



**TORRES STRAIT REGIONAL AUTHORITY
REQUEST FOR TENDER
NATIVE TITLE LEGAL SERVICES PREFERRED SUPPLIER PANEL**

The Torres Strait Regional Authority (TSRA) is the principal Commonwealth Agency operating in the field of Torres Strait Islander and Aboriginal affairs in the Torres Strait and Northern Peninsula Area. The TSRA's enabling legislation is the *Aboriginal and Torres Strait Islander (ATSIS) Act 2005*. The TSRA is the Native Title Representative Body for the Torres Strait region, supporting the native title rights of traditional owners and assisting 21 Prescribed Bodies Corporate.

The TSRA is seeking to establish a preferred supplier panel for the provision of Native Title legal services in the Torres Strait region. Suitably qualified legal firms are invited to tender for services supporting one or more of the following areas of law:

- Applications for the Determination of Native Title
- Indigenous Land Use Agreements
- Land Dispute Resolution
- Native Title Compensation Claims
- Registered Native Title Body Corporate Legal Issues
- Prescribed Body Corporate Support
- Future Acts
- General Litigation
- General Advice

Successful tenderers may be offered a standing offer contract to provide services.

Tender documentation can be obtained from the TSRA web site <http://www.tsra.gov.au> (see Opportunities / Tenders and Contracts) or copies can be requested by emailing tenders@tsra.gov.au. Submissions must address the Statement of Work attached to the Request for Tender document.

Tenders should be marked 'Commercial-in-Confidence' and submitted as an email attachment to tenders@tsra.gov.au. Alternatively tenders may be posted or couriered to:

Locked Tender Box
Torres Strait Regional Authority
PO Box 261
Thursday Island, QLD, 4875

Tenders close at **4:00 pm** (Queensland Non Daylight Saving - UTC + 10) on **Monday 7 August 2017**



REQUEST FOR TENDER

STANDING OFFER LEGAL SERVICES PANEL

**NTO 2017-491-1
(CA-2018-00005)**

Native Title Programme

Programme Manager:

John Ramsay

Principal Legal Officer

Cecelia O'Brien

Tender Approval

The information contained in this Request for Tender inclusive of the user requirements is cleared for release.

A handwritten signature in black ink, appearing to read "John Ramsay", written over a circular scribble.

John Ramsay
Programme Manager
Fisheries and Native Title

12 July 2017

REQUEST FOR TENDER (RFT)

Reference:

- A. TSRA Procurement Manual

Purpose

1. The purpose of this document is call for tenders to establish a panel of preferred supplier to deliver Native Title legal services to the Torres Strat Regional Authority (TSRA).
2. The methodology used in this RFT is also applicable for the call for Expressions of Interest (EOI) and Requests for Quotation (RFQ). The term 'tender' throughout this document is to be interpreted accordingly.

Timing

3. Tenders open at **8:00 am on 12 July 2017** and close at **4:00 pm on 7 August 2017**.
4. The last date for the request of tender documentation is **2 August 2017**.
5. The cut-off date for correspondence from tenderers seeking clarification or additional information is **4:00 pm on 2 August 2017**.
6. All timings are Australian Queensland Non Daylight Saving, (UTC + 10).

Registration

7. Persons intending to submit a tender response are advised to register their intent. It is in the interest of the tenderer to effect the registration as early as possible in the tender period so that they will receive any additional or amplifying information. Registration may be effected prior to **4:00 pm on 2 August 2017** by email to tenders@tsra.gov.au, including the reference '**Standing Offer Native Title Legal Services**' in the subject line.

Requirement

8. The TSRA requires services for a wide range of legal services in relation to its role as the Native Title Service Provider for the Torres Strait region.
9. The TSRA requires that the services be provided in accordance with the **Statement of Work** at Annex A.
10. A *Response Form – Price Submission* (Annex B) is to be completed for **each** of the separable portions of the services for which the tenderer is responding. Tenderers may respond to one, some or all of the separable portions by attaching the appropriate number of *Response Form – Price Submission* to their Tender Response.

Communication by Tenderers

11. Communication from tenderers must be in writing and all responses to enquiries will be provided in writing. Questions from tenderers will not be accepted by telephone or other verbal communication. Questions will not be accepted after the cut-off date indicated in 'Timings' above. Tenderers are advised that all responses to questions relating to clarification of the tender document or relating to the services under the tender will be provided in non-attributable format to all persons who have registered their interest in the tender. Questions are to be directed to legal@tsra.gov.au and must contain the reference "**Standing Offer Native Title Legal Services**" in the subject line.

Tender Evaluation

12. The tender will be assessed in accordance with the TSRA Tender Evaluation Plan. It is in the interest of the tender to **construct their tender response based the evaluation criteria** which is contained in the Tender Evaluation Plan (Attachment 1). The sample Tender Evaluation Plan scoring sheet is included for reference and transparency of process, this sheet should not be completed by the tenderer.

13. The tender response must also state agreement to the terms and conditions in the draft Contract (provided at Attachment 2) or to identify any clauses in the draft Contract where a variation would be sought. The nature and reason for the variation is to be included in the tender response. Variations to standard clauses not identified in the tender response will not be considered during contract negotiation or as variations to any Contract later in force.

14. Tenders which are lodged electronically will be accepted as being 'signed' by a duly authorised representative of the tendering organisation provided the name, appointment and contact details (telephone, email address and postal address) of the authorised officer is clearly identifiable. Tenders submitted by other means must contain the signature, name, appointment and contact details (as above) of the tenderer's authorised officer.

Incomplete Responses and Late Tenders

15. Tenders lodged after the closing date specified under 'Timing' above will be managed as late tenders. Late tenders will not be evaluated and if submitted as hard copies will be returned to the tenderer unopened. Tenderers will be advised as soon as possible after the tender closing date if their documentation was not received by the tender closing date. Tenders submitted through Australia Post which are postmarked up to 48 hours before the tender closing date may be accepted if they are received at least 24 hours before the Tender Evaluation Panel is scheduled to meet. Tenders which do not meet this exception are to be treated as late tenders.

16. Tenders which are materially incomplete, in that insufficient information has been provided to complete an evaluation of the tender, may be set aside at the beginning of the Tender Evaluation. Tenders which are 'set aside' are to be classed as non-compliant and are not to be further evaluated. The reason for setting aside an incomplete tender is to be included in the Evaluation Report to the delegate.

17. Tenders which do not include fully completed *Response Form – Price Submission* (Annex B) for each of the separable areas for which the tenderer is responding will be treated as materially incomplete.

Clarification of Tender Responses

18. During the evaluation process, communication between the TSRA and tenderers must not be designed to solicit new information from tenderers. Any communication between the TSRA and tenderers is to be restricted to clarification of information that would assist the evaluation process, thereby improving the level of confidence attached to the evaluation. Clarifying questions must be approved for release by the Evaluation Panel Chair. When a tenderer's response to a clarifying question foreshadows a change in scope, schedule, quality or cost, the Evaluation Panel will determine whether the information is admissible for evaluation purposes.

19. Any unsolicited information received from tenderers after the tender closing date will be passed to the Chairperson of the Evaluation Panel. If the Chairperson of the Evaluation panel determines that such information is inconsistent with the principles outlined in the procedures for the handling of late tenders as outlined in the Tender Evaluation Plan, the information is to be so endorsed and withheld from the evaluation.

20. Any clarification questions from the Evaluation Panel are to be consolidated into a single request and forwarded to the tenderer by the Evaluation Panel Chair. Requests for clarifying information will be issued by the Evaluation Panel Chair to the relevant applicant in writing.

