



**Australian
Competition &
Consumer
Commission**

**Request for Tender for the
Provision of Expert Telecommunications Sector
Consultancy Services to the Australian Competition
and Consumer Commission**

RFT Release Date: 31 March 2006

RFT Closing Time: 5 May 2006

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1 Introduction

1.1 About the ACCC and the Communications Group

- (a) The Australian Competition and Consumer Commission (the ACCC) is an independent statutory authority, set up in 1995 as part of the national competition policy reform program. It is a national agency dealing with competition matters. The primary responsibility of the ACCC is to ensure that individuals and businesses comply with competition, fair trading and consumer protection laws, in particular the Trade Practices Act 1974 (the Act). The ACCC applies these laws without fear or favour, helping to make sure that competition in the marketplace is efficient and fair. As an integral part of its work the ACCC promotes effective competition and informed markets, encourages fair trading and protects consumers, and regulates infrastructure service markets and other markets where competition is restricted.

The **Communications Group's role** at the ACCC conducts the economic regulation of the Telecommunications industry. This involves regulating access to natural monopoly telecommunications infrastructure, and administering the competition provisions of the *Trade Practices Act* (the Act). The ACCC has responsibilities over the economic and competition regulation of the Telecommunications industry under Parts XIB and XIC of the TPA and various provisions of the Telecommunications Act and Telecommunications (Consumer Safeguards etc) Act. This requires the Commission to administer, amongst other things, industry specific competitive safeguard provisions similar to those under Part IV in relation to anti-competitive conduct in telecommunications markets and an access regime in relation to certain declared services that is loosely based on that of Part IIIA.

Once a service is declared under Part XIC of the Act, it is subject to the standard access obligations. Any disputes between access seekers and access providers in relation to the terms and conditions on which the standard access obligations are fulfilled, can be brought to the ACCC for arbitration. The regime also enables access providers to lodge undertakings regarding conditions of access and seek exemptions from the standard access obligations.

1.2 About this request for tender (RFT)

- (a) The purpose of this RFT is to identify and engage a suitable Consultant with specialist skills in economic modelling within the telecommunications industry. The specific nature of the scope of the work requires the ACCC to seek tenders from Consultants with expertise in the modelling of the cost of telecommunications services and experience of this nature would be a requisite criterion for selection. Specifically, the scope of work focuses on the cost of services in the mobile segment of the telecommunications industry. As a result, it is desirable but not necessary that any prospective tenderers would have exposure to economic modelling of the cost of services in the mobile segment of the telecommunications industry.
- (b) The Statement of Requirement at Section 4 provides details of the services required.

2 Background

2.1 Regulatory functions relevant to the request for tender

- (a) This request for tender relates to outcomes associated with the regulatory function undertaken by the Communications Group under the telecommunications access regime in Part XIC of the Act.
- (b) The ACCC is interested in receiving tenders from firms or individuals, with appropriate expertise in the development of economic cost models for services provided in the telecommunications industry.
- (c) The date for the completion of these services is 31 December 2006.
- (d) Most decisions made in the performance of these functions are subject to judicial review by the Federal Court and, in some cases, merits review before the Australian Competition Tribunal
- (e) Further details of the work undertaken by the Communications Group are provided in Appendix A.

3 Information for tenderers

3.1 General

- (a) Further details of the work undertaken by the Communications Group are provided in Appendix A.
- (b) The Consultant's report and Economic Cost Model may be disclosed to industry participants or other interested parties in the course of the regulatory function undertaken by the Communications Group.
- (c) It would be expected that external Consultants would provide a consistently high standard of service.

3.2 Costs of Expert Consultancy Services

- (a) The ACCC takes the issue of unanticipated costs on invoices seriously, and attempts to rein in the incidence of budget variance. Before incurring any costs that would not be reasonably expected by the case manager, the selected Consultant would be expected to discuss the matter with the case manager, to attempt to mitigate the effect that the unanticipated work may have, so that budget variations can be made if the costs are agreed.

3.3 Case managers

- (a) Case managers generally control the conduct of any projects for which expert consultancy services may be required, and as such are responsible for ensuring that expenditure is reasonable and accountable to management. Invoices may be queried where:
 - there is an incidence of unexpectedly high expenditure without prior notification; or
 - there appear to be incidences of over-servicing.

- (b) Case managers are required to comply with the Australian Public Service (APS) code of conduct. Case managers are not permitted to accept gifts or hospitality where they either compromise, or could be perceived to compromise, the case manager's integrity and ability to undertake official duties in a professional and objective manner.

3.4 Dispute resolution

- (a) The ACCC is conscious that its relationships with Consultants must be productive and effective. As such, internal guidelines and mechanisms are in place for dealing with issues which may arise. Before the formal dispute resolution procedures of the Standard Form Consultancy Contract are implemented, the matter will be dealt with initially with the Consultant on a staff or line manager basis.

4 Statement of requirement

4.1 Introduction

- (a) The ACCC's power to appoint a Consultant derives from sections 6A and 27A of the Act.
- (b) This request for tender is seeking to establish a Standard Form Consultancy Contract between the ACCC and a Consultant for the provision of an economic cost model of mobile telecommunications networks.

4.2 Services Required

- (a) **Mobile Termination Cost Study Brief**

The ACCC seeks assistance in constructing a bottom-up engineering-economics cost model of the 'TSLRIC+' (see below) of providing the termination of voice calls on mobile networks in Australia. The ACCC has in mind models similar to those, for examples, constructed for the United Kingdom, Malaysia, Sweden and Israel.

