

CONDITIONS FOR PARTICIPATION & GUIDANCE MATERIAL FOR APPLICANTS

1. Statement of Requirement

- 1.1. The Commonwealth of Australia (Commonwealth) requires a broad range of legal services to meet the operational and administrative requirements of its various departments, agencies and bodies which are subject to the *Financial Management and Accountability Act 1997* (FMA Act) or the *Commonwealth Authorities and Companies Act 1997* (CAC Act)* (Agencies).
- 1.2. Legal services are provided from both in-house and external sources with the demand for, and nature of, the services required varying from Agency to Agency and over time. The *Report of the Review of Commonwealth Legal Services Procurement* (the Blunn Krieger Report) defined legal services in the context of the Commonwealth's requirements as meaning:

"..those professional services used by agencies to determine their legal position on issues, to manage legal processes, to advise on managing legal risk or achieving results lawfully, or to document contractual or other legal obligations."
- 1.3. The Blunn Krieger Report recommended that, to ensure the most efficient and effective use of Commonwealth resources expended on legal services, the Commonwealth needs to become a more informed purchaser. To give effect to this recommendation the Attorney-General's Department (the Department) through the Office of Legal Services Coordination (OLSC), seeks to establish a whole-of-government legal services multi-use list (LSMUL).
- 1.4. The objectives and advantages of the LSMUL include:
 - a. reducing barriers to entry into the Commonwealth legal services market;
 - b. gathering and disseminating information as to the performance of Service Providers in the provision of legal services to Agencies; and

* This excludes Government Business Enterprises (GBEs) prescribed under Regulation 4 of the *Commonwealth Authorities and Companies Regulations 1997* and any agencies exempt from compliance with Appendix F to the *Legal Services Directions 2005*, under paragraph 13.1(a) of the Schedule to the *Legal Services Directions 2005*.

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- c. supporting Agencies in their ongoing function as informed purchasers of legal services.
 - 1.5. Broadly, the legal services required by the Commonwealth through the LSMUL fall into the following categories of legal work:
 - a. government and administrative law;
 - b. corporate and commercial law;
 - c. dispute resolution and litigation; and
 - d. all other legal services.
 - 1.6. The above categories of legal work do not include the services of Counsel. Counsel will continue to be engaged by Agencies via the arrangements under the *Legal Services Directions 2005*, issued under section 55ZF of the *Judiciary Act 1903* (Cth) (Legal Services Directions).
 - 1.7. The provisions of the LSMUL will apply to the tied areas of work under the Legal Services Directions, except those areas provided by Agencies.
 - 1.8. Agencies will be required under the Legal Services Directions to purchase legal services from Service Providers on the LSMUL from the date of its commencement. This requirement is subject to transitional arrangements and exceptional circumstances which may prevent an Agency from engaging a Service Provider on the LSMUL.
 - 1.9. There is no definitive data to project into the forward years either the extent of the demand for, or proposed expenditure on legal services across the Commonwealth. Since 2009/10 OLSC has produced an annual Commonwealth Legal Services Expenditure Report (the Report) which is available from the OLSC webpage, <http://www.ag.gov.au/olsc>. The Report includes historical information about professional fees paid to law firms by individual Agencies.
- 2. About the LSMUL**
- 2.1. Applicants seeking to be included on the LSMUL should note that appointment to the LSMUL does not guarantee that any legal services or any volume of legal services will be ordered by Agencies.