21. Tenderers will allowed two business days to respond to matters of clarification.

Lodgement of Tender

22. Tender responses are to be clearly marked as **'TENDER RESPONSE NTO 2017-491-1 STANDING OFFER NATIVE TITLE LEGAL SERVICES'**. Electronic lodgement is preferred. Electronic submissions must be compatible with Microsoft Office Suite 2010 or Adobe Reader Portable Document Format (PDF) and lodged as an eMail attachment to tender@tsra.gov.au. Alternatively, responses may be lodged either by Australia Post to 'Locked Tender Box, Torres Strait Regional Authority, PO Box 261, Thursday Island, Queensland, 4875'; or delivered by the Tenderer's representative or courier to the Locked Tender Box located on the level one foyer of Torres Haus, 46 Victoria Parade, Thursday Island, Queensland.

Provision of Advice to Tenderers

23. The recommendation of the Tender Evaluation Panel will not be communicated to tenderers until the Evaluation Report has been approved by the delegate. Unsuccessful applicants will be advised by letter.

24. Feedback to unsuccessful tenderers will be offered as a matter of course. Feedback will be limited to advising the name / organisation of the successful applicant, the value of the successful tender and the strengths and weaknesses of the unsuccessful tender. A comparison of the unsuccessful tender to any other tender will not be provided. Feedback will be provided by the Chair of the Evaluation Panel. A record will be kept of all feedback.

25. The successful applicant will be advised by letter and informed that a contract will be forwarded for consideration.

Annexes

A Statement of Work

B Response Form – Price Submission

Attachments:

1. Tender Evaluation Plan

2. Draft Contract

STATEMENT OF WORK - REQUEST FOR TENDER

STANDING OFFER CONTRACT FOR THE PROVISION OF LEGAL AND RELATED SERVICES

Introduction

The Torres Strait Regional Authority (TSRA) Native Title Office (NTO) has an ongoing requirement for legal and related services (whether as counsel or solicitor) and is seeking suppliers that are able to demonstrate experience, expertise and capacity in the provision of timely, accurate and relevant advice to the TSRA's Principal Legal Officer across a variety of areas of law.

The TSRA is establishing a Standing Offer Panel of preferred suppliers of legal services that the TSRA may engage for specific matters from time to time for the duration of the Contract.

Throughout this Statement of Work and for the purposes of the Contract, Invitations to Offer and any supporting documents, a reference to the Principal Legal Officer is a reference to the person holding the position of, or delegated by the Chief Executive Officer of the TSRA to perform the duties of, the Principal Legal Officer in the NTO of the TSRA.

Background

The NTO is a Representative Native Title Body (RNTB) under the *Native Title Act 1993*.

The NTO is the RNTB for the Torres Strait.

The NTO as the RNTB is the client for all legal and related services provided under the Contract

There is no current Standing Offer Contract of preferred suppliers for legal services, such services having been procured by the NTO on an individual Contract basis.

Timeframe

It is anticipated the Standing Offer Contract for the preferred supplier arrangement for Legal and related services will commence in September 2017 and will remain in place until 30 June 2022 unless ended sooner in accordance with the Contract termination clauses.

Scope

The NTO is seeking offers through an open tender process from suitably qualified and experienced suppliers (whether as counsel or solicitor) to establish a Standing Offer Contract which will be the basis of a preferred supplier arrangement to provide legal and related services to the Principal Legal Officer.

Tenderers who are offered a Standing Offer Contract will be engaged through specific Invitations to Offer which, will form part of the Contract and, provide instructions on a particular legal matter, which upon acceptance will form the basis of the engagement between the TSRA and the Tenderer for that matter, and that matter only.

Tenderers must be able to demonstrate their expertise and capacity in the provision of timely, accurate and relevant advice across one or more areas of law and have experience in delivering services to a RNTB, Registered Native Title Service Provider or similar organisation. Tenderers are expected to have an understanding of the environment in which the Principal Legal Officer operates and offer a high-priority and high-quality service approach to meet the Principal Legal Officer's requirements.

The Request for Tender (RFQ) has been divided into nine separable portions based on defined areas of law in accordance with the NTO's requirements. Tenderers are invited to submit an offer for one or more of the separable portions. It is intended that more than one Tenderer may be identified to deliver services under each separable portion.

The Principal Legal Officer will allocate each matter as an Invitation to Offer by written instruction according to the Principal Legal Officer's requirements at the time (and may withdraw instructions on a matter at the Principal Legal Officer's absolute discretion) taking into consideration the relevant area of law, the capacity and expertise of the Tenderer and overall value for money.

The Principal Legal Officer retains the right without any liability to Tenderers who are appointed to the Contract, to engage other external providers where it is considered necessary and at its discretion. In addition, the Principal Legal Officer does not guarantee and makes no representation that any Invitation to Offer will be issued to any Tenderer or that Invitations to Offer will be evenly distributed across Tenderers who are invited to Contract.

Any reference to historical or estimated future legal expenditure by the NTO whether as contained in the tender documents or otherwise should not be relied on as an indicator of future legal expenditure. Such references are estimates only and are not guarantees of the volume of work upon which a Tenderer should expect or should rely.

Key Personnel (For Solicitor only)

The Principal Legal Officer requires that all legal services are provided by suitably qualified and experienced lawyers who have expertise in one or more of the nominated areas of law across the various separable portions A to I as detailed below.

The Tenderer must provide a profile of their law firm and nominate each lawyer who is proposed to provide the services for each of the separable portions in which the Tenderer is offering legal services, together with a summary Curriculum Vitae for each lawyer outlining their experience and expertise which is relevant to that separable portion.

The Tenderer must nominate a Client Relationship Manager (CRM) who will act as the primary point of contact between the Tenderer and the Principal Legal Officer. It is expected the same CRM will be the contact for all separable portions included in the Tender response.

As far as reasonably possible, Tenderers should ensure that lawyers nominated as Key Personnel continue for the term of the Contract and in the event of any change of lawyers, such change is agreed in writing by the Principal Legal Officer prior to the new lawyer being engaged on work assigned under the Contract. Where such approval is sought, the Tenderer must provide details of the proposed new lawyers' qualifications and experience including a summary of the Curriculum Vitae. Upon written acceptance by the Principal Legal officer, the new lawyer will be deemed as included as Key Personnel.

Customer Service (For Solicitor only)

The Tenderer is required to provide a detailed customer service strategy outlining how they propose to meet the NTO's requirements, including how it will assure high quality service to the NTO in a timely manner and details as to how it proposes to manage the lawyer client relationship. Only one customer service strategy is required to cover all the separable portions included in the Tender response.

Experience and Capability

The Tenderer is required to demonstrate their experience and capability for each of the separable portions included in the Tender response. The response should cover the specific expertise of the nominated Key Personnel and also the capacity of the Tenderer to provide additional legal support to

Key Personnel, contingency in the event Key Personnel are unable to complete a matter and reference to work described under the separable portion descriptions which has been completed for other clients.

The response should demonstrate an understanding of the role of the Principal Legal Officer and the NTO's business including the challenges and risks in providing Native Title legal services in the Torres Strait. The response should demonstrate how the Tenderer will deliver value for money to the Principal Legal Officer and that the Tenderer has the legal and commercial expertise to assist the Principal Legal Officer in the ongoing management of such challenges and risks.

Additional Services

The Tenderer is required to supply details of any value added services it is able to offer the NTO (within the Tender price). These may include the provision of training or seminars, legislative updates or bulletins and information on relevant legal developments, such as changes in the law and reports on decisions which may be of interest to the NTO.