The model required would provide a tool for the assessment of the efficient costs of providing termination by hypothetical operators under differing circumstances, with differences in, *inter alia*, market shares; technologies; geographical/population coverage; and extent of integration with a fixed-line carrier. The ACCC requires that it have the ability to estimate cost-volume relationships; the benefits of economies of integration, etc.

The successful consultant would *not* be required to assess the cost of termination of any particular mobile carrier operating in Australia, and the ACCC therefore believes there will be minimal commercial-in-confidence issues involved in providing the required consulting services.

- (b) **Deliverables**

The deliverables from the consultancy would be in three parts:

1. A draft report setting out the draft position on the structure of the model, inputs and modelling assumptions and including indicative results;

2. A final report containing a comprehensive discussion of the structure of the model, inputs, and crucial modelling assumptions and the results under different agreed scenarios; and
3. A fully-working empirical model in electronic form that will enable the ACCC to make estimates based on its own inputs and scenarios.

(c) Background Information: TSLRIC+ Cost Concept

The underlying concept of total service long run incremental cost (TSLRIC+) is explained in the ACCC's 1997 paper, *Access Pricing Principles Telecommunications – A Guide*. This concept is understood to include a contribution to organisational-level costs (discussed below), and the ACCC adds a '+' to denote this.

The ACCC interprets the legislative criteria as requiring it to have regard to the *most efficient operator* when making decisions relating to access prices. The rationale for this, as stated in the *Access Pricing Principles* (p. 18) is because

an access price consistent with these principles will also promote productive efficiency. As the price will be based on the cost of providing the service using the most efficient means commercially available it will encourage access providers to continually improve their performance with the aim of achieving best practice.

However, the ACCC is also conscious of the concept of achievability by existing mobile carriers, and therefore seeks to have the ability to determine the costs of operators with, say, a 25 per cent market share as well as those of the most efficient operator. The ACCC requires to have the ability to estimate the costs in terms of foregone productive efficiency through deviating from the most efficient operator standard in circumstances where this could be required in the light of the various legislative criteria the ACCC must have regard to.

(d) Specific Cost Modelling Issues to be addressed as part of the scope of work

In developing the applied cost model, the ACCC is seeking to benefit from the successful consultant's expertise and experience in developing similar models for other clients in other jurisdictions. Therefore, it expects that it will be useful to enter into discussions with potential consultants to discuss the sorts of issues that are relevant to a successful cost modelling exercise. Having said that, the ACCC has identified a number of core issues that it expects will be relevant to the modelling exercise. These are set out below.

i. The Output Increment

The ACCC expects that the appropriate output increment for a specific mobile carrier would be defined as the total of all originating and terminating minutes, whether on net or off net, holding all other outputs constant. In unitising over minutes of use it would envisage adjustment for any differences in costs of originating and terminating such as those relating to the home location register (HLR).

The ACCC would require great clarity about the point of interconnection (POI) in order to identify which network elements are used in termination. This issue is further discussed below in relation to routing factors.

ii. Common Network Costs

The ACCC understands that previous modelling exercises have identified common network costs relating to the production of the full range of mobile services such as subscriber access, voice termination, voice origination, SMS, geographical coverage, etc. over a mobile network. The ACCC seeks advice on the efficient level of these costs and would require that the consultant provide a detailed discussion of the alternative ways of dealing with the allocation of these shared costs to different services, and to be explicit about the way it allocates these costs. This issue is discussed further below in relation to routing factors.

In the case of data services, the ACCC requires a specification of the magnitude of costs that should be directly allocated to the provision of mobile data services; particularly SMS. This would include specific advice on the:

- network assets that are required to provide mobile data services; and
- intensity with which these services use common network infrastructure as compared to voice services.

The ACCC also requires that the consultant provide specific advice on the implications of alternatively placing voice services and data services on a 'stand-alone' basis with respect to the sharing of common network costs.

iii. Routing Factors

The ACCC requires a specification of the appropriate set of 'routing factors' that should be included in a model to estimate the forward-looking efficient economic costs of providing the MTAS. This would include:

- specific advice on whether the MTAS should include costs associated with the transmission of mobile voice calls; and
- specific advice on whether routing factors for transmission, switching, voicemail, and gateway switching should be greater for mobile termination services than for mobile origination services.

The ACCC requires a detailed discussion of the source and rationale of routing factors applied, and a comparison of these preferred routing factors with those used in a sample of other modelling exercises.

iv. Current Costs / Changes in Equipment Prices

The ACCC requires the consultant to advise it on:

- whether mobile equipment prices are rising or falling, the magnitude of any identified trends, and a comparison with equipment price trends for fixed-line equipment;
- the relevance of site and construction costs and how these have changed and are likely to change over time; and
- appropriate estimates of the 'useful life' of the main mobile assets.

v. Spectrum Costs

The ACCC requires a specification of the annual spectrum costs that would be incurred by an efficient MNO. This would include specific advice on:

- what component of this annual cost would constitute an annual licence fee;

- what component would constitute costs associated with bidding for spectrum which can be used in the provision of GSM services; and
- whether this cost should be allocated across all services that an MNO provides, or across a subset of services that an MNO provides.

vi. Operational Costs

The ACCC requires a detailed exposition of the reasonable operating costs of a mobile operator, what quantum of these could reasonably be allocated to the provision of mobile termination, and of how these operational costs would vary with different levels of output and other circumstances. This discussion would include a comparison of the successful consultant's approach with those of a representative sample of other models of the cost of mobile termination.

