



Request for Tender

To re-establish a Legal Services Panel for the Australian Government

Tender Reference: AGD APP 2023-24-003

Closing Time: 9.00am (Canberra Local Time AEDT) on Tuesday 19 December 2023

Tender Submission: Tenders must be submitted in the 360 Tender System [refer paragraph 9.1]

Important Note: **LATE TENDERS WILL NOT BE ACCEPTED EXCEPT WHERE
PARAGRAPH 11.6 OF THIS RFT APPLIES**

Revision 4: Updates to 15 December 2023

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PART A – LEGAL SERVICES PANEL

1. Establishment of the Panel

1.1 Introduction

1.1.1 The Commonwealth of Australia represented by the Attorney-General's Department (**AGD**) is conducting an open approach to market to re-establish the Legal Services Panel for the Australian Government (**the Panel**). The objectives of this exercise include ensuring the quality, consistency and efficiency of the purchase of external legal services for the Commonwealth.

1.1.2 AGD is managing a coordinated procurement on behalf of the Commonwealth to establish a new Panel that will replace the existing panel.

1.1.3 As a coordinated procurement, use of the Panel will be:

- (a) mandatory for non-corporate Commonwealth entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act); and
- (b) optional for other entities that are subject to the PGPA Act.

1.1.4 The Panel will replace the current Legal Services Panel that will expire on 30 June 2024.

1.1.5 Once established, AGD will administer the Panel.

1.2 Term of the Panel

1.2.1 The panel will be in effect from 1 July 2024 for a period of three years with an option to extend for two additional periods of up to twelve months each.

1.2.2 Timetable Table 1 sets out the timetable for this procurement process. With the exception of the Closing Time which is final, subject to paragraph 11.4.2, the dates are indicative only and do not create an obligation on the part of AGD to take any action on the date specified.

Table 1 – Procurement Timetable

| Milestone | Date |
|-----------------------------|--|
| Enquiry Cut-off Date | 11.59pm Monday 11 December 2023, Canberra time AEDT |
| Closing Time | 9.00am Tuesday, 19 December 2023, Canberra time AEDT |
| Commencement Date | 1 July 2024 |

1.2.3 AGD will not respond to queries from Industry or Respondents about the milestone dates in Table 1 – Procurement Timetable, or on the progress of the evaluation of Tenders. If there

are any perceived delays in meeting the milestone dates in paragraph 1.2.2 AGD may, at its discretion, publish updates to the timetable on AusTender and the 360 Tender System.

1.3 Notices about the procurement

1.3.1 Information about the procurement and notification of the release of the Request for Tender will be published on AusTender. Potential Respondents must be registered on AusTender at www.tenders.gov.au/RegisteredUser/Register to receive any information or notifications about the procurement.

2. Scope of the Panel

2.1 Services included in the Panel

2.1.1 The Legal Services required under the Panel cover the following Areas of Law:

- (a) Workplace, Industrial Relations and Compensation
- (b) Public Law
- (c) Corporate and Commercial (General)
- (d) Corporate and Commercial (Specialist)
- (e) Property and Environment
- (f) Legal Support Services

2.1.2 Secondments of a Legal Services Provider's personnel can occur when a Legal Services Provider is providing services under any Area of Law.

2.1.3 Legal Support Services covers short to medium term resource service arrangements for personnel to provide general legal support to the in-house legal area or operations of the Commonwealth Entity for periodic or project work or to assist with resourcing gaps, which may be provided:

- (a) under the supervision of the relevant Commonwealth Entity; or
- (b) under the supervision of a Legal Services Provider.

2.1.4 Further information about the Areas of Law is provided in Schedule 2 (Statement of Requirement) of Attachment C – Head Agreement.

2.2 Previous specialised stream panels

2.2.1 Specialised stream panels were previously excluded from the scope of the Panel, in relation to the technical legal work of the Australian Competition and Consumer Commission (ACCC) and Australian Taxation Office (ATO). For Legal Services that were not technical in nature the Panel was used. ACCC and ATO technical legal work previously covered by these stream panels will be covered under the following Areas of Law of the Panel:

- (a) Tax technical law: Corporate and Commercial (Specialist)
- (b) Competition and consumer law: Corporate and Commercial (Specialist).

2.2.2 For the avoidance of doubt, legal work that is properly considered as falling within another Area of Law on the Panel may be obtained by the ATO and ACCC under that other Area of Law. For example, administrative law legal services may be obtained under the Public Law Area of Law and tax-related debt recovery work may be obtained under the Corporate and Commercial (General) Area of Law.

2.3 Out of scope services

2.3.1 The Services required under the Panel do not include:

- (a) the engagement of counsel or barristers;
- (b) engagement of government legal services (including, for example the Australian Government Solicitor, Office of Parliamentary Counsel, Department of Foreign Affairs or Office of International Law) for tied or untied work; and
- (c) engaging legal services providers in a foreign jurisdiction, to provide legal services in relation to the laws of a foreign or international jurisdiction.

2.3.2 In accordance with the Panel flexibility mechanisms, Commonwealth Entities may purchase legal services from service providers not on the Panel:

- (a) for up to ten percent of the relevant Commonwealth Entity's total expenditure on external legal professional fees in a financial year; or
- (b) with an exemption for special circumstances granted by AGD.

2.4 Refreshing the Panel

2.4.1 AGD may, at any time during the Head Agreement Period:

- (a) approach the market to add other service providers to the Panel in one or more Areas of Law; and
- (b) add additional Areas of Law to the Panel (for which Legal Services Providers on the Panel and other legal services providers may tender to provide).

3. Background

3.1 Establishment of the Panel

3.1.1 In 2019, the Commonwealth established the first iteration of the Legal Services Panel as a direct outcome of a review of how the Australian Government (Government) purchases legal services. The Legal Services Panel provides a mechanism for purchasing legal services that:

- (a) mandates the use of the Panel by non-corporate Commonwealth entities that are subject to the Public Governance, Performance and Accountability Act 2013 (PGPA Act);
- (b) makes the use of the Panel optional for other entities that are subject to the PGPA Act;
- (c) does not prevent Commonwealth Entities purchasing or acquiring legal services from the Australian Government Solicitor, who will not be part of the Panel; and

(d) enables Commonwealth Entities to purchase legal services from any other service provider not on the Panel in accordance with the Panel flexibility mechanisms:

- i. for up to ten percent of the relevant Commonwealth Entity's total expenditure on external legal professional fees in a financial year; or
- ii. with an exemption for special circumstances granted by AGD.

3.1.2 AGD determined that an ongoing coordinated procurement for Legal Services would provide a range of benefits, including:

- (a) improved quality, consistency and efficiency of purchasing legal services with standard terms and conditions and a performance management framework;
- (b) cost savings and efficiencies for industry by reducing administration and tendering efforts;
- (c) reduction in the time and effort for Commonwealth Entities and for industry participants to establish contracts; and
- (d) providing standardised fee structures for legal services providers, noting that a legal services provider's fees across previous panels could vary significantly for the same types of services.

3.1.3 Entities other than non-corporate Commonwealth entities that are subject to the PGPA Act may opt in to use the Panel, and Legal Services Providers will be required to offer the Services on the same terms and conditions, including price. The Commonwealth makes no representation or warranty about the participation or continued participation of such Commonwealth Entities.

3.2 Due Diligence Information

3.2.1 AGD has compiled historical information relating to the Government's legal services expenditure across the Areas of Law that may assist Respondents to inform themselves about the Government's legal services requirements.

3.2.2 The approximate proportion of Commonwealth external legal spend for each Area of Law, based on expenditure data from entities that accessed the panel in the 2021/22 financial year, is provided in Table 2. The total expenditure for financial year 2021/22 by this group of entities was approximately \$374 million.

3.2.3 To the extent possible, the information excludes expenditure in the following categories:

- (a) Tied work
- (b) Government legal service providers, as referred to in paragraph 2.3.1 (b)
- (c) Overseas legal expenditure
- (d) Disbursements
- (e) Briefs to Counsel

Table 2

| Area of Law | Approximate proportion of expenditure in FY 2021/22 |
|--|--|
| Workplace, Industrial Relations and Compensation | 9% |
| Public Law | 66% |
| Corporate and Commercial (General and Specialist) | 9% |
| Property and Environment | 13% |
| Litigation Specialisation | 1% |
| Legal Support Services | 2% |

NB: This is based on the total of all matters in the 2021/22 financial year where each legal support arrangement counted as one 'legal matter.'

3.2.4 More information about legal services expenditure is available at Commonwealth legal services expenditure | Attorney-General's Department (ag.gov.au).

3.2.5 The Commonwealth makes no representation or warranties that the historical information provided in this approach to market is complete, current or accurate or that this information reflects the expenditure that will occur in the future.

PART B – ABOUT THIS REQUEST FOR TENDER

4. Overview

4.1 Whole of Government Legal Services

- 4.1.1 AGD is conducting this open approach to market to re-establish a panel of legal services providers for the Government.
- 4.1.2 Suitably experienced interested parties are invited to lodge a Tender in accordance with this RFT by completing the tender response questionnaire in 360 Tender.
- 4.1.3 Tenders will be assessed to identify responses that provide the greatest value for money. The number of Legal Services Providers will be limited, and will be set according to Government's expected legal service requirements under each Area of Law.
- 4.1.4 Respondents should not expect that negotiations will take place. To have the best chance of being assessed as providing value for money, Respondents should provide their final and best offer in their Tender response.
- 4.1.5 Once established, AGD will administer the Panel for the benefit of Commonwealth Entities.

4.2 RFT Structure

- 4.2.1 This RFT is structured as follows:

- (a) **Part A** – Legal Services Panel;
- (b) **Part B** – About this Request for Tender;
- (c) **Part C** – Conditions of Tender;
- (d) **Part D** – Evaluation of Tenders;
- (e) **Attachment A** – Glossary;
- (f) **Attachment B** – Public Interest Certificate;
- (g) **Attachment C** – Head Agreement
- (h) **Attachment D** – Information about the Tender Response Questionnaire;
- (i) **Attachment E** – Guidance on the Shadow Economy Policy; and
- (j) **Attachment F** – 360 Tender System Respondent's User Guide.

4.3 Contractual Arrangements

- 4.3.1 Successful Respondents will be required to enter into a Head Agreement with the Commonwealth under the terms and conditions at **Attachment C – Head Agreement**, without amendment. This is a Condition of Participation, refer paragraph 10.1 of this RFT.

4.3.2 It is anticipated that the Services will commence from 1 July 2024 and expire on June 30 2027. The Head Agreement may be extended by AGD, at its sole discretion by two periods of up to twelve months each.

4.3.3 During the term of the Head Agreement, AGD may review reporting requirements in Schedule 8 (Reporting) of **Attachment C – Head Agreement** (for example, the requirement to report pro bono hours by personnel classification) to ensure reporting requirements remain effective and of overall benefit to the Commonwealth, and identify if modifications are warranted.

5. Timeframe for this RFT

5.1 Timetable

5.1.1 Table 3 sets out the anticipated timeframe for the primary stages of this RFT. However, with the exception of the Closing Time which is final (subject to paragraph 11.4.2), the dates are indicative only and do not create an obligation on the part of AGD to take any action on the date specified.

Table 3 – RFT Timetable

| Milestone | Date |
|---------------------|--|
| RFT Release | 5.30pm (Canberra local time, AEDT) 21 November 2023 |
| Time open in market | 27 days |
| Closing Time | 9.00am (Canberra local time, AEDT) 19 December 2023 |

6. Industry briefings

6.1.1 AGD has conducted an industry briefing to provide interested parties with information concerning this RFT. Notification of the format of the industry briefing, and details about how to register to attend, was published as a notice on AusTender.

6.1.2 Information in relation to the industry briefing has been published on AusTender under notice [AGD/LSPR-Notice2](#) and [AGD/LSPR-Notice3](#).