Separable Portions (Areas of Law)

The Principal Legal Officer's service requirements include the provision of advice, representation and assistance in the following areas of law divided into the nine separable portions:

| | |
|---------------------|--|
| Separable Portion A | Applications for the Determination of Native Title |
| Separable Portion B | Indigenous Land Use Agreements |
| Separable Portion C | Land Dispute Resolution |
| Separable Portion D | Native Title Compensation Claims |
| Separable Portion E | RNTB Corporate Legal Issues |
| Separable Portion F | Prescribed Body Corporate Support |
| Separable Portion G | Future Acts |
| Separable Portion H | General Litigation |
| Separable Portion I | General Advice |

The scope of the services under the Contract for each separable portion is described below in non-exhaustive summary form:

Separable Portion A Applications for the Determination of Native Title

The provision of representation and/or advice on matters arising out of Native Title Claims under the *Native Title Act 1993* including but not limited to:

- (a) Claimant Applications
- (b) Claimant rights and interest in an area of land and/or water according to their traditional laws and customs;
- (c) Connection material;
- (d) Claim Authorisation;
- (e) Representing Authorised Applicants in Applications for the Determination of Native Title at mentions, case conferences and hearing.

This may involve attendance on country in Torres Strait communities.

Separable Portion B Indigenous Land Use Agreements

The provision of legal advice and/or the drafting and/or amendment of Indigenous Land Use Agreements (ILUA) under the *Native Title Act 1993* including but not limited to:

- (a) Drafting ILUAs;
- (b) Advising Prescribed Body Corporates (PBCs) and common law native title holders on the effect of proposed ILUAs and the ILUAs effect on native title, including extinguishment, compensation and employment and economic opportunities for common law native title holders;
- (c) Drafting amendments to proposed ILUAs.

This may involve attendance on country in Torres Strait communities.

Separable Portion C Land Dispute Resolution

The provision of representation and/or legal advice and /or mediation services under the *Native Title Act 1993*, the *Native Title (prescribed Body Corporate) Regulation 1999* including but not limited to:

- (a) Advising PBC Chairpersons and PBC Directors on the relevant PBC Rule Book as it relates to intra-island land disputes;
- (b) Advising and representing common law native title holders in intra island land disputes; and
- (c) Providing mediation services for PBC Chairpersons and PBC Directors to assist in the resolution of intra island land disputes.

This may involve attendance on country in Torres Strait communities.

Separable Portion D Native Title Compensation Claims

The provision of representation and/or legal advice for native title compensation under the *Native Title Act 1993*, including but not limited to:

- (a) Advising and representing PBC Chairpersons, PBC Directors and/or common law native title holders on native title compensation claims across the wide range of functions and activities associated with such claims; and
- (b) Reporting to the Principal Legal Officer on the conduct of native title compensation claims.

This may involve attendance on country in Torres Strait communities.

Separable Portion E RNTB Corporate Legal Issues

Advising the NTO in its capacity as a RNTB on matters pertaining but not limited to:

- (a) its functions and powers under s.203B of the *Native Title Act 1993* (Cth);
- (b) *Aboriginal and Torres Strait Islander Act 2005* (Cth);
- (c) *Torres Strait Islander Land Act 1991* (Qld);
- (d) *Aboriginal and Torres Strait Islander Land Holding Act 2013* (Qld);
- (e) *Land Act 1994* (Qld);
- (f) *Torres Strait Islander Cultural heritage Act 2003* (Qld);
- (g) *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth)

Separable Portion F Prescribed Body Corporate Support

Advising PBC Chairpersons, PBC Directors and/or common law native title holders on all legislation and policies (including their review) pertaining to PBCs and all matter pertaining to the PBC Rule Books, including the review of PBC Rule Books.

This also may involve attendance on country in Torres Strait communities.

Separable Portion G Future Acts

Advising PBC Chairpersons, PBC Directors and/or common law native title holders on the effect of a proposed Future Act, the validity or otherwise of the proposed Future Act, negotiating cultural heritage issues and the adequacy of compensation.

This may involve attendance on country in Torres Strait communities.

Separable Portion H General Litigation

Advising and representing the Principal Legal Officer on matters where the NTO is a party in its RNTB capacity to the proceedings.

Advising and representing PBC Chairpersons, PBC Directors and/or common law native title holders in proceedings where they are a party, including but not limited to, Federal Court proceedings, judicial review proceedings, Land Court of Queensland proceedings.

This may involve attendance on country in Torres Strait communities.

Separable Portion I General Advice

Advising the Principal Legal Officer on matters of law as and when required.

Performance Management (For Solicitor only)

(a) Contract Management and Monitoring

The Principal Legal Officer requires each Tenderer to nominate a dedicated Client Relationship Manager (CRM) who will be the primary point of contact between the Tenderer and the Principal Legal Officer. The CRM will manage the services and allocation of matters on behalf of the Tenderer as well as attend to all Contract matters including invoicing and Contract management meetings. Time incurred for these tasks by the CRM is non-chargeable to the Principal Legal Officer.

The Tenderer will participate in the Principal Legal Officer's performance management program during the course of the Contract and the Tenderer's performance will be monitored and assessed in line with Key Performance Indicators (KPI's). Tenderers should propose appropriate KPI's and timeliness standards to suit the relevant separable portions in accordance with their own Contract management and service delivery methodology.

Required service timeframes for each matter will be specified in individual Invitations to Offer and will be taken to be agreed upon acceptance of the Invitation to Offer. Adherence to agreed timeframes will form the basis of the time element for performance monitoring.

(b) Reporting

The Tenderer must be able to provide standard reports to the Principal Legal Officer on a schedule agreed in the Invitation to Offer which may be weekly, monthly or quarterly, or as otherwise required by

the Principal Legal Officer. A standard report format be agreed with the Tenderer within 30 days following the award of the Standing Offer Contract. Additionally, the Tenderer will be required to provide Professional Activity Statements that accompany (or are included in) each Tax invoice submitted to the Principal Legal Officer. Tax invoices are to contain the following information:

Tax Invoice must display:

- (a) Tax Invoice number
- (b) Date of Tax Invoice
- (c) Standing Offer Contract Number and Invitation of Offer Reference
- (d) NTO Purchase Order Number
- (e) NTO Matter Reference Number
- (f) NTO In-house Lawyer Name

Tax Invoices must be broken down into the following categories:

- (a) Professional Fees
- (b) Outlays/Disbursements (with supporting documentation)
- (c) Counsel Fees
- (d) Expert Fees

Schedule of professional fees should include:

- (a) Date
- (b) Fee Earner
- (c) Narrative
- (d) Time
- (e) Fee

Fee Earner Summary should include:

- (a) Fee Earner
- (b) Fee Earner Initials
- (c) Hours
- (d) Rate
- (e) Total Fees of each Fee Earner

(c) Updates

In addition to formal reporting requirements, the Tenderer may be required to provide verbal and written updates as requested by the Principal Legal Officer that include a short summary of the status of each current matter, a summary of items that require action in respect of any particular matter, together with a summary of fees quoted, billed and unbilled. These updates and actual outcomes will be used to assist the Principal Legal Officer to monitor the performance of the Tenderer. The cost of such reports, updates and related meeting must be considered as part of the overall cost delivery of the services and included in the Tenderer's Schedule of Rates set out in the *Response Form – Price Submission*.

Workplace Instructions

The Principal Legal Officer is responsible for all legal advice provided across the organisation and will be responsible for the coordination, instruction, management and supervision of the services provided under this contract.

The Principal Legal Officer will allocate each matter by issuing an Invitation of Offer containing written instruction according to the circumstances and requirements at the time, taking into consideration the relevant area of law, the capabilities and expertise of the law firm and overall value for money.

The Tenderer must provide written confirmation to the Principal Legal Officer as soon as practicable (but not more than 48 hours from receiving an Invitation of Offer from the Principal Legal Officer) of the acceptance or rejection of the Invitation of Offer.

Tenderers must only accept instructions to provide services to the Principal Legal Officer on any matter, where the instruction is made in writing by the Principal Legal Officer. Where instructions or requests are received from persons other than the Principal Legal Officer the Tenderer must immediately refer the matter back to the Principal Legal Officer for further instructions. The Principal Legal Officer will not be liable to pay for any service performed by a Tenderer which has not been instructed or approved by the Principal Legal Officer.