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- 2.2. The LSMUL will include a list of Service Providers who have pre-qualified by applying for and satisfying the conditions for participation at clause 4, to provide legal services to Agencies in their nominated categories of legal work.
- 2.3. Applicants may submit an application for inclusion to join the LSMUL at any time, noting that OLSC intends to assess applications twice a year. Applicants seeking to be included on the LSMUL will be required to provide evidence demonstrating their capacity to meet the conditions for participation, details of which are provided for below. Applicants will be included on the LSMUL once they have been assessed as meeting the conditions for participation.
- 2.4. No assessment of value for money will be made at the time of inclusion on the LSMUL. Agencies accessing the LSMUL will undertake a comparative value for money assessment of individual Service Providers as part of acquiring specific legal services.
- 2.5. In forming the LSMUL, there will be a head agreement in the form of the LSMUL Deed (at Part 2 of the application for inclusion) between the Commonwealth as represented by the Department and each successful Applicant. The LSMUL Deed will standardise the terms that will apply to all Service Providers of legal services to Agencies. For that reason, the terms of the LSMUL Deed are not negotiable. Clause 4 of the LSMUL Deed outlines the process for purchasing legal services from Service Providers on the LSMUL.
- 2.6. The operation of the LSMUL does not affect the requirement that the procurement of legal services by Agencies, whether from the LSMUL or otherwise, must comply with the requirements under the financial management framework, the Legal Services Directions and Commonwealth Procurement Guidelines (CPGs).
- 2.7. Information about the Australian Government's Procurement Framework is at www.finance.gov.au/procurement. Further information about the provision of legal services to Government is at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Legal_services_to_Government.
- 2.8. In approaching the market to initially establish the LSMUL, the Department will hold industry briefings on the LSMUL in a number of locations. For information on the industry briefing timetable please refer to the OLSC webpage at: www.ag.gov.au/lsmul .

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3. Overview of Application for Inclusion

3.1. Applicants that wish to participate in the LSMUL arrangements must complete an application for inclusion. This application for inclusion includes:

- a. **Part 1** – Conditions for Participation and Guidance Material for Applicants;
- b. **Part 2** – LSMUL Deed:
 - i. Schedule 1 – Operational Rules;
 - ii. Schedule 2 – Request for Quote (RFQ) Template;
 - iii. Schedule 3 – Order Template; and
 - iv. Schedule 4 – Default Terms and Conditions; and
- c. **Part 3** – application for inclusion form:
 - i. Section 1 – Applicant Details;
 - ii. Section 2 – List Rates and Innovative Fee Arrangements;
 - iii. Section 3 – Categories of Legal Work, Conflicts of Interest and Legal Services Directions;
 - iv. Section 4 – Referees; and
 - v. Section 5 - Supporting Information.

4. Conditions for Participation

4.1. To be considered for inclusion on the LSMUL, an Applicant must meet the following requirements:

Threshold Conditions for Participation

- a. provide proof that key personnel engaging in legal practice in Australia are subject to the regulation of a relevant State/Territory law society or professional body, or the National Board on its commencement, or Part VIII B of the *Judiciary Act 1903*;

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- b. provide copies of current Certificates of Currency in respect to public liability insurance and professional indemnity insurance for an amount not less than \$10 million (Aud) per event per policy and workers compensation insurance as required by law (or equivalent evidence);
- c. provide a response to the requirement for information on list rates and innovative fee arrangements as required by Section 2 of Part 3 of the application for inclusion;
- d. provide two duly completed and executed LSMUL Deeds (in the form set out in Part 2 of the application for inclusion); and
- e. provide two written referee reports (for each category the Applicant is seeking inclusion) supporting the Applicant's statements against the conditions for participation at clauses 4.1.f, 4.1.g and 4.1.h (see further clause 10);

Qualitative Conditions for Participation

- f. demonstrated capacity to provide quality legal services to the Commonwealth in the nominated categories of legal work, including offers of value add services (see further clause 7);
- g. demonstrated capacity to identify and manage conflicts of interest (see further clause 8); and
- h. demonstrated understanding and capacity to meet the requirements of the Legal Service Directions, including commitment to pro bono legal work (see further clause 9).