7. RFT Publishing and Addenda

7.1 RFT Publishing

7.1.1 Notification of this RFT will be published on both AusTender and the 360 Tender System. A link will be provided on AusTender to direct the user to this RFT in the 360 Tender System. Respondents must either register for a new account on the 360 Providers' Portal or sign in to an existing 360 Provider's account to download the RFT documentation.

7.1.2 If the Respondent has obtained the RFT documentation from any source other than the 360 Tender System, they must visit the 360 Tender System, register for a new account and download the RFT documentation, in order to receive notification of Addenda.

7.2 Notice of Addenda

7.2.1 AGD has the right to add, vary, supplement or clarify any aspect of this RFT, or to provide additional information in relation to this RFT, at any time by issuing an Addendum in the 360 Tender System. Addenda will also be published in bundles through AusTender after they have been published in the 360 Tender System. Respondents should register their interest on the 360 Tender System to receive Addenda as soon as they are published as there may be a delay in publishing on AusTender.

7.2.2 Respondents who have registered and downloaded this RFT documentation from the 360 Tender System will be notified by the 360 Tender System via email of any Addenda issued.

7.2.3 The Respondent must open all Addenda in the 360 Tender System, before the 360 Tender System will allow the Respondent to submit its Tender. The 'Submit and Lock Responses' button will not appear in the 360 Tender System until all Addenda have been opened.

7.2.4 Respondents acknowledge that they have no claim against AGD (or the Commonwealth in any other capacity) or Simplylogical.net if they fail to become aware of any Addendum.

7.2.5 All Addenda issued by AGD under this paragraph 7.2 will form part of this RFT.

7.3 AusTender and 360 Tender System

7.3.1 Access to and use of AusTender and the 360 Tender System is subject to the terms and conditions governing AusTender and the 360 Tender System respectively. In participating in this RFT, the Respondent must comply with those terms and conditions and any applicable instructions, processes and procedures:

(a) for AusTender – as advised on the AusTender webpage:
<https://www.tenders.gov.au/infolinks/termsofuse>; and

(b) for the 360 Tender System - as advised on the 360 Tender System webpage:
<https://360providers.apetsoftware.com.au/Public%20Portal%20Terms%20of%20Use.pdf?2023-08-11>.

7.4 AusTender and 360 Tender System Support

7.4.1 All queries and requests for technical or operational support for the 360 Tender System must be directed to:

360 Tender System Support

Email: support@simplylogical.net

Telephone (within Australia): 02 51 004 009

Telephone (International): +61 251 004 009

7.4.2 All queries and requests for technical or operational support for AusTender should be directed to:

AusTender Help Desk

Email: tenders@finance.gov.au

Telephone: 1300 651 698

International: +61 2 6215 1558

7.4.3 Support for the 360 Tender System and the AusTender Help Desk is available between 9am and 5pm Canberra local time (AEDT), Monday to Friday (excluding Australian Capital Territory and national public holidays).

8. Enquiries Relating to this RFT

8.1 Enquiries from Respondents

8.1.1 Enquiries relating to this RFT, including questions and requests for additional information or clarification, must be made in writing before the Enquiry Cut-off Date set out in Table 1 – Procurement Timetable in paragraph 1.2.2 of this RFT. Enquiries must be directed to the Request Manager through the “Contact Request Manager” feature within the 360 Providers’ Portal, which opens an “Enquiries” page.

8.1.2 AGD will use its best endeavours to acknowledge the receipt of enquiries within two Business Days of the enquiry being lodged. If the Respondent has not received an acknowledgment from AGD within this timeframe, the Respondent should telephone (02) 6141 3642 to advise that an acknowledgement has not been received. This telephone number is only to be used to advise that an acknowledgement to an enquiry, or a complaint lodged under paragraph 8.4 of this RFT, has not been received.

8.1.3 The Request Manager is the sole contact point for any queries, or requests for any information, in relation to this RFT until this procurement process has concluded.

8.1.4 Enquiries received before the Enquiry Cut-off Date may be answered, subject to paragraph 8.2.2 of this RFT. Enquiries received after the Enquiry Cut-off Date will not be answered unless AGD determines it would be in the interest of any or all Respondents to provide a response to the enquiry.

8.1.5 AGD encourages Respondents to ask any questions they may have and advises that any enquiries relating to this RFT will not be taken into consideration during the evaluation process. Enquiries should clearly set out the document and paragraph reference to which the enquiry relates.

8.2 AGD's Response to Enquiries

8.2.1 Respondents should note that AGD may, where it considers it appropriate, provide the answer (if any) to an enquiry to the requesting Respondent only or to all potential Respondents on a non-attributable basis by way of an Addendum (in accordance with paragraph 7.2 of this RFT). In order to provide the answer (if any) on a non-attributable basis, AGD reserves the right to modify questions that are lodged before publishing the question and answer.

8.2.2 AGD may, in its sole and absolute discretion, not respond to questions or comments.

8.3 Discrepancies, Errors or Omissions in this RFT

8.3.1 If a Respondent finds, or reasonably believes it has found, any discrepancy, error, ambiguity, inconsistency or omission in this RFT, or any other information given or made available by AGD, the Respondent should promptly notify the Request Manager through the contact points in paragraph 8.1.1 of this RFT. The Respondent should set out in sufficient detail such discrepancy, error, ambiguity, inconsistency or omission.

8.3.2 The notice referred to in paragraph 8.3.1 of this RFT should be provided as soon as possible after the Respondent becomes aware of a discrepancy, error, ambiguity, inconsistency, or omission to enable AGD to take whatever corrective action, if any, it deems appropriate.

8.3.3 Any actual discrepancy, error, ambiguity, inconsistency or omission in this RFT or any other information given or made available by AGD will, if AGD considers (in its absolute discretion) that it is practicable and appropriate to do so, be corrected by AGD and notified to Respondents by way of an Addendum in accordance with paragraph 7.2 of this RFT (without attribution to the Respondent that provided the notice).

8.4 Complaints

8.4.1 Subject to paragraph 8.4.8, any complaints arising out of this RFT process should be lodged with the Request Manager through the contact points in paragraph 8.1.1 of this RFT.

8.4.2 A complaint lodged by a Respondent under paragraph 8.4 of this RFT should:

- (a) state that it is a complaint made under paragraph 8.4 of this RFT;
- (b) contain a clear statement as to what the Respondent considers is defective in this RFT process;
- (c) attach copies of, or references to, information to support the Respondent's view; and
- (d) contain a statement as to what outcome the Respondent wishes to achieve from the complaint process.

8.4.3 AGD will acknowledge receipt of a complaint described in paragraph 8.4.2 of this RFT in accordance with paragraph 8.1.2 of this RFT and will seek to address the complaint as soon as practicable.

8.4.4 Where requested by AGD, a Respondent must co-operate with AGD (including providing information or answering questions) in the investigation and attempted resolution of any complaint in respect of this RFT process.

8.4.5 AGD may, in its absolute discretion in relation to a complaint described in paragraph 8.4.2 of this RFT:

- (a) refer the complaint to a probity adviser;
- (b) have the complaint reviewed by an officer or person nominated by AGD, with a view to finding a solution to appropriately resolve the complaint; or
- (c) contact the Respondent with a view to resolving the complaint.

8.4.6 This RFT process is a covered procurement for the purposes of the *Government Procurement (Judicial Review) Act 2018* (Cth) (**the GP(JR) Act**).

8.4.7 A Public Interest Certificate (**PIC**) has been issued under the GP(JR) Act in relation to this RFT process and a copy of that PIC is available at: [Public Interest Certificates | Attorney-General's Department \(ag.gov.au\)](#) and provided at Attachment B of this RFT.

8.4.8 Any complaint relating to the RFT which is made under the GP(JR) Act is to be lodged using the following link: <https://www.finance.gov.au/government-procurement-judicial-review-act-2018-complaints-questionnaires>

8.4.9 If AGD receives a complaint lodged by a Respondent under the GP(JR) Act, and at the time of the complaint no PIC is in force in relation to this RFT, then AGD reserves the right to suspend this procurement process in accordance with the GP(JR) Act.

8.4.10 Complaints will not prejudice a Respondent's participation in this or any future Government procurement process.

9. Responding to this RFT

9.1 360 Tender System

9.1.1 AGD is using the 360 Tender System to receive tenders in response to this RFT. The 360 Tender System includes a 360 Providers' Portal, which is hosted and supported in Australia. Respondents must submit their tender through the 360 Tender System.

9.1.2 The 360 Tender System is not hosted on AGD's network, and therefore does not use all of the same protections that are used on AGD's network. Any information provided on the 360 Tender System will be subject to the terms and conditions governing that system (see paragraph 7.3.1), and the security protections of the 360 Tender System (see [360 System Security Statement](#)). Further information about the system can be obtained from 360 Tender System Support (see paragraph 7.4.1).

9.1.3 Respondents should refer to the quick reference guides (including the [Sign up & Sign in Guide](#) and [Getting Started Guide](#)), which are available on each screen in the 360 Providers' Portal by clicking on the following icon:



9.1.4 The guide contains instructions on:

- how to register on the 360 Providers' Portal;
- how to contact the Request Manager;
- how to complete and submit a Tender;
- how to change or withdraw a Tender prior to the Closing Time if it has been submitted; and
- the specifications required for web browsers to submit a Tender.

9.1.5 To assist Respondents to submit their Tender, AGD has also developed a 360 Tender System Respondent's User Guide, which is available at **Attachment F** to this RFT.

9.2 Offered Services

9.2.1 Respondents may submit a Tender in respect of some or all of the Legal Services set out in Schedule 2 (Statement of Requirement) of **Attachment C – Head Agreement**.

9.2.2 Respondents may offer to provide Legal Services in one or more Areas of Law, noting that Respondents are not required to offer services in all types of Legal Services described under an Area of Law set out in Schedule 2 (Statement of Requirement) of **Attachment C – Head Agreement**. For the avoidance of doubt, a Respondent may offer services in one type of Legal Service described under an Area of Law.

9.2.3 AGD will not consider joint Tenders.

9.2.4 Respondents will be required to demonstrate their capability and experience to provide the Offered Services to the Australian Government.

9.2.5 To demonstrate their capability and experience to provide the Offered Services, Respondents may include statements in their Tenders about work they have undertaken for non-corporate Commonwealth entities (NCCE), Corporate Commonwealth Entities (CCEs) or Commonwealth Companies (CCs).

9.2.6 Subject to paragraph 9.2.7 and 9.2.8, Respondents may disclose general information about work they have undertaken for NCCEs in their response to this RFT without obtaining the agreement of the relevant NCCE(s) to that disclosure.

9.2.7 Respondents must obtain the agreement of CCEs and CCs before disclosing in their response to this RFT information about the work the Respondent has undertaken for them.

9.2.8 Information the Respondent discloses in response to this RFT must not include any:

- (a) Privileged information
- (b) Information that is not permitted to be disclosed by law including any legislative confidentiality or secrecy provision; or
- (c) Security classified information protected under the Protective Security Policy Framework.

9.2.9 Respondents must obtain all necessary consents to the use and disclosure of any 'personal information' or 'sensitive information' as defined in the Privacy Act in their response to this RFT.

9.3 Best Offer

9.3.1 AGD does not intend to conduct negotiations and intends to conduct the evaluation and select Successful Respondents to the Panel primarily on the basis of the Tenders as submitted. Accordingly, the Respondent is encouraged to submit its best and unconditional offers in the first instance.

PART C – CONDITIONS OF TENDER

10. Participating in this RFT Process

10.1 Conditions for Participation

10.1.1 The Conditions for Participation are mandatory minimum requirements that the Respondent must meet before a Tender can be considered by AGD.

10.1.2 Any Tender that, in the opinion of AGD, does not meet the Conditions for Participation at the Closing Time will be excluded from evaluation.

