retail and wholesale broadband products in the target areas which are largely equivalent to those enjoyed by the vast majority of broadband users in the Irish market.
- Solution Design
- Rollout Plan
- Contract

1. Background and Introduction

3.2 Procurement Stages

3.2.1 Briefing session for interested candidates

A briefing session for candidates, who propose to submit an expression of interest for the NBS project, will take place at 10.00 am (local Irish time) on Thursday 17 May 2007 at the DCMNR, 29-31 Adelaide Road, Dublin 2. The purpose of the briefing session will be to provide potential service providers with an overview of the NBS project and the proposed procurement process for this competition. The briefing session will be limited to potential service providers/consortia only. In order to attend the briefing, interested candidates must have purchased the **Pre-Qualification Documentation** and register their proposed attendance by contacting Yvonne McCarthy by email at the address below.

Email: Yvonne.McCarthy@dcnmnr.gov.ie

Registrations must be received by the DCMNR no later than 12.00pm on Wednesday 16th May 2007. Attendance by potential service providers/consortia at the briefing is limited to a maximum of two persons. The DCMNR reserves the right, at its sole discretion, to refuse admittance to the briefing session to those parties who have not purchased the Pre-Qualification Documentation and registered their proposed attendance.

Candidates should note that the DCMNR will discuss at the briefing session only that information which is set out in this IM. Information set out in this IM shall prevail over any information, which may be given at the briefing session.

3.2.2 Pre-Qualification

The Pre-Qualification stage will be used to identify, from all candidates that respond to the OJEU notice, the candidates that have the appropriate technical and professional ability and economic and financial standing to meet the DCMNR's requirements.

Candidates will be required to complete and return a PQQ. For full details, please consult the PQQ accompanying this IM.

The objective and non-discriminatory selection criteria to be applied by the DCMNR for the pre-qualification of candidates are set out in the PQQ. It is envisaged that,

The Minister for Communications, Marine and Natural Resources has announced his intention to introduce a National Broadband Scheme (the "NBS"). It is understood that approximately 10-15% of the country is unserved by broadband for reasons of technical or commercial feasibility. In light of this, the main objective of the NBS is to ensure that broadband is made available in those parts of Ireland that are unlikely to be served by any broadband service provider in the foreseeable future. Affordability is an important consideration. The NBS is intended to complement other government broadband initiatives. Further information is available at <http://www.dcnmr.gov.ie/communications>.

Where used in the Pre-Qualification Documents, the term "broadband" is generally intended to refer to a service or connection which provides high-speed, always on access to the Internet delivered to residential and business locations and allowing a considerable amount of information to be conveyed.

1.1 Purpose of this Information Memorandum

This Information Memorandum (the "IM") aims to provide interested parties with an overview of the competition for the award of a service contract under the NBS (the "NBS Contract") in order that interested parties can:

- Understand the background to and purpose of the NBS;
- Understand the procurement process being employed, the estimated timeframes involved and the tasks to be carried out by those candidates participating in the tender process; and
- Evaluate whether they wish to participate in the procurement process for the award of the NBS Contract.

The first stage of the procurement process for the NBS Contract is pre-qualification by the DCMNR of appropriately qualified candidates. Interested candidates are requested to complete the Pre-Qualification Questionnaire (the "PQQ") accompanying this Information Memorandum and to return it in accordance with the instructions set out therein by no later than 4pm (local time) on Thursday 5 July 2007. Please consult the PQQ for full details in this regard.

3. The Procurement Process

3.1 Overview of the Competitive Dialogue Process

This competition is being undertaken pursuant to the *European Communities (Award of Public Authorities' Contracts) Regulations 2006* using the competitive dialogue procedure.

Figure 3.1 shows an indicative outline of the competitive dialogue process. Minor adjustments may be made to this process.

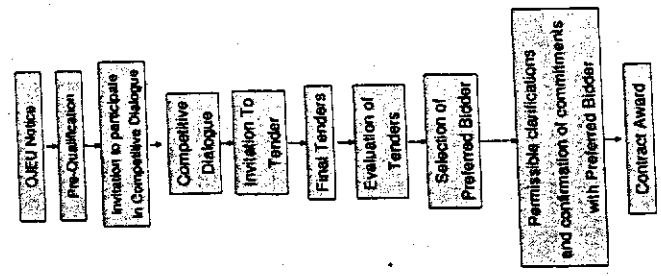


Figure 3.1: Competitive Dialogue Process

1.2 Structure of this IM

The next sections of this IM are structured as follows:

Section 2: NBS Objectives and Scope

Section 3: Outline of the Procurement Process

2. NBS Objectives and Scope

The NBS Contract will not prevent the Service Provider from supplying services outside the specified areas, however public funding under the NBS will be limited to the provision of services to areas which are unlikely, without intervention, to have a broadband service in the foreseeable future.