vii. 'Busy Hour' Considerations

Assumptions made about dimensioning for 'busy-hour traffic' should be clearly specified.

viii. Subscriber Acquisition and Retention Costs

The ACCC requires a detailed discussion of what – if any – costs of subscriber retention and acquisition can reasonably be allocated to the provision of mobile termination. This discussion should include a comparison of the successful consultant's approach with those of a representative sample of other models of the cost of mobile termination.

ix. Risk and WACC

The ACCC requires advice on the risk characteristics of mobile networks, with specific advice on:

- whether the provision of the MTAS service in isolation is likely to involve greater, less or the same risks than the provision of a suite of mobile services; and
- whether the risk characteristics of fixed-line services are comparable to those from mobile services, and, if not, how they vary.

The ACCC is interested in the successful consultant's advice on the implications of these risk considerations for the weighted average cost of capital (WACC) to be applied in the costing of capital equipment used in production of mobile termination.

x. Working Capital

The ACCC requires a detailed estimation of the reasonable working capital requirements of a mobile carrier and of what portion of the opportunity cost of this working capital can reasonably be allocated to mobile termination.

xi. Integrated Fixed-line/Mobile Carriers

The ACCC requires advice on the nature and extent of any economies of scope that could arise from simultaneously offering a mobile and a fixed-line business; including on whether this would depend on the extent and nature of the fixed-line infrastructure. Both Telstra and Optus operate mobile and fixed-line telecommunications networks. Vodafone and Hutchison are mobile-only operators.

xii. Implications of 3G and other Emerging Technologies

All four Australian carriers offer 3G services. Infrastructure-sharing arrangements have been developed between pairs of them – Hutchison with Telstra and Optus with Vodafone – to economise on the infrastructure costs of individually providing 3G services to end users. The ACCC requires detailed analysis of the implications of the introduction and development of 3G services for the cost of providing 2G voice termination, with sufficient information for it to make quantitative assessment of the impact on 2G termination costs.

The ACCC also requires advice on whether or not there are other relevant emerging technologies that could have a bearing on the costs of termination on 2G networks.

xiii. Common Organisational-Level Costs

The ACCC uses a TSLRIC+ cost concept where the ‘+’ refers to a contribution to organisational-level costs such as those of corporate finance; HR; general management, and non-network IT. The ACCC requires advice on the means of assessing the quantum of efficient organisational-level costs and of the alternative ways of allocating these to particular services. The ACCC has previously used equi-proportionate mark-up (EPMU) approaches to allocating organisational-level costs over services in its approach to fixed-line cost modelling and in its response to suggestions that it adopt Ramsey-Boiteux allocations.

4.3 Limits on the scope of the current request for tender

- (a) This request for tender is limited to expert consultancy services in support of the regulatory roles that are specified in this request for tender and not other work areas.

4.4 Conflicts of interest

- (a) Identification of a conflict of interest will not automatically exclude a firm or individual from the tender process. The ACCC will assess the potential impact of the conflict in relation to the services offered and value offered by the firm before a final decision is made.
- (b) The Consultant is expected to be capable of identifying potential conflicts of interest at a very early stage;
- (c) Firms are to include in their tenders a statement as to the firm’s policy in relation to conflicts of interest and how the issues would be handled should the tender be successful;
- (d) Where a potential conflict of interest arises the issue will be managed according to the circumstances of the case.

4.5 Insurances

The Consultant will be required to maintain at all times an appropriate level of insurance as required for the nature of the Consultancy Service, in accordance with the requirements of the law and upon request, provide proof of insurance acceptable to the ACCC.

4.6 Operation of the Standard Form Consultancy Contract

- (a) Upon selection of a Consultant, the ACCC will issue a Standard Form Consultancy Contract. This Standard Form Consultancy Contract will contain information relevant to the project, including information addressing:
- (1) commencement and completion dates;
 - (2) a description of the services required;
 - (3) name(s) of specified personnel offered for the project;
 - (4) the acceptable financial outlay by the ACCC;
 - (5) an agreed schedule of milestones for payments (if applicable); and
 - (6) disclosure of information.
- (b) The selected Consultants should not commence any work prior to acceptance of the terms and conditions in the Standard Form Consultancy Contract . Upon acceptance of the terms and condition of the Standard Form Consultancy Contract the ACCC requires the selected Consultant to:
- (1) conduct the project professionally and ethically, including complying with relevant legislation and the relevant industry codes of conduct;
 - (2) declare and immediately notify the ACCC in writing when any real or potential conflict of interest arises at any time while undertaking a project;
 - (3) facilitate effective observation opportunities for the ACCC as required by the project;
 - (4) provide the ACCC with data sets in mutually agreed formats whenever the project requires quantitative services to be undertaken; and
 - (5) submit clear and concise ad-hoc, progress, interim and/or final reports and abstracts as required by the ACCC.
- (c) Tenderers should note that it is the ACCC’s policy with regards to payments for projects that no payments will be made upon commissioning a project.

5 General information

5.1 General statement on environmental policy and procurement

- (a) The Australian Government aims to improve the implementation of ecologically sustainable development (ESD) within its agencies. The ACCC supports this aim and will actively seek to ensure that environmentally sustainable goods and services are provided to the ACCC.
- (b) The ACCC’s procurement activities are a key means of implementing its environmental policy.