10.1.3 The Respondent must, at the Closing Time, meet the Conditions for Participation in paragraph 10.1.4 of this RFT.

10.1.4 The Respondent must:

- (a) agree to enter into a Head Agreement with the Commonwealth on the terms and conditions at **Attachment C - Head Agreement**, without amendment, if selected as a Successful Respondent;
- (b) must agree to sign up to the National Pro Bono Target;
- (c) be a legal practitioner or legal practice, engaging in practice in Australia that complies with all applicable State or Territory Laws governing the legal profession, and is subject to the relevant State or Territory law society;
- (d) confirm that, where the Respondent is a member of a limitation of liability scheme through a State or Territory law society or similar, it has or will have prior to the execution of a Head Agreement a liability cap for an amount not less than \$10 million and it will maintain the liability cap in that amount for the duration of the Head Agreement and any resultant contract.
- (e) be a legal entity or a partnership;
- (f) not be bankrupt or insolvent;
- (g) not be subject to any judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order;
- (h) not be listed as a non-compliant employer under the *Workplace Gender Equality Act 2012* (Cth); and
- (i) either:
 - i. hold a Valid and Satisfactory Statement of Tax Record by the Closing Time; or
 - ii. have a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office by the Closing Time, and hold a Valid and Satisfactory Statement of Tax Record prior to 7:00am AEDT Monday 8 January 2024.

Note to Respondents: Respondents should apply for a Statement of Tax Record within sufficient time to meet these Conditions for Participation and the Minimum Content and Format Requirement in paragraph 10.2.3(c).

Respondents are strongly encouraged to apply for a Statement of Tax Record online through the Australian Taxation Office website, by visiting [Statement of tax record | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/Statement-of-tax-record). To avoid delays in receiving your Statement of Tax Record, Statements of Tax Record should not be requested from the Australian Taxation Office by telephone.

These Conditions for Participation and the Minimum Content and Format Requirement at paragraph 10.2.3(c) of this RFT applies to **all** Respondents regardless of whether or not the Respondent pays tax in Australia.

All Respondents must submit a Statement of Tax Record.

10.2 Minimum Content and Format Requirements

- 10.2.1 The Minimum Content and Format Requirements are minimum requirements that a Tender must meet in order to be considered by AGD.
- 10.2.2 Subject to paragraph 11.7 of this RFT, any Tender that in the opinion of AGD does not meet a Minimum Content and Format Requirement, may be excluded from evaluation.
- 10.2.3 The Minimum Content and Format Requirements that apply to this RFT are:
 - (a) the Tender must be written in English;
 - (b) all fees, prices and costs must be submitted in Australian dollars inclusive of GST; and
 - (c) subject to paragraph 10.2.4 of this RFT, the Respondent must submit with its Tender:
 - i. a Satisfactory Statement of Tax Record for the Respondent that is Valid at the Closing Time; or
 - ii. a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office for the Respondent and the Respondent must provide a Valid and Satisfactory Statement of Tax Record to the Request Manager by emailing LSPanel@AGD.gov.au, **within four business days** from the Closing Time.

Note to Respondents: Refer to the Note to Respondents at paragraph 10.1.4 above.

- 10.2.4 AGD may decide not to exclude a Respondent from further consideration due to a failure by the Respondent to provide a Statement of Tax Record receipt or Statement of Tax Record by the required timeframe, as required by the Minimum Content and Format Requirements if AGD, in its sole discretion, is satisfied that the failure is due solely to the delay or mishandling on the part of the Australian Taxation Office, and subject to the Respondent providing:

- (a) evidence that it has lodged an application for a Statement of Tax Record prior to the Closing Time if it does not have, or is unable to provide, a Statement of Tax Record receipt; and
- (b) a Valid and Satisfactory Statement of Tax Record immediately upon receipt from the Australian Taxation Office.

10.2.5 For the avoidance of doubt, AGD will not enter into a Head Agreement with a Respondent that does not have a Valid and Satisfactory Statement of Tax Record.

10.3 Referee Endorsements

- 10.3.1 As stated in paragraph 13.4.2 of this RFT, Referee Endorsements are required to be submitted to support the Respondent's claimed experience.
- 10.3.2 A Referee Endorsement should be provided for each demonstrated example under an Area of Law for which the Respondent has Offered Services.
- 10.3.3 Referee Endorsements will be facilitated through the 360 Tender System. Referees will receive notification from the 360 Tender System when their details are entered by the Respondent that they have been nominated as a referee and asked to complete a form. Referees will be required to submit their Referee Endorsements through the 360 Tender System by 11.59pm AEDT Friday 12 January 2024.
- 10.3.4 Respondents will be notified via email when each referee has started their response and again when they have completed their response. The 360 Tender System allows the list of nominated referees to be changed prior to the Closing Time should a referee not receive or not action their invitation to respond.
- 10.3.5 AGD reserves the right, in its absolute discretion, to contact referees to clarify information provided in their Referee Endorsement, or make its own enquiries to verify claims made in a Referee Endorsement (including, without limitation, contacting a person who is not nominated as a referee by the Respondent).

11. Tender Presentation and Submission

11.1 Completing and Submitting of Tenders

- 11.1.1 Respondents must use the 360 Tender System to complete the Tender Response Questionnaire which once completed will constitute the Respondent's Tender. Tenders cannot be lodged on AusTender, or by email, post, courier, hand or any other method.
- 11.1.2 Respondents must follow the instructions in the 360 Tender System when completing their tender and attach any required information, in the format requested. Respondents should respond to questions in the Tender Response Questionnaire for each Area of Law that they are offering to provide services under. Respondents should include completed answers in their responses. Respondents should adhere to any word/character limits stipulated in the Tender Response Questionnaire. If word/character limits are exceeded, AGD reserves the right not to consider any information provided beyond the word/character limit.
- 11.1.3 The 360 Tender System will advise if a question has not been correctly completed. Failure to complete any mandatory aspects of the Tender Response Questionnaire will result in the

Respondent not being able to proceed with completing or submitting its Tender. Information not submitted and saved in the 360 Tender System will not be considered.

11.1.4 Respondents are requested not to reformat or corporate brand any attachments they upload in the 360 Tender System, and must not embed or separately provide any video files as part of their Tenders. If video files are embedded or separately provided, AGD will not consider them.

11.1.5 Respondents must allow sufficient time to complete the submission of their Tender prior to the closing time, to allow enough time to resolve any issue that may arise and seek help if required.

11.2 Changing or Withdrawing a Tender

11.2.1 Prior to the Closing Time, Respondents can re-open their submitted Tender in the 360 Tender System to make changes. After re-opening a Tender, the Respondent must re-submit the amended Tender in the 360 Tender System. If any assistance is required, the Respondent should contact 360 Tender System Support through the contact points in paragraph 7.4.1.

11.2.2 Prior to the Closing Time, Respondents can withdraw their Tender from the 360 Tender System.

11.3 Respondents' Responsibility in Relation to Submitting a Tender

11.3.1 Respondents acknowledge that:

- (a) submitting their Tender on time and in accordance with this RFT is entirely their responsibility;
- (b) it is solely their responsibility to ensure that they allow sufficient time to complete the Tender Response Questionnaire in the 360 Tender System to enable the Tender to be submitted in accordance with this RFT, and before the Closing Time; and
- (c) AGD and the Commonwealth (in its other capacities) will not be liable for any loss, damage, costs or expenses incurred by Respondents or any other person if, for any reason, a Tender or any other material or communication relevant to this RFT:
 - i. is not received on time;
 - ii. is corrupted or altered;
 - iii. otherwise is not received as sent;
 - iv. cannot be read or decrypted; or
 - v. has its security or integrity compromised.

11.3.2 Before submitting a Tender in the 360 Tender System, the Respondent must:

- (a) ensure that its technology platform meets the minimum requirements identified in the 360 Tender System;
- (b) ensure that it has opened all Addenda in the 360 Tender System;

- (c) ensure it has completed all parts of the Tender Response Questionnaire as instructed in the 360 Tender System;
- (d) take all steps to ensure that its Tender is free from anything that might reasonably affect usability or the security or operations of the 360 Tender System and/or AGD's computing environment;
- (e) ensure that its Tender does not contain macros, script or executable code of any kind; and
- (f) ensure its Tender complies with all file types, format, naming conventions, size limitations or other requirements specified within the 360 Tender System.

11.3.3 The Respondent must ensure that the person who submits a Tender in the 360 Tender System has the authority to do so on behalf of the Respondent, including making the warranties and representations set out in this RFT on the Respondent's behalf. Tenders submitted through the 360 Tender System will be deemed to be authorised by the Respondent.

11.4 Closing Time

- 11.4.1 Tenders must be submitted in the 360 Tender System before the Closing Time, which is set out on page 1 (cover page) of this RFT.
- 11.4.2 Prior to the Closing Time, AGD may extend the Closing Time for the submission of Tenders at its sole and absolute discretion, and will issue an Addendum in accordance with paragraph 7.2 of this RFT notifying Respondents of any decision to extend the Closing Time.
- 11.4.3 If a Respondent does not submit the Tender before the Closing Time, the Tender will not be accepted by the 360 Tender System. Only Tenders with a status of 'submitted' in the 360 Tender System after the Closing Time will be considered by AGD. Any conditions or advice set out in the 360 Tender System, or otherwise provided by 360 Tender System Support, that suggest a position to the contrary do not apply.
- 11.4.4 The judgement of AGD as to the time a Tender has been submitted will be final.

11.5 Proof of Submission

- 11.5.1 When a Tender has been submitted successfully in the 360 Tender System:
 - (a) the Tender status in the 360 Providers' Portal will change to "submitted";
 - (b) the "Final Step" page will have a green tick. The display screen will also record the time and date the Tender was received by the 360 Tender System and will be conclusive evidence of successful submission of a Tender; and
 - (c) an email receipt of the Tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.
- 11.5.2 Failure to receive a receipt in accordance with paragraph 11.5.1 means that submission was not successful. Where no 'submitted' status is visible on the 360 Tender System, the attempted submission will be deemed to have been unsuccessful.

11.5.3 The Respondent should contact the 360 Tender System Support in paragraph 7.4.1 as a matter of priority if they do not receive a receipt and believe they have successfully submitted their Tender.

11.6 Late Tenders

11.6.1 Any attempt to lodge a Tender after the Closing Time will not be permitted by the 360 Tender System. A Tender will be deemed late if it is not properly submitted in the 360 Tender System by the Closing Time (Late Tender).

11.6.2 AGD will not accept a Late Tender, unless the Tender is late due solely to mishandling by AGD or the 360 Tender System.

11.7 Unintentional Errors of Form and Illegible Tenders

11.7.1 If AGD considers that there are unintentional errors of form in a Tender, AGD may request the Respondent to correct or clarify the error, but will not permit any material alteration or addition to the Tender.

11.7.2 Respondents should not interpret a request under paragraph 11.7.1 as being an indication of the outcome of the RFT process. The Respondent should treat all requests under paragraph 11.7.1 as confidential information.

11.7.3 AGD is not obliged to consider any Tender that it considers to be illegible. If AGD considers that all or part of a Tender is illegible for any reason, it may, at its sole discretion, seek clarification from the Respondent, but is not obliged to do so.

11.8 Incomplete Responses and Corrupt Files

11.8.1 Incomplete Tenders, including those that Simplylogical.net or AGD believes may contain any virus, worms, malicious code, disabling features, or anything else that might compromise the integrity or security of the 360 Tender System and/or AGD's computing environment may be excluded from the evaluation process at AGD's sole and absolute discretion. Simplylogical.net reserves the right to delete a Respondent's account if it finds the Respondent's Tender contains a virus, worms, malicious code, disabling features, or anything else that might compromise the integrity or security of the 360 Tender System.

11.8.2 Notwithstanding paragraph 11.8.1 of this RFT, AGD may consider an incomplete Tender and seek clarification from the Respondent only where this does not materially alter or add to the Tender submitted.