The objective of the NBS is to encourage and secure the provision of broadband services to certain target areas in Ireland in which broadband services are not available or are unlikely to be available in the foreseeable future. It is envisaged that the NBS will lead to a broadband product being available to homes and businesses in these areas, which is affordable, sustainable and scalable. Ideally these products should be comparable to the products enjoyed in the majority of currently served areas now and in the future.

The competition for the award of the NBS Contract will take the form of a competitive dialogue procedure as set out in the *European Communities (Award of Public Authorities' Contracts) Regulations 2006*. Details of the competitive dialogue process proposed to be followed are provided in Section 3. It is anticipated that during the competitive dialogue process, various key issues (such as the technological means to be employed to address the DCMNR's requirements for the NBS Contract and the level of required funding to be made available under the NBS Contract) will be discussed with candidates. A full statement of the DCMNR's requirements for the NBS Contract and the matters to be discussed with candidates during the competitive dialogue process will be set out in the Invitation to Participate in Competitive Dialogue and ancillary documents.

By way of indicative summary only, the following sections contain a broad overview of the objectives and anticipated scope of the NBS. PLEASE NOTE THAT THESE MAY BE SUBJECT TO CHANGE DURING THE COMPETITIVE DIALOGUE PROCESS.

2.1 Anticipated Geographic Scope

An indicative map¹ denoting the geographic areas it is anticipated will fall within the coverage requirements of the NBS is available on the DCMNR's website at <http://www.dcmnr.gov.ie/nbs>. The indicative map sets out those areas of Ireland which, from information available to the DCMNR (including, without limitation, based on representations from service providers):

- (i) are currently served by broadband;

¹ Please note that this map has been developed having regard to the information available to the Department at the time of issue of the IM and is subject to change during the course of this procurement process.

- It is anticipated that the Service Provider will be required to ensure that the services it provides pursuant to the NBS Contract are affordable, sustainable and scalable with a view to ensuring that retail subscribers are provided with a broadband service to a specification which is closely analogous to broadband service typically enjoyed by users in urban areas. Service Providers will need to demonstrate that the broadband service proposed is "future-proofed" so as to accommodate and reflect broadband market developments

- The Service Provider will have minimum service level commitments set out in a defined and published Service Level Agreement and will be required to monitor its retail broadband services to ensure that retail subscribers are receiving the required service availability, performance and other specifications as agreed pursuant to the NBS Contract.

- There will be a requirement for the Service Provider to provide a wholesale product, at an appropriate wholesale price, which will be available to other operators in the market. A wholesale Service Level Agreement will also be required.

2.3 Financing Arrangements and Retail Tariffs

The intention is that candidates will be required to bid for a level of government subsidy for the provision of minimum specified NBS services for the duration of the NBS Contract.

It is anticipated that the Service Provider will be paid a percentage of the subsidy at agreed milestones during the rollout of NBS services with the DCMNR retaining an agreed residual percentage until the end of the contract term, which retention amount will be paid if the Service Provider has met the defined performance criteria

The tariffs the Service Provider can charge to retail and wholesale subscribers together with an agreed mechanism for revising tariffs will be defined in the NBS Contract. It is anticipated that the tariffs will be agreed initially with the DCMNR and reviewed regularly during the contract, based on tariffs charged for similar broadband services available in other parts of Ireland.

2.4 Anticipated Contract Structure and Duration

The Service Provider will enter into the NBS Contract with the DCMNR. It is anticipated that the NBS Contract will be for a duration of five years. This period includes any time required for the rollout/implementation of infrastructure/services.

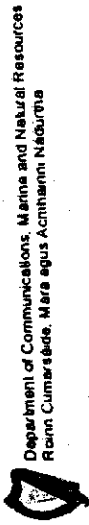
- (ii) DCMNR reasonably believes will be served by broadband in the near future, based on information from service providers; and
- (iii) Remaining areas that are not currently served by broadband and can be addressed by the NBS.

The DCMNR are undertaking an ongoing assessment of served and unserved areas for broadband in Ireland. Further maps will be provided in the Invitation to Participate in Competitive Dialogue ("ITPCD") documentation, which will show the indicative target areas which will be addressed by the NBS Contract.

2.2 Anticipated NBS Requirements

The successful candidate chosen by the DCMNR for the NBS Contract pursuant to this competition (the "Service Provider") will be required to provide broadband services to residential and business locations in specified areas within a defined timeframe. At this stage, the DCMNR anticipates that the services to be provided by the Service Provider pursuant to the NBS Contract will be required to meet the following requirements:

- The Service Provider will be required to offer retail subscribers in specified areas a connection to the Internet that meets the following requirements:
 - always-on service (no charge by connection time);
 - downstream (ie Internet to subscriber) speed of 1024kbit/s (1Mbit/s) whereby the service must allow peak speeds up to 1024kbit/s;
 - upstream (ie subscriber to Internet) speed of 128kbit/s whereby the service must allow peak speeds up to 128kbit/s;
 - a maximum contention ratio equivalent to 48:1 (by reference to the technology employed by the Service Provider);
 - minimum monthly limit on download capacity (uncharged) per retail subscriber connection of 10GB; and
 - latency requirements such that common Internet Protocol (IP) applications such as Virtual Private Network (VPN), Voice over IP (VoIP) and gaming may be supported by the broadband service.