5. Assessment of an Application for Inclusion

- 5.1. Applicant's responses to the conditions for participation will be assessed on the basis that they either meet or do not meet the relevant requirement. Where it is determined by OLSC at its discretion that an Applicant does not meet a condition for participation, the application for inclusion will be rejected.
- 5.2. Where an application for inclusion is rejected the Applicant will receive, in writing, formal notification of the rejection and details regarding the reasons for this decision.

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6. Provision of List Rates and Innovative Fee Arrangements

- 6.1. Applicants must provide, in Section 2 of Part 3 of the application for inclusion:
- a. details of the list rates (GST inclusive) they propose for the provision of their services on an hourly, daily and secondment basis; and
 - b. details of any innovative fee arrangements they may propose. This may include arrangements which reduce the cost of the services without jeopardising the Applicant's business model or the quality of the services delivered and may involve sharing risk.
- 6.2 Applicants should note that list rates and innovative fee arrangements provided in their applications for inclusion do not prevent Agencies from negotiating their own specific fee arrangements with the Participant at rates below the list rates with a participant when procuring services from the LSMUL.

7. LSMUL Categories of Legal Work

- 7.1. The LSMUL is segmented into categories of legal work which provide for the legal services requirements of Agencies. Applicants will be assessed on their demonstrated capacity to provide legal services to the Commonwealth in the nominated categories of legal work, including offers of value add services.
- 7.2. Applicants are required, in Section 1 of Part 3 to the application for inclusion, to nominate categories of legal work in which they wish to participate. Applicants may apply to participate in multiple categories of legal work.
- 7.3. For each nominated category of legal work, the Applicant is to include, in Section 3 of Part 3 to the application for inclusion, details on the practice area(s), including key personnel for each nominated practice area, areas of specialisations, the size of the practice area and the Applicant's approach to managing legal matters and client relationships.
- 7.4. The categories of legal work are:
- a. Government and Administrative Law;
 - b. Corporate and Commercial Law;

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- c. Dispute Resolution and Litigation; and
- d. All other legal services.

7.5. For the avoidance of doubt, the categories at clauses 7.4.a, 7.4.b and 7.4.d involve transactional and advice work only. The dispute resolution and litigation category should also be nominated if an Applicant is offering dispute resolution and litigation services. For example:

nominate the Corporate and Commercial Law and Dispute Resolution and Litigation categories if the Applicant is offering transactional, advice and dispute resolution and litigation services in taxation law.

7.6. The category at clause 7.4.d should only be nominated if the proposed legal services do not fall within any of the other categories.

7.7. Applicants are also required, in Section 3 of Part 3 to the application for inclusion, to indicate what value add services are available to Agencies and the basis on which they are offered.

7.8. Applicants should note that value add services provided in their application for inclusion do not prevent Agencies from negotiating their own specific value add arrangement.

7.9. The categories of legal work may change over time at the discretion of the Department as provided in the Operational Rules at Schedule 1 to the LSMUL Deed.

8. Capacity to identify and manage conflicts of interest

8.1. Applicants will be assessed on their demonstrated capacity to identify and manage conflicts of interest.

8.2. In respect to the requirement to demonstrate an ability to identify and manage conflicts of interest, Applicants are required, in Section 3 of Part 3 to the application for inclusion, to:

- a. detail the approaches and processes they have in place for avoiding, identifying and managing conflicts of interest; and
- b. provide examples as to the operation of those approaches and processes.

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8.3. Applicants should note that Agencies may wish to impose their own specific arrangements for managing conflicts in addition to the requirements contained in the application for inclusion.

9. Capacity to meet the requirements of the Legal Service Directions

9.1. Applicants will be assessed on their demonstrated understanding and capacity to meet the requirements of the Legal Services Directions, including their commitment to pro bono legal work.

9.2. Without limiting clause 9.1, Applicants are required, in Section 3 of Part 3 to the application for inclusion, to detail the arrangements that are either in place or that will be put in place for identifying tied work and ensuring the requirements relevant to the performance of legal services in the public sector environment are met.