11.8.3 In submitting a Tender, Respondents warrant to AGD that they have taken reasonable steps to ensure that any uploaded files are free of viruses, worms, malicious code or other disabling features which may affect the 360 Tender system and/or AGD's computing environment.

11.9 Tender Validity Period

11.9.1 Tenders submitted in response to this RFT must remain open for acceptance by AGD for twelve months after the Closing Time.

11.9.2 If this procurement is suspended under the GP(JR) Act, the Tender Validity Period is extended by the period of suspension, up to a maximum of 18 months after the Closing Time.

11.10 Conflict of Interest

11.10.1 Respondents must notify AGD as soon as practicable after becoming aware of any actual, potential or perceived conflict of interest at any time prior to or during this RFT process which could affect the performance of its obligations if the Respondent was to enter into the Head Agreement.

11.10.2 If the Respondent has or may have an actual, potential or perceived conflict of interest, AGD may, at its discretion:

- (a) exclude the Tender from further consideration;
- (b) impose conditions on the Respondent for the management of the actual or potential conflict of interest; or
- (c) take any other relevant action it considers appropriate in relation to the conflict.

11.10.3 If the Respondent is unable or unwilling to comply with the conditions imposed under this paragraph 11.10, or otherwise resolve the actual or potential conflict of interest in a manner satisfactory to AGD, AGD may, at its discretion, exclude the Tender from further consideration.

11.11 Non-compliance with Other Terms or Requirements

11.11.1 Other than where paragraph 10.1 or 10.2 apply, non-compliance with a term or requirement in this RFT by a Respondent does not automatically exclude a Tender, notwithstanding that the term or requirement is expressed in mandatory terms. However, AGD may, in AGD's absolute discretion, exclude any Tender that does not comply with such a term or requirement that is expressed to be mandatory.

11.12 Respondents' Responsibility to Inform Themselves

11.12.1 By submitting a Tender, each Respondent represents to AGD that:

- (a) it has examined this RFT, all documents referred to in this RFT, all other information made available to the Respondent (including any Addenda), all applicable legislation and policies, and has examined all further information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Tender;
- (b) if successful, it has the capability and capacity to properly provide the Offered Services;
- (c) its Tender is submitted in accordance with this RFT;
- (d) the information contained in its Tender is true and correct and the Respondent has satisfied itself as to the accuracy and completeness of its Tender including tendered fees based on its own examination and assessment;

- (e) it has relied entirely on its own enquiries and has not relied on any representation, warranty or other conduct by or on behalf of AGD, except as expressly provided in this RFT and any Addenda;
- (f) it has satisfied itself as to the terms and conditions of **Attachment C – Head Agreement** and their ability to comply with the Head Agreement; and
- (g) it has obtained independent advice, as it considers is appropriate.

11.12.2 In submitting a Tender, the Respondent also represents that it does not rely on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending this RFT other than amendments made by AGD in accordance with paragraph 7.2 of this RFT.

11.13 Acknowledgement and Disclaimer

11.13.1 In submitting a Tender, the Respondent acknowledges the following:

- (a) any information contained in this RFT, although believed to be accurate at the date of release of this RFT, may change;
- (b) where information contained in this RFT relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, express or implied, is made by AGD, the Commonwealth and their officers, employees, agents, advisers or subcontractors that the statements as to future matters contained in this RFT will be accurate;
- (c) this RFT is intended to reflect and summarise information concerning the Government's requirements for the establishment of the Panel and is not necessarily a comprehensive description of it; and
- (d) except to the extent required by law and only to the extent so required, AGD, the Commonwealth and their officers, employees, agents, advisers or subcontractors will not be liable to any person or body for any loss, damage, cost, liability or expense arising from reliance on any information or representations, actual or implied, contained in or omitted from this RFT or other Information provided by AGD or the Commonwealth.

11.14 Responsibility for Tender Costs

- 11.14.1 Without limiting any other paragraph in this RFT, participation in any stage of this RFT process, or in relation to any matter concerning this RFT, will be at each Respondent's sole risk, cost and expense (including but not limited to any risk, costs and expense associated with preparing and submitting Tenders, any attendance at industry briefings, responding to requests from AGD, participating in any subsequent negotiations and any other action or response in relation to this RFT).
- 11.14.2 Neither AGD nor the Commonwealth (in its other capacities) will be responsible in any circumstance for any costs or expenses incurred by any Respondent in preparing or submitting its Tender, or in respect of any discussions, negotiations, or enquiries in relation to taking part in this RFT process or any work undertaken by the Respondent after its Tender is submitted.

11.15 No Contract or Liability

11.15.1 This RFT is an invitation to treat, and must not be construed, interpreted, or relied upon, whether by expression or implication, as an offer capable of acceptance by any person, or as creating any form of contractual (including a process contract), quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds.

11.15.2 Except as required by law and only to the extent so required, AGD and the Commonwealth (in its other capacities) is not liable to any Respondent, on the basis of any contract or other understanding (including, without limitation, any form of contractual, quasi contractual, restitutionary or promissory estoppel rights or rights based on similar legal or equitable grounds) whatsoever, or in negligence, as a consequence of any matter relating or incidental to this RFT or a Respondent's participation in this RFT process, including (without limitation) instances in which:

- (a) a Respondent is not invited to participate in any subsequent process as part of or following completion of this RFT process;
- (b) this RFT or RFT process is varied including when paragraph 7.2.1 of this RFT applies;
- (c) AGD or the Commonwealth (in its other capacities) decides to terminate this RFT process or not to contract for all, or any, of the requirements;
- (d) AGD or the Commonwealth (in its other capacities) exercises or fails to exercise any of its rights under or in relation to this RFT;
- (e) a Tender, enquiry or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised; or
- (f) the Respondent suffers any loss, damage, cost or expense arising from any information or representation, actual or implied, contained in or omitted from this RFT, or by reason of any reliance by any person on such information or representation.

11.15.3 Paragraph 11.15.2 does not apply to any valid claims by the Respondent against AGD or the Commonwealth under the GP(JR) Act.

11.15.4 Each Respondent, in lodging a Tender, releases AGD and the Commonwealth from any claim it might otherwise have been able to bring against AGD or the Commonwealth, arising out of or in connection with any of the following:

- (a) AGD's or the Commonwealth's conduct of, or failure to conduct, this RFT process in any manner or at all;
- (b) the Commonwealth's entering into, or failing to enter into, any resultant Head Agreement in any manner at all;
- (c) AGD's exercising or failing to exercise its discretion to add to, vary or modify or amend this RFT; or
- (d) any issues with lodgement of an enquiry by the Enquiry Cut-off Date or a Tender by the Closing Time.

11.16 Offers and Acceptance of Offer

- 11.16.1 Submitting a Tender will constitute an offer by the Respondent to enter into a Head Agreement to become a Service Provider who may provide the Services on the terms and conditions set out in **Attachment C – Head Agreement**. The offer is capable of being accepted for a period of not less than the Tender Validity Period described in paragraph 11.9 of this RFT.
- 11.16.2 A Tender is not taken to have been accepted unless and until a Head Agreement has been executed by the Respondent and the Commonwealth.
- 11.16.3 Acceptance of a Tender and entry into a Head Agreement does not indicate any obligation on the Commonwealth or any Entity to source a minimum amount of, or any, Services from a Respondent.

11.17 Termination of RFT Process

- 11.17.1 Without limiting any of its rights under this RFT, at law or otherwise, AGD may, in its absolute discretion, suspend, defer or terminate this RFT process at any time if AGD determines that:
 - (a) it is in the public interest to do so;
 - (b) AGD is required by law to do so;
 - (c) no Tender represents value for money;
 - (d) no conforming or compliant Tenders are received;
 - (e) the Commonwealth's requirements have changed so as to make this RFT or part of this RFT redundant, unachievable within the scope of the Legal Services or if it were to continue, inconsistent with AGD or Commonwealth policy;
 - (f) no Respondent is sufficiently capable of meeting the terms and conditions in **Attachment C – Head Agreement**; or
 - (g) termination of this RFT would be in line with any direction of the Australian Government.
- 11.17.2 If AGD suspends, defers or terminates this RFT process, then AGD will:
 - (a) notify Respondents to this effect; and/or
 - (b) issue an Addendum in accordance with paragraph 7.2.1 of this RFT.

11.18 AGD's Additional Discretions

- 11.18.1 Notwithstanding anything else contained in this RFT and without limiting its rights at law or otherwise, AGD may:
 - (a) alter, vary or amend any part of this RFT (including the attachments outlined in paragraph 4.2.1 of this RFT);
 - (b) accept a Tender without prior notice to any other Respondent;

- (c) seek amended Tenders from any one or more Respondent(s) or Preferred Respondent(s), or allow any Respondent to amend its Tender;
- (d) select any number of Respondents as Successful Respondents and/or Preferred Respondent(s);
- (e) call for a further pricing offer on any aspect of a Tender either from Respondents or Preferred Respondents (this discretion should not detract from Respondents submitting their best offers in response to this RFT);
- (f) suspend or defer this RFT process, or any part of it or activity in connection with this RFT process, at any time;
- (g) remove any Respondent from consideration at any time after the Closing Time;
- (h) exclude from consideration any Tender which is, in the opinion of AGD, incomplete or clearly not competitive;
- (i) use any relevant information obtained by AGD in relation to a Tender (provided in the Tender itself, otherwise through this RFT or by independent enquiry) in the evaluation of Tenders;
- (j) require additional information or clarification from any Respondent or anyone else, or provide additional information or clarification;
- (k) provide any clarification of the meaning of the content of this RFT or amendments or re-issue documents to all Respondents;
- (l) enter or not enter into negotiations with one or more Respondents and discontinue those negotiations at any time for any reason;
- (m) allow, or refuse to allow, a Respondent to enter into a Head Agreement in the name of a different legal entity to that which submitted the Tender;
- (n) waive or vary any obligation of any Respondent under this RFT;
- (o) allow or not allow a Related Body Corporate of a Respondent or other entity to take over a Tender in substitution for the original Respondent;
- (p) remove or add any Entities to the scope of this RFT, whether during this RFT process or following the completion of this RFT process;
- (q) seek and/or contact any client reference, whether or not nominated by the Respondent;
- (r) publish or disclose the names of any Successful Respondents as a result of the evaluation of the Tenders; and
- (s) conduct a subsequent procurement process in relation to all or any part of the Services described in this RFT and utilise information provided or obtained under or in connection with this RFT process for that purpose.

11.18.2 AGD may reject any Tender submitted by a Respondent that is engaging, or has engaged, in any conduct that contravenes any laws or contravenes the conditions set out in this RFT.

11.18.3 AGD may reject any Tender that is submitted subject to any form of approval, such as Chief Executive Officer or Board approval.

11.19 Commonwealth's Confidential Information

11.19.1 Respondents should not, except in accordance with paragraph 11.19.2 of this RFT:

- (a) directly or indirectly copy or record; or
- (b) disclose to any person,

any information that is confidential information of the Commonwealth, AGD, a Commonwealth Entity, or a third party acquired or obtained by a Respondent in the course of preparing its Tender, or any documents, data or information provided by AGD and which AGD indicates is confidential or which Respondents know or ought reasonably to know is confidential, except as required by law or the rules of any stock exchange to be disclosed.

11.19.2 Respondents may only copy, record or disclose information referred to in paragraph 11.19.1 of this RFT to Respondent's personnel, a Related Body Corporate, or an officer, employee, or subcontractor of a Related Body Corporate, or a person assisting the Respondent, to the extent that the person to whom that information is disclosed needs to know the information for the purposes of the Respondent:

- (a) determining whether to respond to this RFT;
- (b) responding to this RFT; or
- (c) negotiating any Head Agreement arising out of this RFT,

and provided that the Respondent obtains from such other person an undertaking for, or the person is otherwise subject to, the same obligations of confidentiality as are applicable to the Respondent in accordance with paragraph 11.20 of this RFT.