- (c) Environmental issues are considered during the development of all the ACCC's requests for tender. If environmental issues will affect the ACCC's procurement decision-making process, then those issues that are appropriately incorporated into the statement of requirement and the tender evaluation criteria will inform a potential tenderer of the ACCC's priorities and requirements in respect of those environmental issues.

5.2 General statement on confidentiality

- (a) The ACCC is subject to a number of specific requirements, which support internal and external scrutiny of its tendering and contracting processes. These include:
 - (1) the requirement to publish details of agreements, contracts and standing offers with an estimated liability of \$10,000 or more in the Purchasing and Disposals Gazette; and
 - (2) the requirement to report a list of contracts valued at \$100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts.
- (b) Tenderers should also note that the Parliament and its committees have the power to require the disclosure of Commonwealth contracts and contract information to enable them to carry out their functions.
- (c) The ACCC will treat as confidential any information provided by the tenderer prior to the award of a contract (other than information in the public domain). Once a contract has been awarded, the ACCC will not keep such information confidential if it was provided by the successful Tenderer unless:
 - (1) the tenderer requests that specific information should be kept confidential by expressly noting on the face of its tender any information that is to be treated as confidential;
 - (2) the specific information is by its nature confidential; and
 - (3) the ACCC agrees to that request.
- (d) In considering a request for confidentiality, the ACCC will consider whether disclosure would cause detriment to the successful tenderer or other third party and the circumstances under which the information was disclosed. The ACCC will also consider whether confidentiality is supported by the underpinning principles of Commonwealth procurement such as value for money, accountability and transparency.
- (e) The ACCC cannot provide an absolute guarantee of confidentiality because certain confidential information may be required to be disclosed by law or to the Parliament or the Auditor-General.

5.3 General statement on conflict of interest

- (a) The ACCC may regard any participant in a consortium who separately tenders or participates in another consortium tendering in response to the RFT as having a conflict of interest.

- (b) Tenderers must agree to notify the ACCC if the Tenderer becomes aware of an actual or potential conflict of interest at any time prior to the finalisation of the RFT process.
- (c) If the Tenderer has or may have an actual or potential conflict of interest, the ACCC may, at its discretion:
 - (1) exclude the Tender from further consideration, or
 - (2) impose conditions on the Tenderer for the management of the actual or potential conflict of interest.
- (d) If the Tenderer is unable or unwilling to comply with the conditions imposed under Clause 5.3 (c) or otherwise resolve the actual or potential conflict of interest in a manner satisfactory to the ACCC, the ACCC may then exclude the Tenderer from further consideration.

5.4 General statement on compliance with legislation and policies

- (a) All suppliers of goods and services to the Commonwealth must comply with, and not be in breach of, the requirements of applicable legislation, and in particular the:
 - (1) *Financial Management and Accountability Act 1997 and Financial Management and Accountability Regulations 1997;*
 - (2) *Crimes Act 1914;*
 - (3) *Racial Discrimination Act 1975;*
 - (4) *Sex Discrimination Act 1984;*
 - (5) *Privacy Act 1988;*
 - (6) *Disability Discrimination Act 1992;*
 - (7) *Equal Opportunity for Women in the Workplace Act 1999*

5.5 General statement about Australian National Audit Office

- (a) The attention of tenderers is drawn to the *Auditor-General Act 1997*, which provides the Auditor-General, or an authorised person, with a right to have, at all reasonable times, access to information, documents and records.
- (b) In addition to the Auditor-General's powers under the *Auditor-General Act 1997*, if the tenderer is chosen to enter into a contract, the tenderer will be required to provide the Auditor-General, or an authorised person, access to information, documents, records and the ACCC assets, including those on the tenderer's premises. This will be required at reasonable times on giving reasonable notice for the purpose of carrying out the Auditor-General's functions and will be restricted to information and assets which are in the custody or control of the tenderer, its employees, agents or subcontractors, and which are related to the contract. Such access will apply for the term of the contract and for a period of 7 years from the date of expiration or termination.
- (c) The tenderer should obtain, and will be deemed to have obtained, its own advice on the impact of the *Auditor-General Act 1997* on its participation in the request for tender.

6 The tender process

- (a) The ACCC is conducting an open tender process to obtain the services identified in the Statement of Requirement.

6.2 Chronology

- (a) The following chronology outlines the process ACCC intends to take in conducting this request for tender. Prospective suppliers should note that the ACCC reserves the right to alter times and dates throughout the tender process should the need arise. ACCC also reserves the right, in its absolute discretion, to alter the terms and conditions of this request for tender at any time. Any such change will be notified to your registered contact officer and confirmed in writing.

ACTIVITY	TIMING
Release of request for tender	31 March 2006
Questions and answers	Up to 28 April 2006
Closing date for tenders	2pm 5 May 2006
Tender evaluation	May 2006
Contract(s) finalised	June 2006
Draft Report & Cost Model	October 2006
Final Report & Cost Model	November 2006

7 Tender lodgement details

7.1 Contact officer

- (a) Potential suppliers should direct any questions arising during the preparation of a response to the request for tender in relation to the ACCC's requirements to:

Dr. Rob Albon

Telephone: 61-3-92901859

Email: robert.albon@accc.gov.au

- (b) All inquiries for request for tender clarification or requests for information should use Appendix I - Submission of Question form. These forms should then be submitted via email or post. These requests will be posted on the ACCC's web site to ensure information that may be pertinent for tender preparation is disseminated to all.
- (c) During this request for tender process, telephone inquiries from potential suppliers are not discouraged, however all callers will be requested to use the appropriate forms.