**DEPARTMENT OF COMMUNICATIONS, MARINE AND
NATURAL RESOURCES**

NATIONAL BROADBAND SCHEME

**PRE-QUALIFICATION QUESTIONNAIRE
(PQQ)**

2 May 2007

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1. Background

The Department of Communications, Marine and Natural Resources (the "DCMNR") has published a Contract Notice in the Official Journal of the European Union (the "OJEU"), and the www.eenders.gov.ie website, regarding the proposed contract for the National Broadband Scheme (the "NBS Contract"). Further information regarding the NBS Contract and the proposed procurement process is set out in an Information Memorandum accompanying this Pre-Qualification Questionnaire.

4. Declaration

DECLARATION

Name of Candidate: _____

Address: _____

THIS DECLARATION MUST BE SIGNED BY AN AUTHORISED OFFICER OF THE CANDIDATE OR, WHERE THE CANDIDATE IS A CONSORTIUM, BY A DULY AUTHORISED OFFICER FOR AND ON BEHALF OF THE CONSORTIUM.

I certify that the information provided in this completed Pre-Qualification Questionnaire is, to the best of my knowledge, true, accurate and complete and that this Candidate is competent to carry out the NBS contract described in the Information Memorandum. I understand and accept that the provision of inaccurate or misleading information in completing this Pre-Qualification Questionnaire and accompanying documentation may lead to the exclusion of the Candidate from the tender list.

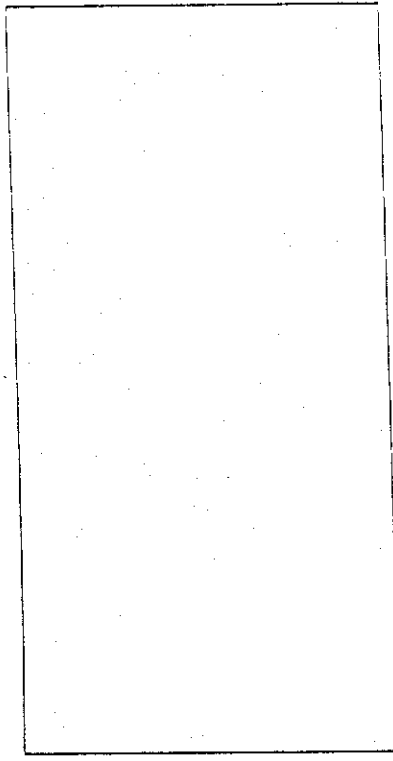
SIGNATURE: _____

NAME: _____

POSITION: _____

DATE: _____

C10: Does your organisation operate a formal Health and Safety Policy? Please enclose details of Health and Safety Policy in respect of telecommunications installation, works and services in a public environment and analogous matters.



2. Instructions for Completion of this Pre-Qualification Questionnaire

- a) Candidates who wish to be considered for the proposed NBS Contract should respond to all of the questions detailed in this Pre-Qualification Questionnaire, accurately, without any omissions and in accordance with the terms and conditions set out in section 2. Candidates are required to provide all details that they consider necessary to provide a sufficient response to each part of the Pre-Qualification Questionnaire. Failure to do so may lead to disqualification.
- b) Where the Candidate is a single entity, responses should be provided with respect to that entity. Where the Candidate is a consortium, information required in responses to this Pre-Qualification Questionnaire should be provided with respect to each member of the consortium (e.g. each organisation or relevant group company participating in the consortium etc.), save where otherwise expressly indicated. Where the Candidate proposes to rely on the resources of another entity in accordance with paragraph 2.2 of this Pre-Qualification Questionnaire, information with respect to such entity should be provided where requested in this Pre-Qualification Questionnaire.
- c) The written response to each question is to be given in the space allowed, immediately following each question. Where additional space is required, Candidates should provide their response on separate A4 sheets which are clearly marked with the appropriate question number. All supporting literature enclosed must be relevant to a question set out in this Pre-Qualification Questionnaire and should be clearly marked with the relevant question number.
- d) Information required by more than one part in this Pre-Qualification Questionnaire is only required to be provided once, but its location within the completed Pre-Qualification Questionnaire must be clearly noted in all other responses to questions that seek to rely on it. If any of the questions in this Pre-Qualification Questionnaire are not relevant to a Candidate or member of a Candidate, please insert "Not Applicable". Do not leave any section blank.
- e) This Pre-Qualification Questionnaire identifies where responses to questions should be supported by additional information in the form of, for example,

C8: Please provide details of the membership of relevant trade associations / professional bodies of both the Candidate or consortium member and the staff identified in Question C5 and Question C6.