11.19.3 AGD may, in its sole and absolute discretion, exclude from further consideration any Tender submitted by a Respondent that has engaged in any behaviour contrary to paragraphs 11.19.1 or 11.19.2 of this RFT.

11.20 Respondent's Confidential Information

11.20.1 Subject to paragraphs 11.20.2, 11.20.3 and 11.20.4 of this RFT, for the duration of this RFT process until the execution of a Head Agreement with the Successful Respondents, AGD will treat as confidential any information provided by a Respondent.

11.20.2 AGD may disclose a Respondent's confidential information to the extent that the information is:

- (a) disclosed by AGD to its advisers, officers, employees or subcontractors, or to an officer, employee or adviser of an Entity, in order to conduct this RFT process or to prepare, manage and review the performance and implementation of any resultant Head Agreement;
- (b) disclosed to AGD's internal management and senior personnel, to enable effective management or auditing of this RFT process;

- (c) disclosed by AGD to the Minister for AGD, the Cabinet or a responsible Minister for an Entity;
- (d) disclosed by AGD in response to a request made by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) disclosed by AGD in response to a request made by the Auditor-General, or by a person authorised by the Auditor-General;
- (f) disclosed by AGD within AGD, or to a Commonwealth Entity for the purposes of managing the delivery of legal services or if this otherwise serves the Commonwealth's legitimate interests;
- (g) authorised or required by law to be disclosed, including but not limited to under the *National Anti-Corruption Commission Act 2022* (Cth); or
- (h) in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

11.20.3 AGD may also disclose information to the appropriate regulatory authority because of suspected collusive or anti-competitive behaviour.

11.20.4 If a Respondent wishes for information:

- (a) contained in its Tender;
- (b) provided otherwise in connection with this RFT; or
- (c) contained in, or obtained or generated in performing, any resultant Head Agreement,

which may be included in any resultant Head Agreement to be protected as confidential information if it is selected as a Successful Respondent, the Respondent must identify in its Tender, under the Confidential Information tab of the Tender Response Questionnaire, the information and reasons why the Respondent considers that it should be protected as confidential information. To avoid doubt, the Respondent only needs to identify information that may be included in any resultant Head Agreement, and not other information which would not be relevant to include in the Head Agreement (as the confidentiality of this information is covered by paragraph 11.20.6(b)).

11.20.5 Without limitation, information which will not be included in the Head Agreement includes a Respondent's Referee Endorsements and referee details, examples detailing previous experience delivering relevant services, corporate structure, previous or current customers and information on the financial position and viability of the Respondent.

Note to Respondents:

Information about confidentiality in the procurement cycle is available at
<https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>

AGD will assess any claims for confidentiality against the criteria in the Confidentiality Test.

As stated in guidance, categories of information that may meet the requirements of the Confidentiality Test include:

- internal costing information or information about profit margins;

- proprietary information, for example information about how a particular technical or business solution is to be provided that may compromise the provider's commercial interests elsewhere, including competing in future tender processes;
- pricing structures (where this information would reveal whether a potential provider was making a profit or loss on the supply of a particular good or service);
- artistic, literary or cultural secrets. These may include photo shoots, historic manuscripts, or secret Indigenous culture; and
- intellectual property including trade secrets and other intellectual property matters where they relate to a potential provider's competitive position.

Commercial information that would not generally be considered to be confidential include:

- performance and financial guarantees;
- indemnities;
- the price of an individual item or group of items;
- rebates, liquidated damages and service credits;
- performance measures;
- clauses which describe how intellectual property rights are to be dealt with; and
- payment arrangements.

Note: AGD will be making the Fees of Successful Respondents available to Entities.

11.20.6 Following the entering into of any Head Agreement, AGD will:

- (a) where AGD has agreed to information being confidential, keep information contained in the Successful Respondents' Tender that is subsequently incorporated into any Head Agreement, and information contained in, or obtained or generated in performing, the Head Agreement confidential in accordance with the terms of the relevant Head Agreement;
- (b) keep information contained in the Successful Respondents' Tender that is not subsequently incorporated into any Head Agreement entered into with the successful Respondent confidential in accordance with this RFT; and
- (c) keep information contained in any Unsuccessful Respondents' Tender confidential in accordance with this RFT.

11.20.7 In considering whether to agree to keep information confidential under any resultant Head Agreement, AGD will have regard to principles on confidentiality throughout the procurement cycle. These principles are available at: www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle.

11.20.8 Respondents should note that AGD is required to publish whether the Head Agreement entered into with each Successful Respondent contains confidentiality provisions, and if so, the reasons for confidentiality.

11.20.9 Respondents should also note that in accordance with the Commonwealth Procurement Rules, non-corporate Commonwealth Entities and prescribed Corporate Commonwealth Entities must report entity agreements, contracts, and standing offers with an estimated value (including GST where applicable) of \$10,000 or more on AusTender, within

42 calendar days of entering into the agreement. These requirements also apply to the Head Agreement entered into with any Successful Respondents.

11.21 Use of Tender Documents

- 11.21.1 Subject to paragraph 11.22 of this RFT, Respondents submit Tenders on the basis that all Tenders and any other documentation provided by Respondents to AGD will become the property of AGD upon submission or provision to AGD.
- 11.21.2 AGD will retain all information and documents submitted in response to this RFT:
 - (a) to enable evaluation of Tenders and to respond to any dispute about this RFT;
 - (b) to comply with obligations relating to accountability and record keeping;
 - (c) for the purposes of this RFT process and the preparation and management of any resultant Head Agreement; and
 - (d) for any other purpose permitted by this RFT.

11.22 Intellectual Property Rights in Respect of Tenders

- 11.22.1 Intellectual property rights that exist in a Tender remain the property of the Respondent.
- 11.22.2 Each Respondent licenses AGD, the Commonwealth and its officers, employees, agents, advisers, Ministers and their staff and other Government representatives, to use, copy, adapt, modify, or disclose all or part of its Tender or do anything else to all material, including material which is subject to intellectual property rights of the Respondent or any other person, contained in the Tender which AGD considers necessary for the purpose of:
 - (a) evaluating and clarifying their Tender;
 - (b) evaluating any subsequent offer;
 - (c) negotiating any resultant Head Agreement;
 - (d) managing any resultant Head Agreement with any Successful Respondents;
 - (e) referring any material suggesting collusion by Respondents to the Australian Competition and Consumer Commission (**ACCC**) and the use by the ACCC of that material to conduct any review it deems necessary;
 - (f) anything else related to the above purposes, including audit and complying with Governmental and parliamentary reporting requirements including requests for information by Parliament or Parliamentary Committees, the Auditor-General or the Australian National Audit Office; and
 - (g) responding to any dispute about this RFT.

11.23 Restrictions on Advertising and Public Statements

- 11.23.1 Except with the prior written approval of AGD, Respondents must not, at any time during this RFT process or subsequently, publish any statement or make any public statement

(including by means of advertisement or otherwise) making any reference to this RFT process. This includes Respondents discussing any aspect of this RFT with the media.

- 11.23.2 AGD may, at its discretion, exclude the Tender from further consideration at any time where AGD considers this restriction has not been complied with.
- 11.23.3 Participation in this RFT process does not limit a Respondent's rights to comply with any law or rule of a stock exchange.

11.24 Ethical Requirements

- 11.24.1 Respondents should not act in an unethical or improper manner or contrary to any law.
- 11.24.2 AGD may exclude from consideration any Respondent which, in AGD's reasonable opinion, has engaged in any unethical or improper behaviour, or any behaviour that is contrary to any law. AGD may refer the matter to the relevant Commonwealth, State or Territory authorities. This right is in addition to any other remedies AGD may have under law, or under or in relation to any Head Agreement entered into with the Successful Respondent.

11.25 False or Misleading Claims

- 11.25.1 Respondents should not engage in misleading or deceptive conduct or make false or misleading claims, statements or omissions in relation to their Tender or this RFT process.
- 11.25.2 If AGD considers that a Respondent has made false or misleading claims, statements or omissions, or has engaged in misleading or deceptive conduct, including if:
 - (a) any statement in its Respondent's Declaration is found to be false or misleading; or
 - (b) the Respondent fails to disclose information in its Tender that is requested to be disclosed by this RFT (for example, the existence of relevant Proceedings),
- 11.25.3 AGD may reject at any time, any Tender submitted by or on behalf of that Respondent.
- 11.25.4 Respondents should note that giving false or misleading information to AGD is a serious offence under Division 137 of the Schedule to the *Criminal Code Act 1995* (Cth) (**Commonwealth Criminal Code**).

11.26 Anti-competitive Conduct

- 11.26.1 Respondents and their respective officers, employees, agents and advisors should not engage in any anti-competitive conduct, coercive conduct or any other unlawful or unethical conduct that contravenes any law, with any other Respondent or any other person in relation to the preparation of their Tender or this RFT process.
- 11.26.2 Respondents must not engage in any collusive or cartel conduct, including any consultation, communication, contract, arrangement or understanding, with any competitor other than, and in accordance with law:
 - (a) when certain joint venture arrangements exist between the Respondent and a competitor;
 - (b) when the Respondent and a competitor have an agreement that has been authorised by the ACCC; or

(c) when the Respondent has communicated with a competitor for the purpose of subcontracting for the provision of a portion of the Legal Services, and provided that the communication with that competitor is limited to the information required to facilitate that particular subcontract.

11.26.3 If AGD suspects conduct described in paragraph 11.26.1 or 11.26.2 of this RFT has occurred, it may notify the appropriate regulatory authority and provide that authority with information regarding the Respondent and its conduct. The provision of such information will not be taken to be an infringement of any obligation of confidentiality to the Respondent.

11.26.4 In addition to any other remedies available under any law, AGD may, in its sole and absolute discretion, exclude a Respondent from further consideration under this RFT if the Respondent, or any corporation or person, including directors or senior managers associated with their Tender, have ever contravened the anti-competitive conduct provisions in Part IV of the *Competition and Consumer Act 2010* (Cth) or equivalent laws in Australia or overseas or otherwise engages or has engaged in collusive tendering, anti-competitive conduct or any other similar conduct in relation to the preparation of its Tender or this RFT process.

11.27 Unlawful Inducements

11.27.1 Respondents and their respective officers, employees, agents or advisers should not violate any applicable laws or Commonwealth policies regarding offering inducements in connection with the preparation of their Tender or this RFT process.

11.27.2 Respondents should not engage in, or procure or encourage others to engage in, activity that would result in a breach of the Lobbying Code of Conduct, as amended from time to time, available at: <https://www.ag.gov.au/integrity/publications/lobbying-code-conduct>.

11.27.3 In addition to any other remedies available under any law or any contract, AGD may, at its absolute discretion and at any time, immediately reject any Tender submitted by a Respondent that has engaged in behaviour contrary to paragraph 11.27.1 or paragraph 11.27.2.

11.28 Improper Assistance from Commonwealth or ex-Commonwealth Staff

11.28.1 Each Respondent must arrange for a partner, director or other appropriately authorised officer (being the Respondents' Authorised Representative) to declare in its Respondent's Declaration that its Tender has not been prepared with the improper assistance of any Commonwealth officer or employee or the use of any information obtained unlawfully or in circumstances that constitute a breach of confidentiality or fidelity on the part of that person or a breach of section 122.4 or 122.4A of the Commonwealth Criminal Code or the *Public Service Act 1999* (Cth) or information otherwise improperly obtained from AGD or any other department or entity of the Commonwealth, or from an employee, ex-employee, contractor or ex-contractor of AGD, or any other department or entity of the Commonwealth.

11.28.2 Respondents should not communicate with or solicit information concerning or directly relating to this RFT from employees, consultants, contractors, or former employees, consultants or contractors of AGD or the Commonwealth, other than through the Request Manager.