7.2 Copies of tender

- (a) The original, two (2) hard copies, and an electronic copy on CD of the tender in Microsoft Word, are to be lodged and marked appropriately. In the event of any discrepancy the copy marked as “original” shall take precedence.
- (b) The ACCC may make such copies of the tender as it requires for the purpose of considering the tender.

7.3 Lodgement of tender

- (a) Tenders will be received until 2:00 PM Australian Eastern Standard Time on 5 May 2006 (the Closing Time). The address for lodgement is:
 - Telecommunications Tender
 - RFT 2006-03
 - Tender Box
 - ACCC
 - Level 7
 - 470 Northbourne Ave
 - Dickson, ACT 2602
- (b) Tenders must be enclosed in a sealed envelope or other sealed container and clearly marked on the outside with the request for tender reference number (ACCC RFT 2006-03) and closing date in order to minimise mishandling.

7.4 Extension of closing time

- (a) The closing time may be extended, at the sole and absolute discretion of the ACCC, by written notice from the ACCC. Any extension notice will be given the same distribution as the original request for tender.

7.5 Late lodgement

- (a) Submissions received after the closing time and date will not be accepted unless the lateness is due to mishandling by the ACCC.

8 Tender conditions

8.1 Acknowledgment and disclaimer

- (a) The tenderer acknowledges by lodging a tender that it accepts the terms of these tender conditions.
- (b) The ACCC gives no contractual undertaking, including in relation to the evaluation and assessment of any tender.
- (c) All information (whether written, oral or in any other form) which has been and may subsequently be made available to the Tenderer is provided on the following conditions:

- (1) The ACCC will not accept responsibility if a tenderer fails to become aware of any alteration, correction or notice, which would have been apparent from a visit to the ACCC's website or from other information available from the contact officer. Accordingly, tenderers are advised to:
 - check the ACCC's website from time to time for any addenda that may have been issued; and
 - ensure they 'refresh' their web browser (by pressing the 'Refresh' button on their browser screen) to ensure they access the most up-to-date website information;
- (2) in deciding to lodge or not lodge a request for tender or in the interpretation of this request for tender, the tenderer does not rely on;
 - any representation (whether oral or in writing) other than as expressed in this request for tender; or
 - other conduct of the ACCC, or any of its officers, employees, advisers or agents;
- (3) although believed to be accurate as at the date of this request for tender, any information contained in this request for tender may change;
- (4) where any such information relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, expressed or implied, is made by the ACCC, or any of its officers, employees, agents or advisers that the statements contained in this request for tender will be achieved;
- (5) this request for tender is designed to reflect and summarise information concerning the ACCC's requirement only and is not necessarily a comprehensive description of it;
- (6) neither the delivery of the request for tender nor any agreement made subsequent to this request for tender will imply that there has been no material change since the date of this document or since the date as at which any information contained in this request for tender is stated to be applicable;
- (7) except as required by law and only to the extent so required, the ACCC and its respective officers, employees, agents and advisers will not be liable to any person or body for any loss, damage, cost or expense arising from any information or representations, actual or implied, contained in or omitted from this request for tender, or by reason of any reliance by any person or body on any such information or representation; and
- (8) the tenderer should seek its own professional advice as appropriate and should not construe this request for tender as investment, legal or tax advice.

8.2 Costs of tendering

- (a) The costs and expenses incurred by the tenderer in responding to this request for tender are the responsibility of the tenderer.

8.3 Presentations

- (a) Tenderers may be required to give a short presentation regarding their response or attend an interview. Such requirements will be at the ACCC's sole discretion. All costs incurred by the tenderer in attending or hosting such presentations must be borne by the tenderer.

8.4 Tenderer to inform itself

- (a) The tenderer acknowledges that it is deemed to have;
- (1) examined this request for tender, any documents referred to in it, and any other information made available in writing by the ACCC to tenderers for the purpose of tendering;
 - (2) examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its tender;
 - (3) satisfied itself as to the correctness and sufficiency of its tender, including its tendered prices; and
 - (4) examined the AusTender terms of use which are obtainable on the AusTender website.

8.5 The ACCC's rights

- (a) The ACCC, at its absolute discretion, reserves the right to:
- (1) vary the terms of the request for tender, or the structure, requirements or process referred to in this request for tender;
 - (2) vary any timing referred to in this request for tender;
 - (3) determine at any stage a short-list of tenders;
 - (4) cease, suspend or vary the request for tender process where it is in the public interest to do so;
 - (5) cancel or amend the information or requirements set out in this request for tender;
 - (6) add or remove any tenderer from consideration;
 - (7) accept or reject any tenders whether or not they are compliant with this request for tender;
 - (8) accept or reject any tender that the ACCC considers illegible;
 - (9) accept or not consider any tender that does not conform to the minimum content and format requirements specified in this request for tender;
 - (10) seek additional information or clarification from any or all tenderers (including their subcontractors or agents);
 - (11) provide additional information to all tenderers;
 - (12) seek and/or contact any contacts or referees other than those proposed by tenderers;
 - (13) create a shortlist of tenders following preliminary evaluation;

- (14) negotiate or if it is not in the public interest, refuse to negotiate with any or all tenderers or a non-tenderer;
 - (15) negotiate on terms different to those specified in this request for tender;
 - (16) add to, alter, delete or exclude the services;
 - (17) discontinue negotiations with any tenderer;
 - (18) enter into a contract or other binding relationship outside the request for tender process; and
 - (19) enter into a contract on terms different to that specified in this request for tender.
- (b) The ACCC will not be liable or in any way responsible for any loss, damage, cost or expense incurred by the Tenderer because the ACCC;
- (1) exercises any rights referred to in Clause 8.5; or
 - (2) fails to inform the Tenderer of the exercise of rights under Clause 6.5.