C9: Does your firm operate a formal Quality Policy / Strategy or equivalent? Please provide a summary.

management and contract structure charts. Such supporting information must be provided where requested.

- f) This Pre-Qualification Questionnaire shall be completed by all Candidates in the English language. Where copies of original documents are provided in languages other than English, an accurate English translation (or explanation) must be provided or the documents will not be considered for evaluation.
- g) Unless otherwise stated, documents provided in response to questions in this Pre-Qualification Questionnaire are not required to be notarised or legalised at this stage. However, the DCMNR reserves the right subsequently to seek notarisation or legalisation in respect of certain documents.
- h) Please note that all financial information submitted in response to this Pre-Qualification Questionnaire should be denominated in Euro.

2.1 Queries

Any queries arising from this Pre-Qualification Questionnaire which may have a bearing on the Candidate's response should be raised in writing with the DCMNR at the address set out below as soon as possible and, in any event, no later than 4pm (local Irish time) on Thursday 28 June 2007. The DCMNR may at its absolute discretion (but shall not be obliged to) respond to queries after this date.

All such queries received, together with replies and clarifications on the points raised, may be circulated to all Candidates who have requested and obtained the Pre-Qualification Documents. If a Candidate believes a query and/or its response relates to a confidential aspect of its completed Pre-Qualification Questionnaire it must mark the query as "confidential". If the DCMNR, at its absolute discretion, is satisfied that the query and/or its response should be properly regarded as confidential, the nature of the query and its response shall, subject to the following provisions of this section 2.1 be kept confidential.

If the DCMNR is of the opinion that it would be inappropriate to answer the query/request on a confidential basis it will notify the Candidate and require the Candidate to either withdraw or reformulate the query or to raise any objection within 2 days of such notification and state the grounds for its objection. If the Candidate does not withdraw or reformulate the query/request or raise any objection within the specified period, or the DCMNR is of the

C6. Please provide details of the nominated project manager for delivery of the NBS project including a summary of their relevant skills and experience and a detailed CV.

C7: Please provide details of the average number of staff employed over the last three years by the Candidate or consortium member directly in relation to services that the Candidate believes are relevant to the NBS project and the number of persons employed for that purpose in managerial positions.

opinion that, notwithstanding the objection of the Candidate, the query/request is not confidential, the DCMNR may issue the query and its response to all of the Candidates.

All queries should be dated and addressed to:

Yvonne McCarthy
Communications Development
Department of Communications, Marine and Natural Resources
29-31 Adelaide Road
Dublin 2
IRELAND

Email: Yvonne.McCarthy@dcnmr.gov.ie

Fax: +353 1 6782126

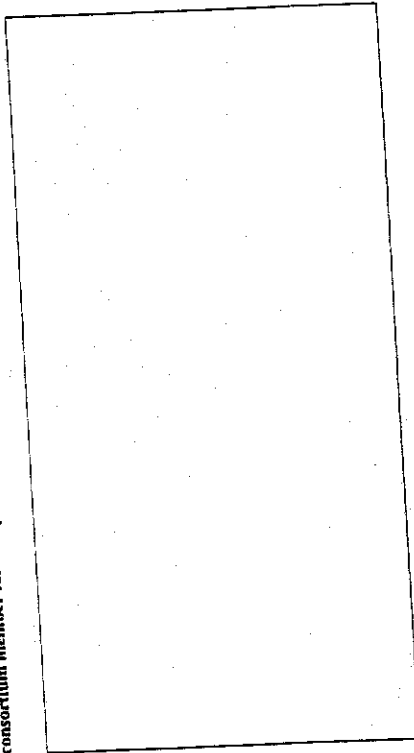
and headed "Query: National Broadband Scheme PQQ". Questions forwarded by letter, e-mail or fax will be accepted. Verbal queries will not be accepted unless they are subsequently confirmed by letter, e-mail or fax prior to the deadline discussed above.

If, as a result of queries/requests, any discussion or other communication between the DCMNR and a Candidate and/or otherwise, the DCMNR is of the opinion that a clarification of and/or amendment to this Pre-Qualification Questionnaire is required to be made and/or additional information is required to be issued, then the DCMNR shall be entitled to make any such clarification of and/or amendment to this Pre-Qualification Questionnaire at any time by notice in writing contained on the www.e-tenders.gov.ie website. Candidates who have already requested and obtained this Pre-Qualification Questionnaire prior to any such amendment will be notified in writing of the amendment.