The Principal Legal Officer will retain the right to require the transfer of matters from an incumbent Consultant to an incoming Tenderer at the commencement, expiry or termination of the Contract at the Principal Legal Officer's discretion. Where such a transfer is required by the incumbent Consultant is required to work with the incoming Tenderer to minimise disruption during the transfer of matters, including transferring files and providing general background information on a matter's progress to the date of transfer.

If identified Key Personnel leave the employ of the Tenderer, and it is deemed by the Principal Legal Officer that the identified Key Personnel is fundamental to matters about which the identified Key Personnel has advised or is advising the Principal Legal Officer, the Principal Legal Officer reserves the right to terminate the instruction and engage an alternate service provider, or to continue utilising the services of the identified Key Personnel notwithstanding any arrangement, agreement or contractual obligation that may exist between the identified Key Personnel and the Tenderer. In which event, the Tenderer must do all things to facilitate the continuing of the provision of services to the Principal Legal Officer by the identified Key Personnel.

Miscellaneous

a) Briefing Counsel (For Solicitor only)

It is expected that the Tenderer will have the skill and experience to provide the services in area of law without the need to unnecessarily instruct Counsel. However, where there is a need to instruct Counsel, the Principal Legal Officer reserves the right to brief Counsel directly, to request that the Tenderer brief specific Counsel in a particular matter or to veto the choice of any Counsel selected by the Tenderer. In all circumstances, the Tenderer must always obtain the Principal Legal Officer's written consent prior to instructing Counsel. Tenderers must always, when briefing Counsel, indicate that Counsel can liaise, discuss and advise the Principal Legal Officer directly.

b) Conflict of Interest

Tenderers must bring all real, potential, or perceived conflict of interest situations to the Principal Legal Officer's attention as soon as the Tenderer becomes so aware, so that the Principal Legal Officer may determine the appropriate response to the conflict.

c) Confidential Information

The Principal Legal Officer may permit a Tenderer to accept instruction to act for others against the Principal Legal Officer as long as such representation does not give rise to the risk that in doing so the Tenderer will have access to and use of confidential information obtained whilst formerly acting for the Principal Legal Officer and provided the prior approval of the Principal Legal Officer has been obtained.

d) Insurances

From time to time the Principal Legal Officer may require the Tenderer to obtain additional Professional Indemnity insurance where the Principal Legal Officer deems it is required.

Measurement and Payment

The Principal Legal Officer may not pay any costs, charges or expenses that are not set out in the *Response Form – Price Submission* unless the Principal Legal Officer's consent in writing has been obtained prior to those charges being incurred.

The Principal Legal Officer is also interested in achieving flexibility in the pricing methods that can apply to an engagement. In that regard statements as to Tenderer's capacity to provide alternative fee arrangements is invited, particularly if such proposal offers value for money for the services provided.

Price Submission

The Tenderer is required to submit their pricing in accordance with the Principal Legal Officer's price methodology detailed in the *Response Form – Price Submission*.

The Tenderer must provide information on any other matters which they believe may be relevant in evaluating the level and the type of fees, and consequently the contribution of the proposed fees to overall value for money.

The Tenderer must provide pricing comprising:

Separable Portions (A through I)

- Hourly rates for each role type
- Capped daily rates for legal services in excess of eight hours
- Capped daily rates for travel (noting travel times from the Tenderer's location to the Torres Strait and between communities within the Torres Strait).
- Any other basis of billing proposed by the Tenderer

Role types for key personnel for the purposes of pricing include:

Barristers

- Senior or Junior Counsel

Solicitors

- Partner/Director
- Special Counsel
- Senior Associate
- Associate
- Lawyers 6+ years PQE (post qualification experience)
- Lawyer 4-6 years PQE
- Lawyers 1-3 years PQE
- Graduate Lawyer

Staff

- Paralegal
- Research Clerk
- Support/Administrative Staff

Other Charges

The Tenderer is required to specify rates for other administrative services where these will not be itemised as disbursements at cost, for example photocopying, document binding, and facsimile transmissions.

Reimbursement for agreed disbursements will be made for the actual cost on the production of tax invoices / receipts or other documentary evidence acceptable to the Principal Legal Officer.

The Tenderer must set out any alternative proposals for financial incentives to be offered by them, including any discounts offered on fees (ie the level of fees per annum above which the Principal Legal Officer would be offered a fee discount or rebate), and any qualifying criteria for those discounts for the activity/event based fees.

A Response Form – Price Submission is to be completed for each separable area included in the Tender response.

RESPONSE FORM – PRICE SUBMISSION
PROVISION OF LEGAL AND RELATED SERVICES

Please select **one** check box, below, to indicate the separable portion covered by this price submission. Note a separate price submission is required for each separable portion being included in the tender response.

- Applications for the Determination of Native Title
- Indigenous Land Use Agreements
- Land Dispute Resolution
- Native Title Compensation Claims
- RNTB Corporate Legal Issues
- Prescribed Body Corporate Support
- Future Acts
- General Litigation
- General Advice

Introduction

Obtaining value for money is one of the key objectives of the TSRA Procurement Policy. Value for money is based on the principle of accepting a reasonably priced tender from a Tenderer that will provide the best overall outcome for the TSRA NTO. It is not a requirement that this is the lowest priced tender. There are many factors other than price which can contribute to enhanced value to the TSRA. The TSRA will consider both price and non-price criteria in procuring the services of contractors for road construction contracts.

Demonstration of Understanding

Briefly outline your understanding of the requirement of the services the Torres Strait Regional Authority may seek through individual *Invitations of Offer* associated with this separable portion.

Qualifications and Experience

Outline the qualifications and experience of the **firm** and its capacity to deliver services which are relevant to this separable portion.

Price Considerations

In providing the response to tender the Tenderer is required to address the following price considerations. If both an hourly rate and a daily rate are offered, please indicate the number of hours at which the daily rate is capped

All services which exceed the billable hours shown in this section, for any nominated person in a 24 hour period, are capped at the daily rate where so indicated in Table 1).

The names of the persons who will provide the services for this separable portion are to be indicated in the table below. Please additional lines within each category if necessary. Names are required only for legal practitioners. One summary CV for each named person is to be attached to the overall tender response.

If it is intended that any person nominated will be sub-contracted to the tendering entity this must be indicated against the name in the table below and detailed in the tender response.

| Serial | Category | Hourly Rate (Services) | Daily Rate (Services) | Hourly Rate (Travel) |
|--------|---|---------------------------|--------------------------|-------------------------|
| 1 | Senior Counsel Name: Name: | \$ \$ | \$ \$ | \$ \$ |
| 2 | Junior Counsel Name: Name: | \$ \$ | \$ \$ | \$ \$ |
| 3 | Partner / Director Name: Name: | \$ \$ | \$ \$ | \$ \$ |
| 4 | Special Counsel Name: Name: | \$ \$ | \$ \$ | \$ \$ |
| 5 | Senior Associate Name: Name: | \$ \$ | \$ \$ | \$ \$ |
| 6 | Lawyer 6 + Years PQE ¹ Name: Name: | \$ \$ | \$ \$ | \$ \$ |
| 7 | Lawyer 4-6 Years PQE Name: Name | \$ \$ | \$ \$ | \$ \$ |
| 8 | Lawyer 1-3 Years PQE Name: Name: | \$ \$ | \$ \$ | \$ \$ |
| 9 | Graduate Lawyer Name: Name | \$ \$ | \$ \$ | \$ \$ |
| 10 | Paralegal | \$ | \$ | \$ |
| 11 | Research Clerk | \$ | \$ | \$ |
| 12 | Administrative Staff | \$ | \$ | \$ |

Table 1: Key Personnel and Rates

¹ Post Qualification Experience

List any additional information on the Price Considerations or relevant experience of the Nominated Persons

Rate Adjustments

It is expected that the costs indicated in the table above will be fixed for a minimum period of 12 months from Contract execution. As the Legal Services Standing Offer Contract will be valid for up to five years, the basis of any cost adjustment over the life of the Contract for this separable portion should be outlined below.