8.6 Addenda

- (a) If the ACCC varies the terms of this request for tender, or the structure, requirements or process referred to in this request for tender prior to the closing time on the closing date, the ACCC will load a formal addendum to the request for tender on AusTender, in the section relating to this request for tender, and a system generated electronic advice will automatically be issued to all entities who have registered their interest in this request for tender. Tenderers must ensure their AusTender registration details are correct for this purpose.
- (b) Any clarification by the ACCC may also be issued as an addendum using the same method described in clause 8.6(a).
- (c) Upon issue, each addendum forms part of the request for tender.
- (d) If the tenderer does not acknowledge receipt of all addenda its tender may be rejected.

8.7 Ownership of tenders and tender documents

- (a) The tenderer agrees that the tender and all copies of the tender submitted to the ACCC become the property of the ACCC and that the ACCC may make further copies of, and use, the tender for the purposes of evaluating the tender and, if necessary, preparing a contract. However, intellectual property in the information contained in a tender will not pass to the ACCC simply by virtue of submission of that tender.

8.8 No binding relationship

- (a) It is not intended by the ACCC or the tenderer that the issue of the request for tender or any response to it creates a legal relationship or obligation in respect of;
- (1) the process to be followed; or
 - (2) entering into a contract with the tenderer.

8.9 Public statements

- (a) The tenderer must not make any public statements in relation to this request for tender or any subsequent agreement arising from this request for tender without the prior written permission of the ACCC.

8.10 Probity of tenders

- (a) The tenderer must not;
- (1) lodge a tender that contains false or misleading claims or statements;
 - (2) lodge a tender that has been compiled with the;
 - improper assistance of employees or ex-employees of the Commonwealth, or contractors or ex-contractors of the Commonwealth, or
 - utilisation of information unlawfully obtained from the Commonwealth;
 - (3) engage in collusive tendering, anti-competitive conduct or any other similar conduct with any other tenderer or any other person in relation to the preparation or lodgement of its tenders; or
 - (4) violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the preparation of its tender.

8.11 Dealing with complaints

- (a) If a tenderer has a complaint about the procurement process, it must in the first instance contact the contact officer named at Clause 7.1.
- (b) The tenderer agrees to the ACCC applying the following procedures to resolve any complaint:
- (1) The contact officer will review the complaint with a view to finding a simple solution to appropriately resolve the complaint;
 - (2) If the complaint remains unresolved the ACCC will appoint a committee with members independent of the request for tender process to address the complaint;
 - (3) If the complaint remains unresolved after consideration by the committee, the matter will be referred to a mutually acceptable mediator for further action;
 - (4) If the parties through the mediator fail to reach agreement, the tenderer may pursue the matter through the Australian civil legal system.

8.12 Pricing

- (a) When proposing prices, the tenderer must;
- (1) where GST is applicable to services which are ‘taxable supplies’ within the meaning of the GST Act, ensure that prices are GST inclusive;

- (2) where costs and expenses (including any foreign and domestic direct or indirect taxes, duties or charges) will be incurred by entering into or performing any contract resulting from this request for tender, absorb those costs and expenses in the prices.
- (b) Tender prices must not vary according to the mode of payment or alter during the period of tender validity.
- (c) The tenderer should note the Commonwealth’s standard 30 day period for the payment of invoices as specified in the draft Contract attached.
- (d) The tenderer should estimate the total price for this assignment and the proposed milestone payments. An appropriate pricing arrangement will be negotiated with the preferred tenderer which may comprise elements of fixed price, capped price or time and materials.

9 Tender evaluation

Tenders are to be assessed on the basis of best value for money consistent with Commonwealth purchasing policies.

9.1 Evaluation criteria

For the purpose of evaluation, the criteria for selecting the panel members will depend upon whether, in the opinion of the ACCC, the supplier can best provide the required services as determined by:

Evaluation criteria	Information to be supplied
1. The extent to which tenderers meet the Statement of Requirement, as demonstrated by the previous experience and past performance of the relevant personnel.	<ul style="list-style-type: none"> • Detailed capability statements and tender response generally • Details of previous assignments undertaken and references • Curriculum vitae of all personnel proposed
2. The degree of overall compliance with the RFT and the Standard Form Contract, including the tenderer’s ability to identify and manage conflicts of interest that may arise	<ul style="list-style-type: none"> • Statement of Compliance for the RFT in Appendix D • Statement of Compliance with Standard Form Contract – Appendix E
3. The degree of overall compliance with the Statement of Requirement: clause 4	<ul style="list-style-type: none"> • Summary of Proposal in Appendix F
4. Assessment of pricing and any non-quantifiable benefits.	<ul style="list-style-type: none"> • Itemised price information as detailed in Appendix G.

9.2 Selection of suppliers

Neither the lowest priced, nor any tender, will necessarily be accepted by ACCC.

10 Tender responses

10.1 Information to be provided

Your tender must provide the information, and be submitted in the format, that is described below and as further detailed in the Appendices.