2.2 Reliance on Resources

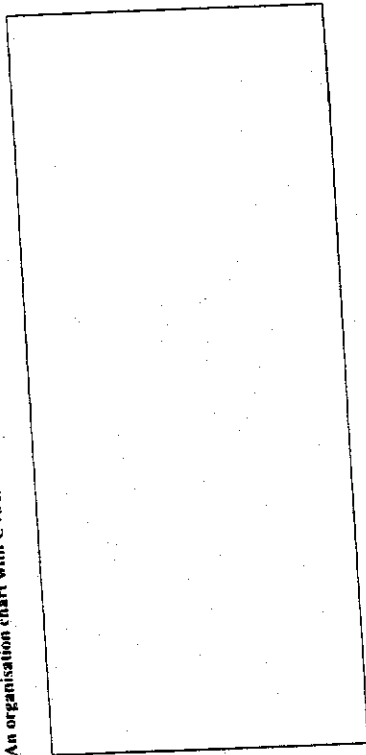
Where, in order to prove it can satisfy the financial and economic standing, or technical capability necessary to undertake the NBS Contract, a Candidate or, in the case of a consortium, any member of a Candidate relies on the resources of entities or undertakings with which it is directly or indirectly linked, whatever the legal nature of those links may be (including, for example, but not limited to, reliance on a parent company's resources, or the resources of a key contractor), it must establish that it has available to it the resources of those entities or undertakings which are necessary for the performance of the NBS Contract.

C4: Provide details as to prior experience of investing in a project of this nature. Information as to the form of that investment, source of funding, and, where the information is being provided in the context of participation in a consortium, the role played by that relevant consortium member for that project (e.g consortium member, sub-contractor etc.).



C5: Please provide details of all the key persons who have appropriate relevant experience in the development and provision of the services that the Candidate believes are relevant to the NBS project and who will be involved in the management structure and/or running of the NBS project for the Candidate or consortium member.

An organisation chart with CVs should also be provided for the key persons identified above.



For example, a letter from such other entity confirming that it will provide the necessary support will suffice. If sufficient evidence is not provided the Candidate or a member of a Candidate will be evaluated based on its own financial and economic standing, and technical capability. A contractual commitment in the form of a guarantee may be required at contract execution stage in favour of the DCMNR from any such supporting entity.

2.3 Submissions by Consortia

In order to offer the resources and the range and depth of skills required, organisations may wish to collaborate to form a consortium which will then apply as a single Candidate for pre-qualification. Such Candidates should specify in full in this Pre-Qualification Questionnaire the identity of their proposed members and shall appoint one of its members to be a lead Candidate for the purposes of this competition. A Candidate's choice of legal structure (e.g. joint venture/unincorporated/incorporated) will not be relevant in the assessment at this time. Where the Candidate is a consortium, each member of the Candidate may be required to contract on the basis of joint and several liability or any other basis which the DCMNR considers appropriate in its discretion having regard to the nature, size and complexity of the NBS Contract, which basis will be set out in the Invitation to Participate in Competitive Dialogue.

2.4 Change in Candidate

Any change in the membership of the Candidate, or in the control of the Candidate or any Candidate members, and/or in the roles of the Candidate members, after the Candidate has submitted its completed Pre-Qualification Questionnaire, may lead to its disqualification unless approved by the DCMNR in writing. The DCMNR reserves the right to withhold approval for any such changes and to disqualify the Candidate concerned from any further participation in the procurement process.

2.5 Conditions of Contract

Candidates should note that it will be a condition of contract that a current Tax Clearance Certificate is provided to the DCMNR. The DCMNR reserves the right to request parent company and/or other guarantees (e.g. performance guarantees) as a condition of contract. Full details of applicable conditions of contract will be set out during the competitive dialogue stage.

2.6 Conflict of Interest

Any conflict of interest or potential conflict of interest must be fully disclosed to the DCMNR as soon as such conflict or potential conflict becomes apparent. In the event of any conflict or potential conflict of interest, the DCMNR shall, in its absolute discretion, decide on the appropriate course of action.

In particular, in the case of a consortium of contractors, if any member of the consortium proposes to be part of another competing Candidate, the DCMNR must be notified as soon as possible and in any event prior to submission of Pre-Qualification Questionnaires so that it can determine whether it considers this to constitute a conflict of interest. The DCMNR reserves the right at its absolute discretion to refuse to allow a consortium member to be part of another competing Candidate and/or to disqualify a Candidate in the event that there is a breach of this requirement. If clarification is required, please contact the DCMNR in accordance with section 2.1 above.

2.7 Freedom of Information

The DCMNR is subject to the Freedom of Information Acts 1997 and 2003. Where Candidates consider that any information they supply is either commercially sensitive or confidential in nature, this should be highlighted with clear and substantive reasons specified. In such cases, the relevant information may, subject to the provisions of the Freedom of Information Acts 1997 and 2003, be protected from access in response to a request made thereunder.