Timeframes

Please indicate the expected normal timing for responding to *Invitations to Offer* and commencing the delivery of services for matters within this separable portion.

Key Performance Indicators

Please indicate any Key Performance Indicators used by the firm to measure the successful delivery of outcomes for matters under this separable portion.

Value Added Services

Please indicate below any value added services relating to this separable portion that are included in the pricing structure shown in Table 1. Any additional services offered at cost may also be detailed in this section.

Torres Strait Islander and Aboriginal Employment

Please indicate below if any of the nominated personnel identify as Torres Strait Islander or Aboriginal. Any other information regarding the firm's Indigenous employment strategy may be indicated here.



TENDER EVALUATION PLAN
STANDING OFFER NATIVE TITLE LEGAL SERVICES

Contract Number: CA18:00005

Native Title Programme

Programme Manager:

John Ramsay

Principal Legal Officer

Cecelia O'Brien

Evaluation Plan Approval

I approve the arrangements detailed in this Tender Evaluation Plan including the selection methodology, selection criteria, weightings and membership of the Tender Evaluation Panel.

Chris de Mamiel
Acting Chief Executive Officer

July 2017

EVALUATION PLAN

Reference:

- A. TSRA Procurement Manual

Purpose

1. The purpose of this document is to outline the evaluation plan and methodology for assessing the responses to the Tender for contract number CA18:00005 for a preferred supplier panel for Native Title Legal Services under a standing offer contract. The methodology is also applicable for the evaluation of Expressions of Interest and Requests for Quotation. The term 'tender' throughout this document is to be interpreted accordingly.
2. The aim of the evaluation plan is to outline the processes to be undertaken by the evaluation panel in order to promote open and effective competition and to ensure that through this process the best *value for money* to the Commonwealth is obtained.

Evaluation Methodology

3. The tender was advertised in the Australian Newspaper, Cairns Post and the Brisbane Courier Mail on July 2017. Notices were also placed on the TSRA web site www.tsra.gov.au. The evaluation is to be conducted in accordance with procurement principles outlined in Reference A. The evaluation criteria and weightings for the tender are shown in annex A.
4. Tender responses will be reviewed for completeness against the following list. Incomplete tender responses may be set aside by the panel.
 - a. compliance with any Australian Government procurement policies specified in the Request for Tender document;
 - b. a minimum 30 day period of validity for the quoted price;
 - c. evidence the tender has been submitted by an authorised officer;
 - d. the applicant's understanding of the task as detailed in the Terms of Reference or Statement of Work in the Request for Tender document;
 - e. the applicant's proposed approach to the delivery of the services;
 - f. the applicants past performance, the skills, qualifications and experience of the person(s) nominated to deliver the services;
 - g. the offered price, the basis of determining the price and the payment schedule; and
 - h. overall value for money to the Torres Strait Regional Authority.
5. Each tender is to be evaluated individually by the members of the evaluation panel against the criteria in annex A and scoring guide in annex B. A tender which fails to meet mandatory performance or functional requirements in Part A of the Evaluation Scoring Guide may be set aside and not further considered. The reason for any response being put aside at this stage is to be included in the tender evaluation report.

6. For each response that has met the mandatory performance and functional requirements, each member of the Evaluation Panel is to complete an assessment using the tender evaluation workbook (attachment A). The Evaluation Panel will then meet and develop a consensus report for each tender response. The consensus report is to reflect the agreed position of all voting members of the evaluation panel and is to be completed on a master copy of the assessment using the tender evaluation workbook (attachment A).
7. On completion of detailed assessments of individual tenders, a comparative qualitative assessment of all tenders against the evaluation criteria is to be completed. The comparative assessment will focus on drawing out major differences between offers as they relate to the evaluation criteria rather than the price. Key discriminators between applicants will form the basis upon which applicants will be ranked in order of technical merit in the evaluation report.
8. The comparative assessment is to document the relative strengths and weaknesses of the tenders in order to make a value for money judgement.
9. Value for money shall be determined by comparing:
 - a. the price offered;
 - b. the level of effort proposed;
 - c. the quality of the services offered, in particular the qualifications and experience of the persons proposed to deliver the services; and
 - d. compliance with the project schedule.

Evaluation Panel Membership

10. The Evaluation Panel members are:

| Name | Role | Voting / Non-voting |
|-----------------|-----------------|----------------------------|
| Cecelia O’Brien | Chairperson | Voting |
| Max Duncan | Member | Voting |
| Cassandra Lang | Member | Voting |
| Not Required | Probity adviser | Non-voting |

Responsibilities of the Evaluation Panel Chairperson

11. The evaluation panel chairperson is responsible for:
 - a. ensuring evaluation panel members are aware of and comply with the requirements of the tender evaluation;
 - b. managing the assessment of each response against the requirements of the tender and in accordance with the evaluation plan;
 - c. ensuring consistency of the approach and evaluation methodology; and
 - d. completing the tender evaluation report and submitting the recommendation of the tender evaluation panel to the delegate.

Incomplete Responses and Late Tenders

12. Tenders lodged after the closing date specified in the tender document are to be managed as late tenders. Late tenders are not to be evaluated and if submitted as hard copies are to be returned to the tenderer unopened. The person submitting the tender is to be advised as soon as possible. Tenders submitted through Australia Post which are postmarked up to 48 hours before the tender closing date may be accepted if they are received at least 24 hours before the tender evaluation panel is scheduled to meet. Tenders which do not meet this exception are to be treated as late tenders.

13. Tenders which are materially incomplete, in that insufficient information has been provided to complete an evaluation of the tender, may be set aside at the beginning of the evaluation panel meeting. The reason for setting aside an incomplete tender is to be included in the evaluation report.

14. Tenders which do not include fully completed *Response Form – Price Submission* for each of the separable areas for which the tenderer is responding are to be treated as materially incomplete.

Clarification of Responses

15. Communication between the Commonwealth and tenderers must not be designed to solicit new information from tenderers. Any communication between the Commonwealth and applicants is to be restricted to clarification of issues that would assist the evaluation process, thereby improving the level of confidence in the evaluation. Clarifying questions must be approved for release by the evaluation panel chairperson. When an applicant's response to a clarifying question foreshadows a change in scope, schedule or cost, the evaluation panel will determine whether the information is admissible for evaluation purposes.

16. Any unsolicited information received from tenderers after the tender closing date is to be set aside until after the tender evaluation is complete. If the tender evaluation panel considers a response requires clarification, the panel may first consider any unsolicited information received, prior to contacting the tenderer.

17. Any clarification questions are to be consolidated into a single request and passed to the evaluation panel chairperson. Requests for clarifying information will be issued in writing by the chairperson to the relevant tenderer.

Evaluation Board Reporting

18. The signed consolidated tender evaluation workbooks are to be appended to the evaluation report summarising the strengths and weaknesses of each response and recommending the preferred offer to the delegate. The original hard copy responses from each tenderer are to be attached to the Evaluation Report.

Probity Issues

19. If appointed, the probity adviser is to advise the evaluation panel chair of any probity risks that arise during the tender process.

20. Before commencing the evaluation the chair of the evaluation panel is to ascertain from each member of the evaluation panel whether they have been contacted by or have provided any assistance to any of the tenderers, in relation to the preparation of the tender. Should there be any question of the independence of any member of the evaluation panel the chairperson is to seek advice from the probity adviser (if appointed) as to whether that member should be excused. Should a member be excused the chairperson is to suspend the evaluation panel and consult with the delegate to appoint

a replacement member. The chairperson is to reconvene the evaluation panel when a new member is appointed and they have completed their individual tender assessments.