9.3. Applicants are also asked to indicate, in Section 3 of Part 3 to the application for inclusion, a commitment to undertake pro bono legal work. The Applicant should either;

- a. indicate if it subscribes to the *National Pro Bono Resource Centre's Aspirational Target*; or
- b. nominate a target value of Pro Bono Work over a financial year.

10. Referees Reports

10.1. Applicants are asked to provide, in Section 4 of Part 3 to the application for inclusion, two written referees reports (for each category of legal work in which the Applicant is seeking inclusion) supporting the Applicant's statements against the conditions for participation above at clauses 4.1.f, 4.1.g and 4.1.h.

10.2. The Applicant's referees may be checked as part of validating the claims made. The Department also reserves the right to contact any other person, directly and without notifying the Applicant to verify the claims made.

10.3. Where an Applicant's referee statements do not support the statements made by the Applicant against the conditions for participation at clauses 4.1.f, 4.1.g and 4.1.h the Applicant will be deemed not to have met the relevant condition for participation and their application for inclusion will be rejected.

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11. Supporting Information

11.1. Applicants are asked to provide any additional information supporting their application for inclusion in Section 5 of Part 3 to the application for inclusion. This may include, for example, curriculum vitae's for key personnel nominated in Section 3 of Part 3 to the application for inclusion.

12. How to Apply for Inclusion on the LSMUL

12.1. The process for applying for inclusion on the LSMUL is:

- a. Go to the LSMUL home page at www.ag.gov.au/lsmul .
- b. Download Parts 2 and 3 of the application for inclusion.
- c. Complete and sign two copies of Part 2 of the application for inclusion.
- d. Complete Part 3 of the application for inclusion and attach any supporting information.
- e. Lodge Parts 2 and 3 electronically to lsmul@ag.gov.au, together with all supporting documentation, as set out below:
 - i. The completed and signed Part 2 should be scanned to PDF 8 (or above) format;
 - ii. The completed Part 3 should be provided in PDF 8 (or above) format **and** in Microsoft Word 2002 SP3 (or above) format.
- f. Post the 2 signed hard copies of Part 2 of the application for inclusion to OLSC at the address below:

Legal Services Multi-Use List Evaluation Team
Office of Legal Services Coordination
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
- g. Applicants will receive an electronic lodgement receipt after both the electronic application for inclusion and the hard copies of the LSMUL Deeds are received by OLSC.

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- 12.2. For the avoidance of doubt, signed copies of the LSMUL Deed will prevail over the electronic copy in the event of an inconsistency between the documents.
- 12.3. If two signed hard copies and an electronic version of the LSMUL Deed are not received by OLSC or the signed copies received have been amended by the Applicant, the application for inclusion will be incomplete and rejected on this basis.
- 13. Incomplete or Non-Compliant Applications for Inclusion**
- 13.1. OLSC will not consider an application for inclusion that:
- a. is incomplete or non-compliant with the application for inclusion response requirements set out in Part 3; and /or
 - b. does not include LSMUL Deeds duly signed by the Applicant in the terms provided for in clause 12 above. For the avoidance of doubt, this includes that the terms and conditions of Part 2 cannot be amended by the Applicant.
- 13.2. OLSC will notify an Applicant if their application for inclusion is incomplete or non-compliant with the requirements and will not be considered for inclusion on the LSMUL.
- 13.3. After an Applicant has been notified that their application for inclusion has been rejected, the Applicant may resubmit an amended application for inclusion at any time. A resubmitted application for inclusion will be considered on the same basis as if it were an original application for inclusion. There is no limitation on the number of times an Applicant may resubmit an application for inclusion.
- 14. Timeframe for Assessing an Application for Inclusion**
- 14.1. While applications for inclusion may be submitted at any time, assessment cut off dates will apply (twice a year) and applications received after a cut off date will be evaluated during the next round of assessments. Cut off dates will be posted on the LSMUL webpage. Except for the initial assessment process, no assessments will be undertaken from 30 November in one year to 1 February in the following year. The cut off date for this first round of Applications for Inclusion is 24 February 2012.
- 14.2. An application for inclusion may, at the Department's discretion, be assessed outside of timeframes posted on the LSMUL website.

