

What's needed for the MED EOI for NZ Rural Broadband Funding?

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What do providers need to do to deal with MED's 22 April request for Expression of Interest (EOI) in relation to projects utilising the NZ\$300M Rural Broadband Initiative?

Quite a bit in a short time frame.

The funding is available for fibre and related services in rural areas. This initiative covers the 25% of the population that is not covered by the UFB urban initiative.

The NZ\$1.5Bn UFB urban initiative is taking a different path. Those seeking funding have already lodged an initial proposal (the ITP phase). To get to the next stages, they had to lodge that proposal.

However, for the Rural Broadband Initiative, responding to the request for EOI is optional.¹ Providers can still come in later at the RFP stage, bypassing the EOI.

Best to lodge the EOI even though optional

Generally, potential providers would be wise, however, to lodge an EOI. MED can still shape the structure of the RFP, based on feedback during the EOI stage. That's a key reason for providing an EOI course. For example:

- Which regions get funding first is influenced by the information in the EOIs (clearly this will be staged as funds are released from sources such as the new Telecommunications Development Levy);
- Providers have an opportunity to encourage changes to the RFP, to suit their particular price/non-price service combination. (This

could be particularly important in relation to rural services).

Even the high level response requires detailed work

Although the EOI requires less detailed responses than the subsequent RFP, a lot of work is still required to lodge a compliant EOI. For example, the providers must:

- pull together their team, to demonstrate they can deliver:
 - the required services (namely, fibre services to schools, backhaul and services to other rural end-users);
 - optional additional services such as voice connectivity (if they choose to do this);
- provide indicative pricing for retail and wholesale Layer 1 and 2 services (BUBA and EUBA equivalent for Layer 2);
- demonstrate how they will provide open access and equivalence;
- outline how they will engage with other stakeholders (such as local government where cooperation and funding may assist).

EOI not binding

¹ Assuming MED follow standard government practice

The EOI is not binding² but, for example, generally it will be commercially difficult to pull back later from the indicative wholesale and retail pricing, even though that is technically possible. The need to scope this and other detail indicates that providers will have to work up their proposed models in some detail. However, framed carefully, some room for later movement may be possible.

Innovative alternatives

The request for EOI encourages submission of alternative models, so that innovative solutions can be put forward. Alternatives to fibre can be considered in some instances.

Focus on wider benefits

There is a focus on broader benefits from the initiative. As the Minister of Communications and Information Technology said on 21 April, Government has given:³

...community benefits significant weighting in the assessment of

² The Request for EOI says statements in the EOI are to be accurate, but this is different from committing legally for the future to those statements: the submitter can, if done carefully, withdraw from the statements later. In that situation, submitters need to watch for Fair Trading Act and Contractual Remedies Act implications, among other things.

³ Speech to the TUANZ Telecommunications Day

proposals. In particular, the following factors will be considered:

- the service speed, quality, scalability and coverage that's being proposed
- the rural businesses and key community sites, such as health centres, libraries and marae, which will be connected to improved broadband services
- any improvements in cellular coverage which will occur
- and the extent to which the bidder has engaged with local government, communities, businesses, iwi and other community groups. This will particularly involve the extent to which these parties will reduce the level of RBI grants required through, for example, guaranteeing demand, contributing funding or reducing costs.

The focus on these criteria will guarantee that the benefits to the community will be maximised and that the 97% target will be achieved.

A lot to do

Now, that's a lot to be achieved by the end of May when the EOIs are due, particularly given that even with the \$300M funding, getting viable proposals will be a challenge.

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

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