11.28.3 In addition to any other remedies available under law, AGD may reject at any time any Tender that has been compiled with:

- (a) the improper assistance of:
 - i. employees or contractors of AGD, or any other Commonwealth Entity; or
 - ii. ex-employees or ex-contractors of AGD, or any other Commonwealth Entity; or
- (b) any assistance from an employee or contractor of AGD, or ex-employee or ex-contractor of AGD who has worked in AGD within the last six months.

11.29 Governing Law

11.29.1 This RFT is to be interpreted in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory. The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter related to this RFT.

12. Commonwealth Legislative and Policy Requirements

12.1 Compliance with Legislation and Policies

- 12.1.1 Respondents are required to comply with all applicable laws and Commonwealth policies in their participation in this RFT process, and in the provision of the Services under any resultant Head Agreement.
- 12.1.2 Respondents should familiarise themselves with relevant laws and Commonwealth policies that are applicable to this RFT and any resultant Head Agreement. Each Respondent should obtain, and will be deemed to have obtained, its own advice on the impact of all laws and policies relevant to participation in this RFT process and any resultant contract with the Successful Respondent.
- 12.1.3 Respondents are required to indicate their compliance or otherwise with all applicable legislation in the Tender Response Questionnaire under the “Commonwealth Policy Requirements” tab.

12.2 Workplace Gender Equality Act 2012 (Cth)

- 12.2.1 Commonwealth policy prevents the Commonwealth from entering into contracts with providers who are non-compliant under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act). The Head Agreement requires that the Successful Respondent must comply with its obligations, if any, under the WGE Act.
- 12.2.2 Respondents must indicate in the Tender Response Questionnaire, under the “Commonwealth Policy Requirements” tab, whether or not the organisation is a ‘relevant employer’ under the WGE Act and, if applicable, provide a current letter of compliance as part of their Tender submission, or prior to entering into a Head Agreement.

12.3 Employee Entitlements

12.3.1 Under Government policy, the Commonwealth must not enter into a contract with a Respondent who has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements, who have not satisfied any resulting order. Respondents are required to make a declaration in the Tender Response Questionnaire, under the “Commonwealth Policy Requirements” tab, that there are no such unmet judgments.

12.4 Indigenous Procurement Policy

12.4.1 Respondents should note that the Indigenous Procurement Policy applies to this RFT. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).

12.4.2 In its Tender, each Respondent is requested to detail how it will increase its:

- (a) purchasing from Indigenous enterprises (being an organisation that is 50 per cent or more Indigenous owned); and
- (b) employment of Indigenous Australians,
in the delivery of any resultant Contract.

12.4.3 Purchasing from an Indigenous enterprise may include engagement of an Indigenous enterprise as a subcontractor, and/or use of Indigenous suppliers in the Respondent's supply chain

12.4.4 The Respondent acknowledges that if any resultant Contract under the Head Agreement is a High Value Contract, the Mandatory Minimum Requirements for Indigenous participation will apply.

12.4.5 In this paragraph 12.4:

- (a) **High Value Contract** means a contract delivered in Australia valued at \$7.5 million (GST inclusive) where more than half of the value of the contract is being spent in one or more of the industry sectors specified in Table 2 of Appendix B to the Indigenous Procurement Policy;
- (b) **Indigenous Procurement Policy** means the policy of that name, as amended from time to time, available at: <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>); and
- (c) **Mandatory Minimum Requirements** means the mandatory minimum Indigenous participation requirements imposed for High Value Contracts by the Indigenous Procurement Policy.

12.5 Shadow Economy Policy

12.5.1 The Shadow Economy Policy applies to this procurement. Details about this policy are available on the Treasury's website at <https://treasury.gov.au/publication/p2019-t369466>.

12.5.2 As required under clause 11(a) of the policy, the policy applies to the process to establish a panel arrangement when the total value of orders under the arrangement are collectively estimated to be over \$4 million including GST.

12.5.3 To comply with the requirements of this policy, the Respondent must submit with its Tender:

- (a) a Satisfactory Statement of Tax Record for the Respondent that is Valid at the Closing Time; or
- (b) a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office for the Respondent and the Respondent must provide a Valid and Satisfactory Statement of Tax Record by emailing LSPanel@AGD.gov.au, within four business days from the Closing Time.

12.5.4 This requirement has been included as a Minimum Content and Format Requirement, refer paragraph 10.2.3 of this RFT. This requirement under the policy has also been reflected as a Condition for Participation. This means that, subject to paragraph 11.7 of this RFT, any Tender that does not meet this requirement may be excluded from evaluation (see paragraphs 10.1.1 and 10.2.2 of this RFT).

12.5.5 Information about how to apply for a Statement of Tax Record is provided on the Australian Taxation Office's website at <https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/>.

12.5.6 AGD has prepared some guidance to assist Respondents to understand the requirements of the Shadow Economy Policy. This guidance is provided at **Attachment E – Guidance on the Shadow Economy Policy** of this RFT.

12.6 Australian Industry Participation Plan

12.6.1 Respondents should note that, where a contract formed under the Head Agreement is valued at \$20 million (GST inclusive) or more and where stated in the contract, the Australian Industry Participation National Framework principles, including requirements for an Industry Participation Plan may apply. More information on AIP plan requirements can be found at <https://www.industry.gov.au/regulations-and-standards/australian-industry-participation>.

12.7 Payment Times Policy

12.7.1 It is Commonwealth policy to ensure providers operating in the supply chains of Government procurement contracts are not left waiting for payments from large businesses (annual income of over \$100 million). The Payment Times Policy can be found at <https://treasury.gov.au/publication/p2021-183909>.

12.7.2 Respondents should note that, where a Contract formed under the Head Agreement is valued over \$4 million (GST inclusive) and the Respondent is a large business (annual income of over \$100 million), the Respondent will be required to pay their subcontracts valued up to \$1 million within 20 calendar days.

12.8 Australian National Audit Office

12.8.1 The Auditor-General has statutory powers to obtain information in respect of the Commonwealth. The *Auditor-General Act 1997* (Cth) provides the Auditor-General or an

authorised person with a right to have, at all reasonable times, access to information, documents and records.

- 12.8.2 In addition to the Auditor-General's powers under the *Auditor-General Act 1997* (Cth), Successful Respondents will be required to provide the Auditor-General or an authorised person, access to information, documents, records and its assets, including those on the Respondent'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 Respondent, its employees, agents or subcontractors, and which are related to the Head Agreement.
- 12.8.3 Such access will apply for the Head Agreement Period and for a period of seven years from the date of expiration or termination.
- 12.8.4 Respondents should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* (Cth) on their participation in the Tender.

12.9 Freedom of Information

- 12.9.1 The attention of Respondents is drawn to the *Freedom of Information Act 1982* (Cth) (the FOI Act), which gives members of the public a right of access to documents in the possession of the Commonwealth, unless exempted. The attention of Respondents is also drawn to the *Australian Information Commissioner Act 2010* (Cth), which provides for the establishment of the Office of the Australian Information Commissioner to perform the FOI functions.
- 12.9.2 Respondents should obtain, and will be deemed to have obtained, their own independent, professional advice on the impact of this legislation on their participation in this RFT process.
- 12.9.3 Respondents should note that under the FOI Act, AGD may be required to publish certain information in the possession of its contracted service providers and their subcontractors on its website where it would not be unreasonable to publish the information. AGD may therefore require its contracted service providers and their subcontractors to provide information necessary to enable AGD to meet any reporting obligations it has under the FOI Act.

12.10 Benefits to the Australian Economy

- 12.10.1 Commonwealth policy requires AGD to consider the economic benefit of the procurement to the Australian economy as part of its value for money assessment.
- 12.10.2 Respondents are required to indicate how their organisation provides a benefit to the Australian economy in their Tender in the Tender Response Questionnaire under the "Commonwealth Policy Requirements" tab.

12.11 Standards

- 12.11.1 The Respondent must ensure that any Offered Services proposed comply with all applicable Australian standards (or the applicable international standards, if there are no applicable Australian standards). Respondents should note that they may be required to enable the Entity, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards.

12.12 Archives requirements

12.12.1 The Head Agreement will require the Respondent to comply with the requirements of the *Archives Act 1983* (Cth) (**Archives Act**) and any records authority in respect of Commonwealth Records which are under the custody or control of the Respondent. In this paragraph 12.12, **Commonwealth Records** has the same meaning as in the Archives Act.

12.13 Tax and GST

12.13.1 Each Respondent should obtain, and will be deemed to have obtained, its own tax advice, including in respect of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12.14 APS Values and Code of Conduct

12.14.1 Commonwealth personnel are subject to the APS Values and Code of Conduct, as contained in Part 3 of the *Public Service Act 1999* (Cth).

12.14.2 Successful Respondents must uphold values and demonstrate behaviour consistent with the APS Values and Code of Conduct.

Part D – Evaluation of Tenders

13. Evaluation Process

13.1 Tender Evaluation Team

13.1.1 A Tender Evaluation Team will be established to evaluate Tenders received in response to this RFT. AGD may appoint advisers to assist the Tender Evaluation Team.

13.2 Evaluation Overview

13.2.1 Following the Closing Time, Tenders will be evaluated in the manner described in this **Part D – Evaluation of Tenders**.

13.2.2 The Tender Evaluation Team will evaluate Tenders in order to identify the Respondents that it considers can provide the Offered Services in a manner that achieves the best value for money for the Commonwealth, in accordance with:

- (a) the Evaluation Criteria set out in this RFT;
- (b) the Commonwealth Procurement Rules, including procurement policies (as applicable); and
- (c) the process described in this RFT.

13.2.3 The Tender Evaluation Team will undertake the evaluation using a staged process as described in Table 4:

Table 4 – Evaluation Stages

| Stage | Description |
|--------------------------------|---|
| Stage 1 | Initial screening for compliance |
| Stage 2 | Detailed Evaluation against Evaluation Criteria |
| Stage 3 | Financial Analysis |
| Stage 4 | Value for money assessment |
| Stage 5 | Final determination |
| Risk assessment | Will be conducted throughout the evaluation process |
| Verification Activities | May occur at any stage of the evaluation process |

13.2.4 AGD may conduct some or all of the processes set out in this **Part D – Evaluation of Tenders** at the same time or in a different order to that stated, if required, so that an efficient and appropriate value for money assessment is undertaken.

13.2.5 The Tender Evaluation Team will evaluate primarily on the basis of the information contained in the Respondent's response against the Evaluation Criteria. The Tender Evaluation Team may, in its absolute discretion:

- (a) consider additional information not provided by a Respondent including information available through Verification Activities in considering any Evaluation Criteria;
- (b) make independent enquiries about any matters that may be relevant to the evaluation of a Tender;
- (c) decide not to assess information in a Tender which is not specifically required by this RFT, such as marketing documentation supplied with a Tender or information that is accessed via a link embedded in the Tender;
- (d) not consider any information that exceeds the word/character limit or is not in the format specified in the Tender Response Questionnaire; and
- (e) may use information from any part of a Tender in the assessment of any Evaluation Criteria.

13.2.6 The Tender Evaluation Team may set aside or reject a Tender at any time, on the basis that:

- (a) the Tender does not demonstrate an acceptable level of capacity, capability, experience, quality or compliance against any of the Evaluation Criteria;
- (b) it has become clear to the Tender Evaluation Team that the Respondent has not provided adequate information or there are other reasons (including technical, financial, commercial, legal or risk related reasons) why the Respondent is clearly not competitive;
- (c) the Tender or the Respondent does not comply with a term or requirement of this RFT that is expressed to be mandatory; or
- (d) the Tender is clearly uncompetitive when compared with the other Tenders received.

13.3 Stage 1: Initial Screening for Compliance

13.3.1 Each Tender will initially be assessed to determine:

- (a) whether it has been properly submitted by the Closing Time (or AGD has accepted the Tender under paragraph 11.6 of this RFT);
- (b) its compliance with the Conditions for Participation; and
- (c) its compliance against the Minimum Content and Format Requirements.

13.3.2 Only Tenders that are assessed as compliant in accordance with paragraph 13.3.1 of this RFT will proceed to Stage 2 – Detailed Evaluation.