21. On completion of the evaluation all copies of the tender and evaluation documents are to be returned to the chairperson. An electronic copy of each tender is to be stored in the TRIM. A paper copy of the successful tender is to be retained as a working document for the duration of the Contract and then destroyed. All paper copies of unsuccessful tenders are to be destroyed.

22. If at any time during the evaluation process any member of the evaluation panel is contacted by an applicant in relation to the tender, they are to report the contact to the evaluation panel chairperson.

Provision of Advice to Tenderers

23. The recommendation of the tender evaluation panel is not to be communicated to tenderers until the tender evaluation report has been approved by the delegate. Unsuccessful applicants are to be advised by letter they have been unsuccessful.

24. Feedback to unsuccessful tenderers is to be offered as a matter of course. Feedback is to be limited to advising the name / organisation of the successful tender, the value of the successful tender and the strengths and weaknesses of the tenderers response. A comparison of the tender to any other tender is not to be made. Feedback is to be provided by the chairperson of the evaluation panel. A record is to be made of all feedback.

25. The successful applicant is to be advised by letter and informed that a contract will be forwarded for consideration.



John Ramsay
Programme Manager
Fisheries and Native Title

12 July 2017

Annexes:

- A. Evaluation Criteria and Weightings
- B. Scoring Guide

Attachment:

- A. Evaluation Matrix (Extract)

EVALUATION CRITERIA AND WEIGHTINGS

1. The evaluation criteria and their weightings are shown in Table A-1.

CA18:00005

| Serial | Mandatory Evaluation Criteria, applying to all Tenders | |
|--------|---|----------|
| M1 | The identity and contact details for the officer authorised to submit the tender has been provided. | Yes / No |
| M2 | The hourly and daily rates for each category of personnel can be identified in the tender response. | Yes / No |
| M3 | The tenderer commits to deliver the services within the time-frame specified in the Statement of Work. | Yes / No |
| M4 | The tender describes the skills and experience of the personnel nominated to deliver the contracted services. | Yes / No |
| M5 | A <i>Response Form – Price Submission</i> has been included for each of the separable portions for which the tenderer is applying. | Yes / No |
| M6 | The tender response contains sufficient information to enable the Evaluation Panel to determine whether it represents value for money. | Yes / No |

| Serial | Tender Specific Mandatory Criteria | |
|--------|---|----------|
| S1 | The response includes a profile of the law firm | Yes / No |
| S2 | The response identifies lawyers by name for each of the separable portions for which the tenderer is applying | Yes / No |
| S3 | The response includes a summary CV of each nominated lawyer | Yes / No |
| S4 | The response nominates a single Client Relationship Manager for the Contract. | Yes / No |
| S5 | The response identifies Key Performance Indicators for the successful delivery of the services | Yes / No |

| Serial | TENDER Specific Qualitative Criteria | Weighting % |
|--------|--------------------------------------|-------------|
| Q1 | Customer Service Strategy | 10 |
| Q2 | Experience and Capability | 40 |
| Q3 | Additional Services | 10 |
| Q4 | Separable Portions | 40 |
| Q5 | Not Used | |

| Serial | Risk Statement | Consequence |
|--------|---|-------------|
| R1 | That the tenderer does not be able to adequately manage the lawyer – client relationship in order to provide high quality and timely services to the Principal Legal Officer. | Moderate |
| R2 | That the tenderer does not have the necessary qualifications or experience to deliver the level of legal services required by the Principal Legal Officer. | Moderate |
| R3 | That some services essential to the delivery of the Contract Outcomes are not included in the offered pricing. | Moderate |
| R4 | That the tenderer does not have the capacity to deliver all of the separable portions which have been nominated in the tender response. | Moderate |
| R5 | Not Used | Moderate |

Table A-1: Evaluation Criteria, Weightings and Risk

EVALUATION SCORING GUIDE

1. The evaluation scoring guide is shown in table B-1.

| Description | Criteria | Score |
|---------------------------------|--|-------|
| Comprehensive | Compliance is demonstrated. Exceeds specified performance or capability and the additional material offered adds value. Tenderer clearly understands the requirement. No weaknesses or deficiencies. Almost certain tenderer will be able to deliver the services. | 5 |
| Very Good | Compliance is demonstrated. Fully meets the specified performance or capability. Tenderer indicates a very good understanding of the requirement. No weaknesses or deficiencies. Almost certain tenderer will be able to deliver the services. | 4 |
| Good | Compliance is demonstrated. Fully meets most, but has addressed all of the specified performance or capability. Tenderer indicates a good understanding of the requirement. No major weaknesses or deficiencies. Low risk the tenderer will not be able to deliver the services. | 3 |
| Acceptable (Deficient) | Compliance is demonstrated. Fully meets some, but has responded to all of the specified performance or capability. Tenderer indicates a general understanding of the requirement. Some weaknesses or deficiencies and further clarification may be needed. Moderate risk the tenderer will be unable to deliver the services. | 2 |
| Marginal (Deficient) | Compliance is not demonstrated. Has responded to all of the specified performance or capability. Tenderer does not indicate a general level of understanding or indicates some misunderstanding of the requirement. Some major weaknesses or deficiencies. High risk the tenderer will not be able to deliver the services. | 1 |
| Unacceptable (Deficient) | Non-compliant. Has not addressed all of the specified performance or capability, or the tenderer indicates a significant misunderstanding of the requirement. There are few supporting statements to verify claims made. Extreme risk the tenderer will not be able to deliver the services. | 0 |

Table B-1: Evaluation Scoring Guide

Deficiencies

2. If any criteria is scored as two (acceptable with some deficiencies) or lower, it is classed as deficient, meaning it is assessed as falling short of the requirements specified in the tender. Deficiencies are to be classified in accordance with table B-2.

| Deficiency | Criteria used to determine deficiency |
|--------------------|---|
| Critical | A deficiency that cannot be readily remedied prior to contract signature which is of such significance that it may seriously prevent the contract deliverables from being achieved to the specified scope, schedule, budget or quality. |
| Significant | A deficiency that has the potential to prevent an element of the contract deliverables from being achieved, but this is expected to be remedied prior to contract signature. The specified scope, schedule, budget or quality may require adjustment. |
| Minor | A deficiency that has no substantial implications for the deliverables and could be accepted without remedial action. The deficiency has no impact on the specified scope, schedule, budget or quality. |

Table B-2: Deficiency Criteria

3. In applying the above criteria, each identified deficiency is to be judged on its merits as presented. The risks to scope, schedule, budget and quality are to be considered when determining the level of the deficiency.

Confidence Levels/Risk Assessment

4. After compliance has been assessed, a level of confidence is to be applied to each criteria using the ratings shown in Table B-3. The evaluation of confidence provides an indication of an assessment of risk associated with the tender. A high level of confidence would indicate a lower level of risk regarding the claims made by the tenderer.

| Level | Criteria used to determine confidence level |
|---------------|--|
| High | The claims made by the tenderer are credible, supported by evidence provided in the tender response or in publicly accessible material, and can be readily verified without seeking clarification from the tenderer. The evaluation panel has a high level of certainty concerning the validity of the claims. |
| Medium | The claims made by the tenderer are supported by evidence provided in the tender or in publicly accessible material, but cannot be verified without seeking clarification from the tenderer. The evaluation panel has some level of certainty concerning the validity of the claims. |
| Low | The claims made by the tenderer are not supported by evidence provided in the tender or in publicly accessible material. The evaluation panel has a low level of certainty concerning the validity of the claims. |

Table B-3: Confidence Level Criteria

Risk Assessment

5. The terminology to be used to determine the likelihood and consequence for risk ratings is to be taken from the TSRA Project Risk and Issue Register associated with Contract CA18:00005.
6. When completing the Tender Evaluation Workbook, the evaluation panel is to consider the confidence level rating when determining the likelihood of the stated risk eventuating for each of the qualitative criteria listed in Annex A.