2.8 Confidentiality

This Pre-Qualification Questionnaire, the Information Memorandum accompanying this Pre-Qualification Questionnaire and all discussions and correspondence between Candidates and the DCMNR must be treated as private and confidential. Candidates should not disclose the fact that they are expressing an interest or release this Pre-Qualification Questionnaire or the Information Memorandum other than on a confidential basis to those who have a legitimate need to know or whom they need to consult for the purpose of expressing an interest.

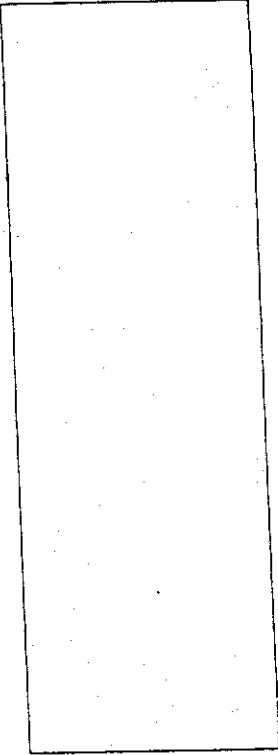
The DCMNR shall have the right to publicise, or otherwise disclose, to any third party, information regarding the NBS, the identity of Candidates (including, without limitation, where the Candidate is a consortium details of their respective members), shortlisted

C2. For the past three years, please provide details of any contracts to which the Candidate or consortium member is a signatory where there has been a failure to complete the contract on time or at all, or where there have been claims for damages and/or penalties, or where damages and/or penalties have been deducted or recovered. Please also provide details of any contracts terminated or employment determined. Please confirm whether a court or other arbitration or mediation body has adjudicated on such matters and, if not, how the matter has been determined. Explanation of the causes of such failures, claims and penalties should also be supplied.

C3. Please provide details of how the Candidate or consortium member has worked in partnership with (ideally public sector) clients to deliver projects that are either similar to, or share at least some components with, the NBS.

SECTION C: Technical Capability

C1: Please provide details (up to a maximum of 10 projects) of major current and recent projects (those that may have terminated within the past 3 years) related to telecommunications (wireline and wireless), broadband, Internet, infrastructure and services contracts in which the Candidate or consortium member has participated with an annual contract value in excess of £1 million (exclusive of VAT). Where the project was carried out in joint venture or other partnership type arrangement, the Candidate's reasonably approximate percentage involvement in the project should be specified. Details of suitable points of contact within the awarding authority's organisation should also be provided. The DCMNR reserves the right to contact these persons.



Candidates, the tender process or the award of the NBS Contract (including, without limitation, details of the contract price) at any time.

2.9

Non-Compliance with the requirements set out in this Pre-Qualification Questionnaire

If a completed Pre-Qualification Questionnaire fails to comply in any respect with the requirements set out in this document, the DCMNR shall be entitled (but shall not be obliged):

- a) to reject the relevant completed Pre-Qualification Questionnaire as non-compliant;
- b) without prejudice to DCMNR's right to reject the completed Pre-Qualification Questionnaire as non-compliant:
 - i) to meet with, raise issues and/or seek clarification from the Candidate in respect of the relevant completed Pre-Qualification Questionnaire;
 - ii) to request the Candidate to provide the DCMNR with information or items which have not been provided or have been provided in an incorrect form;
 - iii) to waive a requirement which, in the opinion of the DCMNR, is minor and/or procedural; and/or
 - iv) to amend the relevant requirements of and invite other Candidates to adjust their respective completed Pre-Qualification Questionnaires on the basis of such revised requirement PROVIDED HOWEVER no amendment and/or change to the DCMNR's requirements will be permitted if, in the DCMNR's opinion, the amendment and/or change, if accepted, would constitute a material amendment and/or change to the DCMNR's pre-qualification requirements.

2.10 Interview

The DCMNR may, at its sole discretion, decide to request one or more Candidates to interview.

B6: Where applicable, attach copies and summarise below any company announcements made to the authorities of the stock exchange market or bourse on which the stocks or shares of the company are publicly traded, since the date of publication of the latest set of audited accounts or confirmation that no such announcements have been made.

2.11 Assessment Criteria

Candidates who have been adjudged by the DCMNR to have met the eligibility requirements set out in Sections A10 and A11 of this PQO will be assessed on the basis of the criteria set out below. Candidates deemed to have satisfied the financial and economic standing, and technical capability necessary to undertake the NBS Contract will be invited to participate in competitive dialogue.

a) Financial and Economic Standing

The objective of the financial appraisal is to select candidates that have the necessary financial and economic standing to undertake the NBS Contract.

Total Score available for Financial and Economic Standing: 100 marks

b) Technical Capability

A detailed assessment of the Candidate's capability to carry out a project of the size, nature and complexity of the NBS, having regard to the following:

- (i) General and specific project experience relevant to the NBS (Sections C1 to C4) [65 marks]
- (ii) Staff resources and experience (Sections C5 to C8) [25 marks]
- (iii) Quality assurance and Health and Safety standards (Sections C9 to C10) [10 marks]

Total Score available for Technical Capability: 100 marks

Any Candidate who fails to score a minimum of 50 marks in respect of each of Section B and Section C of this Pre-Qualification Questionnaire will be deemed not to have the financial and economic standing and/or technical capability necessary to undertake the NBS Contract and will not be pre-qualified.