Each tender is to comprise the following documents:

1. Tender response cover sheet – as per Appendix B
2. Summary of proposal that addresses the evaluation criteria – as per Appendix C
3. Statement of compliance with the RFT – as per Appendix D
4. Statement of compliance with the standard form contract – as per Appendix E
5. Response to statement of requirement – as per Appendix F
 - Statement of capability showing experience and demonstrated expertise to provide services described in the statement of requirement section of the request for tender
 - Curriculum vitae of all specified personnel proposed
 - Previous performance of team or individuals
6. Pricing and financial benefits – as per Appendix G
7. Tender's declaration – as per Appendix H

Appendix A – Information on Communications Group’s activities in relation to the Mobile Telecommunications Sector

Overview

The **Communications Group’s role** at the ACCC conducts the economic regulation of the Telecommunications industry. This involves regulating access to natural monopoly telecommunications infrastructure, and administering the competition provisions of the *Trade Practices Act* (the Act). The ACCC has responsibilities over the economic and competition regulation of the Telecommunications industry under Parts XIB and XIC of the TPA and various provisions of the Telecommunications Act and Telecommunications (Consumer Safeguards etc) Act. This requires the Communication’s Group to administer, amongst other things, industry specific competitive safeguard provisions similar to those under Part IV in relation to anti-competitive conduct in telecommunications markets and an access regime in relation to certain declared services that is loosely based on that of Part IIIA.

Telecommunications Access Regime

Under section 152AL of Australia’s *Trade Practices Act 1974* (the Act) the declaration of a service creates a requirement for those carriers supplying the service (known as ‘access providers’) to provide the service, upon request, to other service providers (known as ‘access seekers’). In doing so, the access provider must take all reasonable steps to ensure that the technical and operational quality of the service is equivalent to that which the access provider provides to itself. Declaration thus ensures that service providers have access to the inputs they need to supply competitive telecommunications services to end-users. The terms and conditions of supply for a declaration can be agreed through commercial negotiations between the access seekers and the access providers.

Once a service is declared under Part XIC of the Act, it is subject to the standard access obligations. Any disputes between access seekers and access providers in relation to the terms and conditions on which the standard access obligations are fulfilled, can be brought to the ACCC for arbitration. The regime also enables access providers to lodge undertakings regarding conditions of access and seek exemptions from the standard access obligations. These two processes are further detailed below.

In the case that access seekers or the access providers cannot agree on the terms and conditions for supply of the declared service, either party can notify the ACCC of an access dispute, with a view to initiating the arbitration procedures set out in Part XIC of the Act. Arbitration is a process where each party puts its case to the ACCC. The ACCC then makes a determination that binds the parties. In doing so, however the ACCC is not merely choosing between the parties’ positions but must consider the issues in terms of the ‘public interest’ criteria set out in s152CR of the Act. The ACCC may therefore undertake its own analysis and seek material in addition to that provided by the parties.

Division 5 of Part XIC of the Trade Practices Act enables access providers to voluntarily lodge written access undertakings with the ACCC specifying the terms and conditions upon which they agree to supply a specified service. There are two types of undertakings. Ordinary access undertakings are lodged in relation to current declared services. Special access undertakings relate to services that are either not yet declared, or that the carrier does not yet supply. The purpose of undertakings is to give owners/operators of telecommunications facilities (including

proposed or new facilities) the opportunity to remove the commercial uncertainty as to what access conditions will apply to the service, by agreeing to certain access arrangements with the ACCC. The ACCC can accept or reject the undertaking. The access provider can seek to vary an undertaking that is in force or it can withdraw the undertaking.

Where the Commission has approved an access undertaking, an arbitration determination made by the ACCC must not be inconsistent with that undertaking.

The Mobile Terminating Access Service

The Mobile Terminating Access Service (MTAS) is a wholesale input, used by providers of calls from fixed-line and mobile networks, in order to complete calls to mobile subscribers connected to other networks. The MTAS is an essential input into the provision of calls to mobile phone users where the mobile phone user is on a separate network to the individual who originates the call. This is the case irrespective of whether the call terminates on a second generation (2G) GSM or CDMA network. It is also a key element in the provision of calls that terminate on 2.5G and third generation (3G) mobile networks

Declaration of the Mobile Terminating Access Service

On 30 June 2004, the ACCC declared the mobile terminating access service. At the same time, the ACCC also made a pricing Determination setting out pricing principles for the MTAS. Included in the pricing principle Determination were a set of non-binding indicative price-related terms and conditions for access to the MTAS. The pricing principle Determination was made under section 152AQA of the Act and included an adjustment path of indicative wholesale prices from 1 July 2004 through to 30 June 2007. The schedule of prices specified by the adjustment path is outlined in the table below.

Period	Price
1 July 2004	21 cpm
1 January 2005	18 cpm
1 January 2006	15 cpm
1 January 2007	12 cpm

Adjustment path for the pricing principle

The pricing principle Determination referred to above is not binding on providers of the MTAS. However, if the Commission is notified of an access dispute in relation to the MTAS, it must have regard to the pricing principle Determination when making an arbitral determination in relation to such an access dispute.

Purpose of the Economic Cost Model

The Communications Group is seeking tenders for the provision of an economic cost model as outlined in clause 4.2. The economic cost model will provide the ACCC with a costing tool to support its regulatory functions in relation to the pricing of the MTAS.