13.3.3 If a Tender is excluded from further consideration in the Stage 1 Initial Screening for Compliance process, the Respondent will be advised in writing that its Tender has been excluded, outlining the reasons for such a decision.

13.4 Stage 2: Detailed Evaluation

- 13.4.1 The Tender Evaluation Team will conduct a detailed assessment of the information provided by the Respondent in its Tender.
- 13.4.2 Tenders will be assessed against the following weighted Evaluation Criteria:
 - (a) the extent to which the Respondent demonstrates its capability and capacity to provide the Offered Services to the Australian Government (40%);
 - (b) the extent to which the Respondent demonstrates its experience in providing the Offered Services to the Australian Government, State/Territory Governments and/or large corporate organisations (60%), which will take into account:
 - i. the examples provided to demonstrate the Respondent's experience and how the experience relates to the definition of Legal Services
 - ii. demonstrated experience of key personnel in relation to each of the Offered Services for tendered Areas of Law (where relevant); and
 - iii. the Referee Endorsements submitted for the Respondent and the extent to how these support the Respondent's claimed experience.
- 13.4.3 The Tender Evaluation Team will also consider any risks inherent in the Respondent's response and the results of any Verification Activities.
- 13.4.4 The detailed evaluation will result in a rating being applied to the Tender in relation to each Area of Law for which the Respondent has Offered Services.

13.5 Stage 3: Financial Analysis

- 13.5.1 In assessing Tenders in Stage 3, the Tender Evaluation Team will consider:
 - (a) the fees submitted by each Respondent, including any omissions or apparent errors in the pricing; and
 - (b) the result of any Verification Activities (if relevant).
- 13.5.2 In assessing if each Respondent's Fees contributes to a value for money outcome for an Area of Law, the Tender Evaluation Team will undertake a comparative analysis of Respondents' fees, and may:
 - (a) categorise Respondent's by organisation size;
 - (b) consider whether any other component of the Respondent's Tender may impact on pricing;
 - (c) where possible, compare pricing against other current or previous Commonwealth Entity arrangements for legal services, including applying an adjustment for the Wage Price Index or Consumer Price Index; and
 - (d) where possible, undertake modelling to quantify benefits for the Government.
- 13.5.3 The financial analysis will result in a rating being applied for each Area of Law that the Respondent has Offered Services.

13.6 Stage 4: Value for Money Assessment

13.6.1 In determining value for money, the Tender Evaluation Team will consider each Respondent's:

- (a) assessment from Stage 2 and Stage 3 of the evaluation process, which includes an assessment of risk;
- (b) the results of any Verification Activities (if relevant);
- (c) the level of compliance with Commonwealth legislation and policy;
- (d) commitment to continual improvement of environmental sustainability;
- (e) economic benefits to the Australian economy;
- (f) the extent to which the Respondent demonstrates its commitment to meeting the National Pro Bono Target, including the Respondent's previous performance;
- (g) Supporting indigenous participation in the Australian economy, including the Respondent's status as an Indigenous organisation; and
- (h) any other matter that AGD or the Tender Evaluation Team considers relevant and allowed to be considered under the RFT.

13.7 Stage 5: Final Determination

13.7.1 The Stage 5 – Final Determination process considers the outcomes of the value for money assessment.

13.7.2 The Tender Evaluation Team may also consider the number of Service Providers selected for the Panel according to Government's expected requirements under each Area of Law.

13.7.3 The Stage 5 – Final Determination process will identify:

- (a) with consideration of paragraph 13.7.2, the Successful Respondents (if any) that will be offered a Head Agreement to sign;
- (b) the Preferred Respondents (if any) that may proceed to negotiations in accordance with section 13.8, where it is considered that negotiations could improve the value for money outcome; and
- (c) any Unsuccessful Respondents,

or any other outcome considered appropriate as a result of the value for money assessment.

13.8 Negotiations

13.8.1 AGD does not intend to conduct negotiations and intends to appoint Successful Respondents to the Panel primarily on the basis of the Tenders submitted.

13.8.2 In accordance with paragraph 13.7.3(b), to achieve the best value for money, AGD may enter into negotiations with one or more Preferred Respondents (if any) (including, without limitation, in parallel and in relation to fees or any other matter), to seek improvements to a Preferred Respondent's offer, based on the Preferred Respondent's response to the RFT.

- 13.8.3 If AGD concludes that a Respondent has retracted, or attempts to retract, its Tender or any undertakings made in its Tender during negotiations, AGD may choose not to proceed with that Respondent and/or exercise another right given by this RFT.
- 13.8.4 AGD may (in its absolute discretion) discontinue negotiations with any Respondent at any stage.
- 13.8.5 Communications between AGD and the Preferred Respondent during the negotiations must be kept confidential by the Preferred Respondent.
- 13.8.6 AGD will conduct a further value for money assessment of the Preferred Respondents taking into account the outcomes of any negotiations.
- 13.8.7 The Commonwealth's decision in relation to the outcome of this RFT process, and the identification of Successful Respondents and Unsuccessful Respondents is final.

14. Verification Activities

14.1 Clarification of Tenders

- 14.1.1 AGD may, at any point during the evaluation process, ask a Respondent to clarify information with respect to any aspect of its Tender.
- 14.1.2 A person responding to a request for clarification on behalf of the Respondent will be deemed to be authorised by the Respondent to do so.
- 14.1.3 Failure to respond to a request for clarification in the manner requested and by the required time may have an adverse impact on the evaluation of the affected Tender.
- 14.1.4 Respondents should not interpret a request under paragraph 14.1.1 as being an indication of the outcome of the RFT process. The Respondent should treat all requests under paragraph 14.1 as confidential information.

14.2 Referee Checks

- 14.2.1 The Tender Evaluation Team may at any stage of the evaluation:
 - (a) contact a referee that did not submit their Referee Endorsement prior to the Closing Time;
 - (b) contact a referee that submitted their Referee Endorsement prior to the Closing Time to verify any aspect of their Referee Endorsement;
 - (c) request additional referee contact details from a Respondent; or
 - (d) contact any other person to whom a Respondent has provided services to (even if not stated in their Tender) to provide a Referee Endorsement for that Respondent.

14.3 Financial Viability and Financial Checks

- 14.3.1 AGD may conduct an independent financial assessment of the Respondent or any Related Body Corporate or other related person or entity by engagement of a third party at any stage during the evaluation process.

- 14.3.2 The financial viability assessment referred to in paragraph 14.3.1 of this RFT may be conducted at any time prior to signature of any resultant Head Agreement with a Successful Respondent.
- 14.3.3 On request by AGD, the Respondent must reasonably assist AGD with any financial viability assessment conducted under paragraph 14.3.1 of this RFT.
- 14.3.4 This process is used to minimise risk to the Government. The process is not used to measure the profitability of an organisation or its potential for success in the market.

14.4 Security, Probity and Other Checks

- 14.4.1 AGD may perform such security, criminal history, probity, financial and regulatory investigations and procedures of the Respondent, and personnel or any Related Body Corporate or other related person or entity as AGD may determine are necessary.
- 14.4.2 Respondents must promptly provide AGD with such information or documentation as AGD requires in order to undertake such checks and procedures. If the Respondent does not promptly provide all reasonable assistance to AGD in this regard, this may be taken into account by AGD in its assessment of the Respondent against the Evaluation Criteria.
- 14.4.3 AGD may take into consideration the results of information obtained from the outcomes of the checks or procedures in its assessment of the Respondent against the Evaluation Criteria.
- 14.4.4 Without limiting paragraph 14.4.1 of this RFT, AGD may conduct criminal history checks, and/or checks with regulatory entities (including but not limited to the Australian Securities and Investment Commission, the ACCC, and State and Territory authorities) on the Respondent, its board of directors, its management and/or its proposed personnel and Related Bodies Corporate or other related person or entity, if AGD considers that the results may affect any aspect of the assessment of the Tender against the Evaluation Criteria or AGD's assessment of risk in relation to the Respondent.

15. Post Evaluation

15.1 Notification of Successful and Unsuccessful Respondents

- 15.1.1 Respondents will be notified in writing and advised if their Tender is successful or unsuccessful.
- 15.1.2 All Respondents will be offered a written debrief on their Tender by AGD at the conclusion of this RFT process.

Attachment A – Glossary

Note to Respondents: The definitions in this Attachment A are in addition to any definitions included in the Head Agreement.

| Term | Meaning |
|--|---|
| 360 Providers' Portal | The portal provided on the 360 Tender System that enables Respondents to complete and submit their Tender. AGD's requests can be accessed on the 360 Providers' Portal through this link <u>Welcome to 360 - Public Portal (apetsoftware.com.au)</u> |
| 360 Tender System | The 360 Tender System is an online tender and evaluation system provided and supported by simplylogical.net. |
| 360 Tender System Respondent's User Guide | The guide provided at Attachment F to this RFT to assist Respondents to complete and submit their Tender. |
| 360 Tender System Support | The point of contact for all queries and requests for technical or operational support for the 360 Tender System specified at paragraph 7.4.1 of this RFT. |
| Addenda/Addendum | A notice issued in accordance with paragraph 7.2 of this RFT. |
| Area of Law | The categorisation of the services that will be included in the Panel, as described in clause 3 of Schedule 2 (Statement of Requirement) of the Head Agreement set out in Attachment C |
| AusTender | The Australian Government's procurement information system located at https://www.tenders.gov.au/ . AusTender provides the centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists and contracts awarded. Notification of the release of this RFT will be published on AusTender. |
| Authorised Representative | The person authorised by the Respondent to complete the Respondent's declaration and to submit a Tender on behalf of the Respondent. |
| Closing Time | The time and date for submission of Tenders set out on the front page of this RFT. |
| Commonwealth Entity | The meaning given in the Head Agreement set out in Attachment C . |
| Commonwealth Procurement Rules | The Commonwealth Procurement Rules, available at <u>https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules</u> , issued by the Minister for AGD under section 105B of the <i>Public Governance Performance and Accountability Act 2013</i> (Cth) as amended from time to time. |

| Term | Meaning |
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| Conditions for Participation | The mandatory minimum requirements that the Respondent must meet before a Tender can be considered by AGD, as set out in paragraph 10.1 of this RFT. |
| Conflict of Interest | <p>means any circumstances:</p> <ul style="list-style-type: none"> • which constitute an actual conflict; • which constitute a known risk of conflict; or • which may be perceived by others to constitute a conflict, (or is likely at some future time to constitute such a conflict, risk of conflict or perceived conflict) between the interests of the Commonwealth or an Entity and those of the Respondent or its personnel (or between the duties or obligations of the Respondent or its personnel to the Commonwealth or an Entity and their duties or obligations to another person) in relation to the performance of the Services or otherwise in connection with the Head Agreement. |
| Enquiry Cut-off Date | The meaning given in the table in paragraph 5.1 of this RFT. |
| Evaluation Criteria | The evaluation criteria set out in paragraph 13.4.2 of this RFT. |
| Head Agreement | The Head Agreement set out in Attachment C . |
| Head Agreement Period | The meaning given in the Head Agreement set out in Attachment C . |
| Key Personnel | Personnel that will be listed in Schedule 3 (Areas of Law and Key Personnel) of the Head Agreement set out in Attachment C . |
| Late Tender | Any Tender that is submitted after the Closing Time, other than where solely due to mishandling by AGD or the 360 Tender System, as determined in accordance with paragraph 11.6 of this RFT. |
| Legal Services | Means the services described in paragraph 2.1 of this RFT. |
| Legal Services Provider | Means a Successful Respondent that enters into a Head Agreement to provide any of the Legal Services. |
| Minimum Content and Format Requirements | The requirements set out in paragraph 10.2.3 of this RFT. |
| National Pro Bono Target | The meaning given in the Head Agreement set out in Attachment C . |
| Offered Services | The services that the Respondent is offering to provide in its Tender. |