To determine the ranking of Candidates who score a minimum of 50 marks in respect of each of Section B and Section C of this Pre-Qualification Questionnaire the DCMNR will then apply the following weighting to the financial and economic standing, and technical capability scores:

- Financial and Economic Standing: 35%
- Technical Capability: 65%

It is envisaged that, provided a sufficient number of Candidates are qualified from those that express an interest, at the DCMNR's sole discretion a minimum of 3 and a maximum of 8 highest ranked Candidates will be pre-qualified.

2.12 Return of Completed Pre-Qualification Questionnaire

Candidates must return completed responses to this Pre-Qualification Questionnaire, including a signed copy of the Declaration contained in Section 4, together with accompanying supporting information to the following address for the attention of Yvonne McCarthy, clearly marked "NATIONAL BROADBAND SCHEME: PQQ RESPONSE":

NATIONAL BROADBAND SCHEME: PQQ RESPONSE
 Communications Development
 Department of Communications, Marine and Natural Resources
 29-31 Adelaide Road
 Dublin 2
 IRELAND
 ATT: Yvonne McCarthy

by not later than 4 pm (local Irish time) on Thursday 5th July 2007.

Twelve (12) paper copies of the completed Pre-Qualification Questionnaire and supporting documents must be provided in a sealed envelope. In addition, an electronic copy of the completed Pre-Qualification Questionnaire and supporting documents should be submitted on a virus free diskette or CD-ROM in the sealed envelope. Responsibility for the timely arrival of its completed Pre-Qualification Questionnaire rests solely with the Candidate.

B4: Please provide

- (a) A statement of any material past, pending or threatened litigation or other legal proceedings for which specific provision has not been made within the latest set of audited accounts or confirmation that no such litigation or proceedings are pending or threatened.
- (b) A description of any material pending or threatened tax or other regulatory investigations into your affairs or confirmation that no such investigations are pending or threatened.

B5: Please provide details of any information that may have a bearing on the Candidate's financial position or ownership. Such information should include, but not be limited to credit facilities, debt ratings, current take-over activity, restructuring, new capital investment mergers, write-offs of foreign or subsidiary holdings, Dun & Bradstreet (or similar) credit reports.

3. Pre-Qualification Questionnaire

3.1 Section A: General Information

This section contains general information questions in questions A1 to A9. Questions A10 and A11 require the Candidate to confirm whether certain mandatory or non-mandatory exclusion criteria apply to it.

Questions A1 to A5 are, to the extent applicable, to be completed by the lead Candidate of a consortium or if the Candidate is a sole organisation, by that organisation.

Questions A6 to A11 are to be completed by each member of a consortium (including the lead Candidate) on separate forms, if applicable.

3.2 Section B: Financial and Economic Standing

This section contains questions that will assist the DCMNR's evaluation of a Candidate's financial and economic standing.

Questions B1 to B6 are to be completed by each member of a consortium on separate forms, if applicable. If the Candidate or consortium member proposes to rely on the financial and economic resources of another entity in accordance with section 2.2 of this Pre-Qualification Questionnaire, questions B1 to B6 are to be completed for both the Candidate/consortium member and the relevant entity on separate forms.

3.3 Section C: Technical Capability

This section contains questions that will assist the DCMNR's evaluation of a Candidate's technical abilities and both general project and specific project experience.

Questions C1 to C10 are to be completed by each member of a consortium on separate forms, if applicable. If the Candidate or consortium member proposes to rely on the technical resources of another entity in accordance with section 2.2 of this Pre-Qualification Questionnaire, questions C1 to C10 are to be completed for both the Candidate/consortium member and the relevant entity on separate forms.

B3: Please provide a statement of the overall turnover of the operations relevant to the NBS project (or projects or areas of work/services similar to those required by the DCMNR under this procurement) for the past three financial years. Provide amounts in Euro (€) and as a percentage of the total turnover of the Candidate or consortium member.

Relevant Turnover (Financial year end) in Euro (€):

Year 1: _____

Year 2: _____

Year 3: _____

Overall turnover (financial year ending) as a percentage of the total turnover of the Candidate or consortium member

Year 1: _____

Year 2: _____

Year 3: _____

Section B: Financial and Economic Standing

B1: Please provide copies of the Candidate's full audited annual financial statements (including all notes to the financial statements) that cover the last three years of trading or for the period that is available if the Candidate has been trading for less than three years. The latest set of such statements should be for an accounting period ending no earlier than 12 months before the date of submission of this Pre-Qualification Questionnaire. If the most recent audited annual accounts remain unsigned or the audit has not yet been completed, the draft accounts and any published interim or management accounts for that year should be provided. Candidates should provide details of any event or matter between the date on which the last set of audited financial statements are available (where such event or matter is not set out in the draft accounts) and the date of submission of this Pre-Qualification Questionnaire that, had the accounts not been prepared or finalised until this submission date, would have required to be adjusted for or disclosed in accordance with the provisions of International Accounting Standards, or confirmation that no such event has taken place.