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- 14.3. Unless otherwise advised on the LSMUL website, the Department aims to assess an application for inclusion and provide written notice of an Applicants inclusion or rejection (including reasons) within sixty (60) days of the cut off date. For the avoidance of doubt, if this date falls on a weekend the next business day will be the notification date.
- 14.4. An application for inclusion is deemed to have been received on the date provided on the relevant lodgement receipt referred to at clause 12.1.g above. This date will be the day that both the electronic application for inclusion and the hard copies of the LSMUL Deeds are received by OLSC.
- 14.5. The Department may from time to time advise of any alternative period of assessment by posting notices on the LSMUL webpage to that effect. Any alternative period of assessment will apply to an application for inclusion as set out in the relevant notice, including where advised, retrospectively.

15. Confidentiality

- 15.1. Applicants must not, and must ensure that their employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any confidential information concerning the affairs of the Commonwealth or a third party acquired or obtained in the course of preparing an application for inclusion.
- 15.2. Agencies, including the Department will ensure that their employees, agents or contractors do not, either directly or indirectly record, divulge or communicate to any third party any confidential information provided by an Applicant in their application for inclusion, unless otherwise required by law or in response to requests by a House/Committee of the Parliament.

16. LSMUL publication on AusTender

- 16.1. Once in operation, the LSMUL remains open to applications for inclusions continuously. Applicants are invited to apply for inclusion on the LSMUL at any time. There is no limitation on the number of times an Applicant may apply for inclusion, should they have previously submitted an unsuccessful application for inclusion.

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16.2. Where a Service Provider has been removed from the LSMUL arrangements pursuant to the Operational Rules at Schedule 1 of the LSMUL Deed, OLSC may at its discretion impose restrictions or conditions on the Service Provider in relation to reapplying for inclusion.

16.3. The Applicant agrees to the publication of their name (if an individual), trading name, ABN/ACN, address, contact position, telephone number and email address on AusTender and/or the LSMUL webpage if their application for inclusion is accepted.

17. Requests for clarification

17.1. Applicants may seek clarification of the meaning of the content of this application for inclusion from OLSC in accordance with this clause 17.

17.2. Except for those raised in an industry briefing, all requests for clarification are required to be in writing and sent to LSMUL@ag.gov.au.

17.3. The Department may, at its discretion, decline to answer a request for clarification. Requests for clarification received after 15 February 2012 will not be responded to.

17.4. The Department reserves the right to:

- a. publish on the LSMUL webpage any clarification of the meaning of the content of this application for inclusion on a non-attributable basis and without disclosing an Applicant's confidential information;
- b. terminate or suspend this process;
- c. alter or change this process, conditions for participation or the requirements of the application for inclusion; or
- d. request additional information and the Applicant needs to promptly provide such additional information.

18. No contractual arrangements

18.1. Nothing in this application for inclusion will be construed to create any binding contract (express or implied) between the Commonwealth and any Applicant, until a LSMUL Deed is executed by the Commonwealth with the successful Applicant(s).

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Any conduct or statement whether prior to or subsequent to the issuance of this application for inclusion is not, and this application for inclusion is not, and must not be deemed to be:

- a. an offer to contract; or
- b. a binding undertaking of any kind by the Commonwealth (including, without limitation, quasi-contractual rights, promissory estoppel, or rights with a similar legal basis).

19. Cost

- 19.1. Each Applicant is responsible for its cost in preparing or submitting an application for inclusion and taking part in this application for inclusion process.
- 19.2. The Commonwealth is not liable for any cost of the Applicant in relation to this application for inclusion process, including in the event that the Applicant's application for inclusion is rejected.