Appendix B – Response cover sheet

**Request for Tender for the
Provision of Expert Telecommunications Sector Consultancy
Services to the Australian Competition and Consumer Commission**

ACCC RFT

RFT Closing Time: 2:00pm AEST, 5 May 2006

Profile of Party Expressing Interest

Full name of party expressing interest		
Registered Office		
Principal Place of Business		
Date And Place of Incorporation		
Trading and Business Names		
ACN, ABN or ARBN		
Registered for GST	Yes	No

Details of Contact Person

Name	
Position	
Address	
Phone Number	
Facsimile Number	
Email Address	

Appendix C – Summary of proposal

In **no more than two pages**, provide an overview of the tender that addresses the evaluation criteria.

Appendix D – Statement of compliance with request for tender

A response (including any requested information) must be provided against each of the sections or clauses of the Request for Tender that are listed in the table below.

The response is to include as a minimum a compliance statement that indicates whether the tenderer either “complies” with or has “noted” the clause (as the context requires), or “does not comply”.

The response should include an explanation for any clauses in respect of which the tenderer does not comply (which may include a revised clause with which the tenderer would comply). This section of the response should be appended and cross referenced to the table.

The response may also include brief remarks clarifying the response where necessary.

Clause/Annex/ Schedule.	Compliance Statement	Cross Reference to Response	Remarks
3.1			
3.2			
3.3			
3.4			
3.5			
4.1			
4.2			
4.3			
4.4			
4.5			
4.6			
5.1			
5.2			
5.3			
5.4			
5.5			
6			
7			
8.1			
8.2			
8.3			

8.4			
8.5			
8.6			
8.7			
8.8			
8.9			
8.10			
8.11			
8.12			
9.1			
9.2			
10			

Appendix E – Statement of Compliance with Standard Form Contract

A response (including any requested information) must be provided against each of the sections or Standard Form Consultancy Contract that are listed in the table below.

The response is to include as a minimum a compliance statement that indicates whether the tenderer either “complies” with or has “noted” the clause (as the context requires), or “does not comply”.

The response should include an explanation for any clauses in respect of which the tenderer does not comply (which may include a revised clause with which the tenderer would comply). This section of the response should be appended and cross referenced to the table.

The response may also include brief remarks clarifying the response where necessary.

Clause/Annex/ Schedule.	Compliance Statement	Cross Reference to Response	Remarks
1			
2			
3.1			
3.2			
3.3			
3.4			
3.5			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
Schedule 1			

Annexe A			
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Appendix F– Response to statement of requirement

In this section, the tenderer is required to address in detail its ability to provide the services described in the statement of requirement section of the request for tender.

As part of this response, please provide a statement of capability that describes the experience and expertise of the tenderer that will enable the tenderer to provide the services that are described in the statement of requirement section of the request for tender.

As part of this response, please include the names of key personnel that will be responsible for providing the consultancy services and a copy of their current curriculum vitae that outlines relevant qualifications and experience

As part of this response, please provide the names and contact details of previous clients (preferably public sector, academic or large corporation) who can comment on the performance of the nominated personnel, preferably in the provision of like consultancy services.

As a guide only, it is anticipated that this section will run for no more than twenty pages.

Appendix G – Pricing template

Tenderers must complete the following Pricing Schedules in accordance with the terms and conditions of the RFT.

Tenderer's Name.....

Tenderer Charge Out Rates

Position	Rate per Hour \$A	Rate per Day \$A
Partner / Director		
Principal Analyst		
Senior Analyst		
Analyst		
Other (Specify)		

List any pricing assumptions and any other costs that the ACCC may be liable for.

Estimated price for the whole assignment:

Proposed milestone payments:

(based on time or major project deliverables)

Appendix H – Tenderer’s declaration

I (1)

.....
declare that to the best of my knowledge and belief:

1. [insert full Tenderer company name and its ABN] ("the Tenderer") has made itself aware of the contents of the Request for Tender ('RFT').
2. The Tenderer is not aware of any reason which would prevent it from lodging a tender in response to the RFT published by the ACCC in March 2006, entitled "Request for Tender for the Provision of Expert Telecommunications Sector Consultancy Services to the Australian Competition and Consumer Commission".
3. The Tenderer, its respective officers, employees, agents or advisers have not violated any applicable laws or Commonwealth policies regarding the offering of unlawful inducements in connection with the preparation of its tender.
4. The Tenderer, its respective officers, employees, agents or advisers have not sought in any way to obtain a special advantage from a Commonwealth officer in connection with the preparation of its tender.
5. The Tenderer, its respective officers, employees, agents and advisers have not taken steps, and will not take steps, to obtain or use confidential information of the Commonwealth or any Commonwealth Agency or Authority in relation to which the services are proposed to be provided, other than information which is publicly available or made available to Tenderers by the Commonwealth.
6. The Tenderer has not, and will not, engage in collusive Tendering, anti-competitive conduct or other similar conduct with any other Tenderer during the tender process.
7. All the information contained in this tender, is true and correct to the best of my knowledge.
8. I am authorised to represent the Tenderer during the RFT process and to bind the Tenderer in any discussions with the Commonwealth.

Signed

by:.....

Name:

the day of 20.....

Witnesses

.....

Name.....

Appendix I – Submission of questions form

Potential Suppliers should use this form to submit questions regarding the RFT. The ACCC will provide a complete list of questions received along with the responses to all Potential Suppliers who participate. Questions will be phrased without identifying the source of the question.

All inquiries will be posted on <http://www.accc.gov.au/CommunicationTender/2006-03/index.html> to ensure all parties have access to information pertinent to the RFT.

Respondent's Details

Name	
Address	
Email address	
Telephone Number	

RFT Reference	Question