| Term | Meaning |
|---|--|
| Panel | The panel arrangement established as a result of this RFT process. |
| Preferred Respondent | A Respondent that is selected to participate in negotiations with AGD in connection with their potential entry into a Head Agreement. For the avoidance of doubt, selection as a Preferred Respondent does not provide the Respondent with any additional rights and the Commonwealth may choose not to enter into a Head Agreement with any Preferred Respondent or exercise any other right granted to it by this RFT. |
| Privacy Act | the <i>Privacy Act 1988</i> (Cth). |
| Proceedings | Any litigation, arbitration, mediation conciliation, proceeding or investigation. |
| Protective Security Policy Framework | The <i>Protective Security Policy Framework</i> outlined at www.protectivesecurity.gov.au , including the Australian Government Information Security Manual outlined at www.cyber.gov.au/ism |
| Referee Endorsements | References provided by a Respondent's client to verify the Respondent's claimed experiences through the process described in paragraph 10.3 of the RFT. |
| Related Body Corporate | Where a body corporate is: (a) a holding company of another body corporate; (b) a subsidiary of another body corporate; or (c) a subsidiary of a holding company of another body corporate; the first-mentioned body and the other body are related to each other. |
| Request for Tender or RFT | This request for tender to re-establish a Legal Services Panel for the Australian Government. |
| Request Manager | The point of contact for this RFT as provided for in paragraph 8.1.1 of this RFT. |
| Respondent | Any organisation considering or responding to this RFT. |
| Respondent's Declaration | The Respondent's declaration contained in the Tender Response Questionnaire. |
| Satisfactory | Means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy. |

| Term | Meaning |
|--|--|
| Shadow Economy Procurement Connected Policy | The <i>Shadow Economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019</i> available at https://treasury.gov.au/publication/p2019-t369466 . |
| Simplylogical.net | Sharrowlane Pty Ltd, ABN 84 099 636 709, the company based in Canberra, ACT that owns the 360 Tender System. |
| Statement of Tax Record | Means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR . |
| Successful Respondent | A Respondent that is selected to enter into a Head Agreement. |
| Tender | A response to this RFT completed and submitted by a Respondent through the 360 Tender System. |
| Tender Evaluation Team | The tender evaluation team referred to in paragraph 13.1 of this RFT. |
| Tender Response Questionnaire | The series of questions and instructions within the 360 Providers' Portal that the Respondent is required to complete/follow in order to submit its Tender. |
| Tender Validity Period | Is the period described in paragraph 11.9 of this RFT. |
| Unsuccessful Respondent | A Respondent who is advised by AGD as not being successful in this RFT process. |
| Valid | Means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy. |
| Verification Activities | The activities set out in paragraph 14 of this RFT. |

Attachment B – Public Interest Certificate

Please refer to **Attachment B – Public Interest Certificate** set out in the separate document as provided.

Attachment C – Head Agreement

Please refer to **Attachment C – Head Agreement** set out in the separate document as provided.

Attachment D – Information about the Tender Response Questionnaire

The Tender Response Questionnaire, in the 360 Providers' Portal, contains a series of questions that once completed and submitted will form the Respondent's Tender. In accordance with paragraph 9.1, Respondents **must** submit their Tender through the 360 Tender System.

The Tender Response Questionnaire contains a number of sections that are represented by tabs on top of each page. The information required in each section (tab) is summarised in Table 1 below. Further information is available through guidance notes in the Tender Response Questionnaire and in the 360 Tender System Respondent's User Guide.

Table 1 – Summary of Tender Response Questionnaire

| Section | Requirements |
|--|--|
| Respondent Details, About the Respondent | <p>This section requires the Respondent to include the following information:</p> <ul style="list-style-type: none">• ABN• legal entity name (auto-populated when ABN is entered)• trading name (this should be your Registered Business Name)• address details• contact information (in relation to the Tender)• the number of employees in the Respondent's organisation• type of legal entity |
| Conditions for Participation | <p>This section requires the Respondent to comply with each of the Conditions for Participation provided in paragraph 10.1 of the RFT. Respondents must comply with each of the Condition for Participation to be able to submit with their response.</p> |
| Minimum Content and Format Requirements | <p>This section requires the Respondent to comply with each of the Minimum Content and Format Requirements provided in paragraph 10.2 of the RFT. Respondents must comply with each of the Minimum Content and Format Requirements to be able to continue with their response.</p> <p>In this section, Respondents will also be able to upload their Statement of Tax Record or Statement of Tax Record receipt from the Australian Taxation Office.</p> |
| Commonwealth Legislation and Policy Requirements | <p>This section requires the Respondent to provide details of:</p> <ul style="list-style-type: none">• any court or alternative dispute resolution proceedings that are taking place concerning the Respondent• any investigations that the Respondent is subject to, or any previous breach of any legislation |

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| | <ul style="list-style-type: none">any material breach in the past three years, or current material breach, of any law, regulation or code that would be relevant to any resultant Head Agreementareas in which the Respondent provides an economic benefit to the Australian Economyhow the Respondent will support Australia's environmental sustainabilityactual or proposed pro bono work that has or will be undertakenwhether the Respondent is an Indigenous enterprise and how it supports Indigenous participation in the economywhether the Respondent is a 'relevant employer' under the <i>Workplace Gender Equality Act 2012</i> (Cth) (and if 'yes', upload their letter of compliance)Respondent's country of tax residency (and if applicable, the Respondent's ultimate parent entity's country of tax residency)solvency and financial capability |
| Conflicts of Interest | <p>The section requires the Respondent to:</p> <ul style="list-style-type: none">identify any actual or perceived conflicts of interest if it were to enter into a Head Agreement with AGDadvise if it has processes in place to identify and manage conflicts of interest. |
| Head Agreement Details | <p>This section requires the Respondent to provide:</p> <ul style="list-style-type: none">the name, position, contact number, and email address of the Legal Service Provider's Representativethe name, job title, contact number, and email address of the Legal Service Provider's Senior Executive; andthe name, job title, physical address and email address of the Legal Service Provider's Address for Notices. <p>This information will be used to populate Schedule 1 - Head Agreement Details of the Head Agreement, if the Respondent is successful.</p> |
| Confidential Information | The section requires the Respondent to identify any information in its Tender that it requests to be treated as confidential information if it enters into the Head Agreement. Refer paragraph 11.20 of the RFT. |
| Offered Services | This section requires the Respondent to select the Areas of Law in which it is offering to provide legal services, and the legal services which it is offering to provide under each Area of Law. Refer to clause 3 of Schedule |

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|---|---|
| | <p>2 – Statement of Requirements of the Head Agreement for details about the Areas of Law and the types of legal services under each area.</p> |
| Area of Law: Evaluation Criteria, Demonstrated Experience, Key Personnel and Fees | <p>As part of Evaluation Criterion 1, the Respondent is required to:</p> <ul style="list-style-type: none">• detail its organisational capability to provide services across various locations;• describe its practice management strategies;• describe how it will manage its relationship with the Australian Government; <p>As part of Evaluation Criterion 2:</p> <p>- For each Area of Law (other than Legal Support Services) selected in the Offered Services section, the Respondent is required to:</p> <ul style="list-style-type: none">• provide a summary of relevant skills qualifications and professional recognition;• summarise the number and types of engagements the Respondent has had with the Australian Government, State/Territory Governments and/or large corporate entities in the past three years• provide three examples of the Respondent providing relevant services to Australia Government, State/Territory Governments and/or large corporate entities in the past three years• for each example provide the names and details of a Referee• provide the details of one Key Personnel for each type of service under each Area of Law <p>- For the Legal Support Services Area of Law, the Respondent is required to:</p> <ul style="list-style-type: none">• provide a summary of relevant skills qualifications and professional recognition;• provide the number of engagements the Respondent has had with the Australian Government, State/Territory Governments and/or large corporate entities in the past three years• provide five examples of the Respondent providing relevant services to Australia Government, State/Territory Governments and/or large corporate entities in the past three years• for each example provide the names and details of a Referee <p>Note: Referee Endorsements will be facilitated through the 360 Tender System. Referees will receive notification from the 360 Tender System when their details are entered by the Respondent that they have been</p> |

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| | <p>nominated as a referee for the Respondent and invited to provide a reference for the Respondent by completing a form in the 360 Tender System. Referees will be required to submit their Referee Endorsements through the 360 Tender System by 11.59pm AEDT Friday 12 January 2024.</p> <p>The Respondent will also be required to:</p> <ul style="list-style-type: none">• select up to six personnel classifications that it is offering pricing for• provide the maximum rates (GST inclusive) for each personnel classification under the Area of Law in the form requested. <p>No alternative pricing structures are to be included.</p> <p>Note: Please refer to the personnel classification and work level standards in Table 2 for a description of the expected work level standards for each classification. The descriptions of the personnel classifications have been provided as a guide only. The personnel classifications have been provided a generic name (Senior Associate, Partner etc.) and the Respondents should, by using the expected work level standards in Table 2, match its own equivalent at each level e.g. Partner/Director/Executive Manager. The Respondent does not need to provide personnel at every level.</p> |
| Value-add Services | <p>The Respondent is to provide details of any value-add services it is offering to the Government.</p> <p>Note: Value-add services are not directly assessed as part of the Evaluation Criteria but form part of the value for money assessment.</p> |
| Respondent's declaration | <p>This section provides the Respondent's declaration. The Authorised Representative is required to:</p> <ul style="list-style-type: none">• to confirm that they have the authority to make the declaration on behalf of the Respondent• include their name and the date the declaration is made• upload a scanned image of their signature. |

Table 2 - Personnel classification and work level standards

| Personnel classification | Expected work level standards |
|--------------------------|---|
| Partner | <ul style="list-style-type: none">• A Partner is a lawyer who is amongst the most senior personnel in a law firm and usually manages a team of lawyers.• A Partner usually has over 10 to 15 years of experience in the legal industry and often specialises in one or more specific subject matter areas.• A Partner in a smaller firm may be referred to as a sole practitioner or principal solicitor. |

| Personnel classification | Expected work level standards |
|--|---|
| | |
| Special Counsel | <ul style="list-style-type: none">• A Special Counsel generally has over ten years of experience in the legal industry who practices law in a senior position within a firm.• Special Counsel assist with generally more complex legal matters and may have extensive subject matter expertise.• Special Counsel are considered to be more senior than Senior Associates. |
| Senior Associate | <ul style="list-style-type: none">• A Senior Associate is a practicing lawyer that generally has 5 to 15 years' experience in practicing law.• They hold a critical role within a firm, supervising and developing junior lawyers and working closely with Partners to deliver services for their clients.• Senior Associates regularly manage complex legal matters. |
| Lawyer > 2 years' experience | <ul style="list-style-type: none">• A lawyer with more than two years of experience is still considered junior amongst practicing legal professionals. They will work under the supervision of senior lawyers and will take instructions accordingly.• Lawyers with more than two years of experience may not be able to manage their own matters and will require second counselling from superiors when assisting a client but from time to time, may be able to assist without supervision. |

| Personnel classification | Expected work level standards |
|--|--|
| Lawyer < 2 years' experience | <ul style="list-style-type: none">• A lawyer with less than two years of experience is considered the most junior amongst practicing legal professionals. They will work under the supervision of senior lawyers and will take instructions accordingly.• Lawyers with less than two years of experience will not be able to manage their own matters and will require second counselling from superiors when assisting a client. |
| Paralegal | <ul style="list-style-type: none">• Paralegals may be law graduates who have not yet been admitted as a legal practitioner, law students, or career paralegals.• Paralegals are not qualified to practice law but generally have exposure to the legal industry and its operations.• Paralegals generally help lawyers with legal research and administrative tasks which can extend to other areas within a firm such as finance and matter management. |

Attachment E – Guidance on the Shadow Economy Policy

Provided as a separate document.

Attachment F – 360 Tender System Respondent's User Guide

Provided as a separate document.