NTO 2017-491-1

Company Name :

| Tender Price (Excluding GST) : \$ | | Refer to individual Response Form - Price Submission | | |
|--|---|--|-------|---|
| Tender Level of Effort (total number of charged hours / 8) in days | | Not Used for Standing Offer Contracts | | |
| Part 1 | Preliminary Evaluation Criteria | Yes / No | Score | Comment is mandatory if the tenderer is deemed non-complaint with any criteria in Part 1. |
| 1 | Tender Authority | | | |
| 1.1 | The identity and contact details for the officer authorised to submit the tender has been provided. | - | 0 | |
| 2 | Basis of Price | | | |
| 2.1 | The hourly and daily rates for each category of personnel can be identified in the tender response. | - | 0 | |
| 3 | Commitment to Timeframe and Confidentiality | | | |
| 3.1 | The tenderer commits to deliver the services within the time-frame specified in the Statement of Work. | - | 0 | |
| 4 | Demonstrated Capacity | | | |
| 4.1 | The tender describes the skills and experience of the personnel nominated to deliver the contracted services. | - | 0 | |
| 4.2 | A Response Form – Price Submission has been included for each of the separable portions for which the tenderer is applying. | - | 0 | |
| 5 | Does the Tenderer address all the essential requirements in the Tender Document / Terms of Reference | | | |
| 5.1 | The response includes a profile of the law firm | - | 0 | |
| 5.2 | The response identifies lawyers by name for each of the separable portions for which the tenderer is applying | - | 0 | |
| 5.3 | The response includes a summary CV of each nominated lawyer | - | 0 | |
| 5.4 | The response nominates a single Client Relationship Manager for the Contract. | - | 0 | |
| 5.5 | The response identifies Key Performance Indicators for the successful delivery of the services | - | 0 | |
| 6 | Completeness of the Application | | | |
| 6.1 | The submission contains sufficient information to enable the Evaluation Panel to determine whether it represents value for money. | - | 0 | |

Total Part 1 Score: 11

| |
|---|
| 0 |
|---|

Tenderer's who score less than 11 points in part one have not met the mandatory requirements of the EOI and may be set aside by the Evaluation Panel.

Part One Compliance:

This tender is assessed as **Non-Compliant** with the requirements of Part One.

Reason for non-compliance (if appropriate) and comments on the offered price

NTO 2017-491-1

Company Name :

| Part 2 | Qualitative Evaluation Criteria | | | |
|--------|---|-------------------------|-------------------|---|
| 7 | Customer Service Strategy | Score 0 to 5 | Deficiency | Comment is mandatory if the score for any Part 2 criteria is less than two or any non-minor deficiency is identified. |
| 7.01 | How well does the Customer Service Strategy detail how the consultant will engage with the TSRA. | | - | |
| 7.02 | How well does the Customer Service Strategy address the quality of service. | | - | |
| 7.03 | How well does the Customer Service Strategy address the timeliness of service. | | - | |
| 7.04 | How well does the Customer Service Strategy address confidentiality and privilege. | | - | |
| 7.05 | To what extent have relevant Key Performance Indicators been identified for each of the separable portions included in the tender response. | | - | |
| | Average Score | 0.00 | | |
| | Weighting % | 15% | | That the tenderer does not be able to adequately manage the lawyer – client relationship in order to provide high quality and timely services to the Principal Legal Officer. |
| | Weighted Score | 0.00 | | |
| | Level of Confidence | Not Defined | | |
| | Risk Likelihood | Not Defined | | |
| | Risk Consequence | Moderate | | |
| | Risk Rating | Not Defined | | |

| | | | | |
|------|--|-------------------------|-------------------|--|
| 8 | Experience and Capability | Score 0 to 5 | Deficiency | Comment is mandatory if the score for any Part 2 criteria is less than two or any non-minor deficiency is identified. |
| 8.01 | To what degree has the qualifications and experience of each of the nominated persons been documented. | | - | |
| 8.02 | To what degree is the qualifications and experience of each of the nominated persons relevant to scope of work in each of the separable portions attached to the tender response | | - | |
| 8.03 | To what level has the tenderer demonstrated the capacity of the firm to deliver against each of the separable portions attached to the tender response | | - | |
| 8.04 | To what degree has the tenderer demonstrated a 'reach-back' capability to support the person nominated to deliver the services. | | - | |
| 8.05 | How well has risk and contingency been factored into the tender response. | | - | |
| 8.06 | To what level has the tenderer demonstrated an understanding of the role of the Principal Legal Officer. | | - | |
| 8.07 | To what level has the tenderer demonstrated an understanding of the challenges and risks in providing legal services to the Torres Strait region. | | - | |
| | Average Score | 0 | | |
| | Weighting % | 40% | | That the tenderer does not have the necessary qualifications or experience to deliver the level of legal services required by the Principal Legal Officer. |
| | Weighted Score | 0.00 | | |
| | Level of Confidence | Not Defined | | |
| | Risk Likelihood | Not Defined | | |
| | Risk Consequence | Moderate | | |
| | Risk Rating | Not Defined | | |

NTO 2017-491-1

| Company Name : | | | | |
|----------------|--|-------------------------|-------------------|--|
| 9 | Additional Services | Score 0 to 5 | Deficiency | Comment is mandatory if the score for any Part 2 criteria is less than two or any non-minor deficiency is identified. |
| 9.01 | How relevant are the value-added services identified in the tender response. | | - | |
| | 0 | 0 | | Description of Risk |
| | Weighting % | 5% | | That some services essential to the delivery of the Contract Outcomes are not included in the offered pricing. |
| | Weighted Score | 0.00 | | |
| | Level of Confidence | Not Defined | | |
| | Risk Likelihood | Not Defined | | |
| | Risk Consequence | Moderate | | |
| | Risk Rating | Not Defined | | |

| | | | | |
|-------|--|-------------------------|-------------------|---|
| 10 | Separable Portions | Score 0 to 5 | Deficiency | Comment is mandatory if the score for any Part 2 criteria is less than two or any non-minor deficiency is identified. |
| 10.01 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support applications for the determination of Native Title. | | - | |
| 10.02 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support Indigenous Land Use Agreements | | - | |
| 10.03 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support land dispute resolution. | | - | |
| 10.04 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support Native Title compensation claims. | | - | |
| 10.05 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support Native Title Representative Body Corporate legal issues | | - | |
| 10.06 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support Prescribed Bodies Corporate. | | - | |
| 10.07 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support Future Acts. | | - | |
| 10.08 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support general litigation. | | - | |
| 10.09 | To what extent does the tenderer convey a clear understanding of the requirement to deliver services which support general advice. | | - | |
| | Average Score | 0 | | |
| | Weighting % | 40% | | That the tenderer does not have the capacity to deliver all of the separable portions which have been nominated in the tender response. |
| | Weighted Score | 0.00 | | |
| | Level of Confidence | Not Defined | | |
| | Risk Likelihood | Not Defined | | |
| | Risk Consequence | Moderate | | |
| | Risk Rating | Not Defined | | |

NTO 2017-491-1

| Company Name : | | | |
|----------------|--------------------------------------|-------------|--------------------------|
| Part 3 | Summary of Evaluation | | Strengths and Weaknesses |
| | Criterion 7 Weighted Score | 0.00 | |
| | Criterion 8 Weighted Score | 0.00 | |
| | Criterion 9 Weighted Score | 0.00 | |
| | Criterion 10 Weighted Score | 0.00 | |
| | Total Weighted Score | 0.00 | |
| | Deficiencies | | |
| | Total Critical Deficiencies | 0 | |
| | Total Significant Deficiencies | 0 | |
| | Total Minor Deficiencies | 0 | |
| | Overall Deficiency Assessment | - | |
| | Confidence | | |
| | Total High Confidence | 0 | |
| | Total Medium Confidence | 0 | |
| | Total Low Confidence | 0 | |
| | Overall Confidence Assessment | Not Defined | |
| | Risk | | |
| | Total Extreme Risk | 0 | |
| | Total High Risk | 0 | |
| | Total Medium Risk | 0 | |
| | Total Low Risk | 0 | |
| | Overall Risk Assessment | Not Defined | |

| Part 4 | Value for Money |
|--------|--|
| | In comparison to the other tenderers, this tender ranks number for technical merit in accordance with the above criteria. <input type="text" value="-"/> |
| | In comparison to the other tenderers, this tender ranks number in their tendered price. <input type="text" value="-"/> |
| | In comparison to the other tenderers, this tender ranks number in our assessment of providing value for money. <input type="text" value="-"/> |