B2: Where the information requested in B1 above is not available in an audited form, Candidates should provide a statement of their turnover, Profit & Loss and cash flow position for the most recent three full years of trading (or part year if not applicable) and an end period balance sheet. Where this information cannot be provided, a statement of the organisation's cash flow forecast for the current year and a bank letter outlining the current cash and credit facility position should be provided. In addition, Candidates should clearly indicate the reasons for the information requested in B1 not being available.

Section A: General Information

A1: Candidate Structure

Is the Candidate a single entity or is it a Consortium?

Tick as appropriate. Single entity Consortium

A2. Name of the Candidate or, where the Candidate is a consortium, name of the organisation that will act as lead Candidate for the NBS project and name of each of the consortium members.

Candidate or, where the Candidate is a consortium, lead Candidate:

Where the Candidate is a consortium, name of the consortium members:

- 1:
- 2:
- 3:
- 4:

A3: Name and contact details for lead Candidate principal contact:

Name:

(f) has provided a statement or information to the DCMNR or another contracting authority knowing it to be false or misleading, or has failed to provide to the DCMNR or another such authority a statement or information that is reasonably required by the authority for the purpose of awarding the public contract concerned.

If any of the circumstances set out above apply, please provide details. If not, please confirm that none of the circumstances apply. Candidates may, where the DCMNR considers it appropriate, be requested to provide documentary evidence as set out in Regulation 53 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006.

Position in Organisation:

Address:

E-mail:

Telephone:

Fax:

A4: Where the Candidate is a consortium, specify the role that each member of the consortium proposes to undertake and the services that each will deliver as part of NBS project.

Name of Organisation	Role and Services to be Delivered

A5: Provide an organisation chart and details of the relationship between the members of the consortium.

All Non-Mandatory Exclusion Criteria

The DCMNR may exclude from consideration any person who at the date of submission of this PQQ:

- (a) is bankrupt or the subject of a bankruptcy petition; or, being a body corporate, is being wound up or is the subject of proceedings for compulsory winding up; or whose affairs are being administered by a court; or who is the subject of proceedings in which it is sought to have their affairs so administered; or who has entered into an arrangement with creditors; or who has suspended business activities; or who is, in the opinion of the DCMNR, in any situation analogous to any of those mentioned in this paragraph (a) under a law of the State, another Member State or a third country relating to bankruptcy or insolvency.
- (b) has been found guilty of professional misconduct by a competent authority that is authorised by law to hear and determine allegations of professional misconduct against persons that include the Candidate, or
- (c) has committed grave professional misconduct provable by means that the DCMNR can demonstrate, or
- (d) has not fulfilled an obligation to pay a social security contribution as required by a law of the country or territory:
 - (i) where the person ordinarily resides or carries on business, or
 - (ii) where the DCMNR is established, or
- (e) has not fulfilled an obligation to pay a tax or levy imposed by or under a law of the country or territory:
 - (i) where the person ordinarily resides or carries on business, or
 - (ii) where the DCMNR is established, or

Questions A6 to A11 are to be completed by ALL Candidates. Where the Candidate is a consortium, each member of the consortium (including the lead Candidate) should complete responses on separate forms.

A6: Name of Organisation:

A7: Provide details of registered office, registered number and date of registration of company where applicable. If not a company, provide status of organisation, including details of the trading address.

A8: If the Candidate or consortium member is a limited company and is a subsidiary of another company, provide details of the name of the organisation's ultimate holding or parent company:

A9: If you are relying on the resources of another entity in accordance with paragraph 2.2 of this Pre-Qualification Questionnaire, please tick the appropriate box below and fill in the location of the relevant supporting document. If sufficient evidence is not provided the Candidate or member of the consortium will be evaluated based on its own financial, economical and technical standing.

Reference to where enclosed:

Tick if appropriate written evidence of such support for financial and economic standing is enclosed.

Reference to where enclosed:

Tick if appropriate written evidence of such support for technical standing is enclosed.

A10. Mandatory Exclusion Criteria

The DCMNR shall exclude from consideration any person who, to the knowledge of the DCMNR, has at the date of submission of this POQ been convicted of an offence involving:

- a) participation in a prescribed criminal organisation, or
- b) corruption, or
- c) fraud, or
- d) money laundering.

Please confirm that none of the circumstances at (a) to (d) above apply. Candidates may, where the DCMNR considers it appropriate, be requested to provide documentary evidence as set out in Regulation 53 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006.