Cecelia O'Brien
Evaluation Panel Chair
Date

Max Duncan
Evaluation Panel Member
Date

Cassandra Lang
Evaluation Panel Member
Date

STANDARD FORM CONTRACT



DRAFT

AGREEMENT

BETWEEN

TORRES STRAIT REGIONAL AUTHORITY

AND

Insert Consultant Name

in relation to Consultancy Services for

STANDING OFFER

NATIVE TITLE LEGAL SERVICES

THIS AGREEMENT is made on _____ 2017

PARTIES

Torres Strait Regional Authority ('TSRA') a body corporate established under the *Aboriginal and Torres Strait Islander Act 2005* of 1st Floor, Torres Strait Haus, Victoria Parade, THURSDAY ISLAND Queensland 4875.

ABN: 57 155 285 807

AND

Insert Consultant Name

Insert Consultant Address

ABN: **Insert Consultant ABN**

PURPOSE

- A The TSRA requires the provision of certain services as specified in the Schedule.
- B The Consultant has fully informed itself on all aspects of the work required to be performed and has submitted the proposal and quotation referred to in Item A of the Schedule [*Proposal and Quotation*].
- C TSRA has agreed to engage the Consultant to provide the Services upon the terms and conditions contained in this Agreement.

OPERATIVE PART

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

| | |
|---------------------------------|---|
| TSRA Material | means any Material: <ul style="list-style-type: none">(a) provided by the TSRA to the Consultant for the purposes of this Agreement; or(b) derived at any time from the Material referred to in paragraph (a); |
| Confidential Information | means information that: <ul style="list-style-type: none">(a) is by its nature confidential;(b) is designated by the TSRA as confidential; or(c) the Consultant knows or should know is confidential; but does not include information which:<ul style="list-style-type: none">(i) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;(ii) is in the possession of the Consultant without restriction in relation to disclosure before the date of receipt from the TSRA; or(iii) has been independently developed or acquired by the Consultant. |
| Consultancy Services | means the services described in Item B [<i>Consultancy Services</i>] and includes the provision to TSRA of the Material specified in Item C [<i>Required Contract Material</i>]; |
| Consultant | includes the officers, employees, volunteers, bailees, agents and subcontractors of the Consultant; |
| Contract Material | means any Material: <ul style="list-style-type: none">(a) created for the purposes of this Agreement;(b) provided or required to be provided to TSRA as part of the Consultancy Services; or(c) derived at any time from the Material referred to in paragraphs (a) or (b); |
| Copies | has the meaning defined in clause 9 [<i>Dealings with Copies</i>] |
| Intellectual Property | includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; |

| | |
|-----------------------------|--|
| Material | includes information and the subject matter of any category of Intellectual Property rights; |
| Personal Information | means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion; |
| Project Officer | means the person specified by name or position in Item K [<i>Project Officer</i>] or any substitute notified in writing to the Consultant; |
| Specified Personnel | means the personnel defined in clause 5 who will perform all or part of the work constituting the Consultancy Services; and |
| Writing | means any representation of words, figures or symbols capable of being rendered in a visible form. |

- 1.2 In this Agreement, unless the contrary intention appears:
- (a) words importing a gender include any other gender;
 - (b) words in the singular include the plural and words in the plural include the singular;
 - (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - (d) words importing persons include a partnership and a body whether corporate or otherwise;
 - (e) all references to dollars are to Australian dollars;
 - (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
 - (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect to that word or phrase has a corresponding meaning;
 - (h) reference to an Item is to an Item in the Schedule;
 - (i) the Schedule and any attachments form part of this Agreement;
 - (j) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;
 - (k) where any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails; and
 - (l) reference to the Schedule (or an attachment) is a reference to the Schedule (or an attachment) to this Agreement, including as amended or replaced from time to time by agreement in writing between the parties.
- 1.3 This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.4 No variation of this Agreement is binding unless it is agreed in writing between the parties.
- 1.5 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

2. PROVISION OF CONSULTANCY SERVICES

- 2.1 The Consultant agrees to:
- (a) perform the Consultancy Services in accordance with relevant leading practice, including any TSRA, Commonwealth and industry standards and guidelines specified in Item D [*Standards and Best Practice*];
 - (b) comply with the time frame for the performance of the Consultancy Services specified in Item E [*Time-frame*]; and
 - (c) liaise with the Project Officer, provide any information the Project Officer may reasonably require and comply with any reasonable request made by the Project Officer.

3. FEES, ALLOWANCES AND ASSISTANCE

- 3.1 The TSRA agrees to:
- (a) pay the fees specified in Item F [*Fees*];
 - (b) pay the allowances and meet the costs specified in Item G [*Allowances and Costs*]; and
 - (c) provide the facilities and assistance specified in Item H [*Facilities and Assistance*].
- 3.2 The TSRA will be entitled, in addition to any other right it may have, to delay payment or any instalment of fees or allowances until the Consultant has completed to the satisfaction of the TSRA that part of the Consultancy Services to which the payment relates. In the event TSRA is not satisfied that the Consultant is entitled to payment of that part of the Consultancy Services in accordance with this Agreement, it shall within 14 days advise the Consultant in writing of the reasons why it is dissatisfied with the Consultancy Services and how the Consultant must satisfy the TSRA of that part of the Consultancy Services to which the payment relates.
- 3.3 The Consultant agrees to submit invoices for payment in the manner specified in Item I [*Invoice Procedures*].

4. SUBCONTRACTORS

- 4.1 The Consultant agrees not to subcontract the performance of any part of the Consultancy Services without prior approval in writing from TSRA.
- 4.2 TSRA may impose any terms and conditions it considers appropriate when giving its approval under clause 4.1.
- 4.3 Despite any approval given by TSRA, the Consultant will be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of the Agreement.
- 4.4 The Consultant states that at all material times to this Agreement they will maintain professional indemnity insurance for an amount of not less than one and a half million dollars (\$1,500,000).

SPECIFIED PERSONNEL

- 5.1 The Consultant agrees that the Specified Personnel identified in Item J [*Specified Personnel*] will perform work in relation to the Consultancy Services in accordance with this Agreement.
- 5.2 Where Specified Personnel are unable to perform the work, the Consultant agrees to notify TSRA immediately.
- 5.3 TSRA may, at its absolute discretion, request the Consultant to remove personnel (including Specified Personnel) from work in relation to the Consultancy Services.
- 5.4 Where clauses 5.2 or 5.3 apply, TSRA may request the Consultant to provide replacement personnel acceptable to TSRA at no additional cost and at the earliest opportunity.
- 5.5 If the Consultant does not comply with any request made under clause 5.4 TSRA may terminate this Agreement in accordance with the provisions of clause 20 [*Termination for Default*].

6 RESPONSIBILITY OF CONSULTANT

- 6.1 The Consultant agrees to be fully responsible for the performance of the Consultancy Services and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
- (a) involvement by the TSRA in the performance of the Consultancy Services unless the involvement impedes, delays or obstructs the performance of the service;
 - (b) payment made to the Consultant on account of the Consultancy Services;
 - (c) subcontracting of the Consultancy Services; or
 - (d) acceptance by the TSRA of replacement personnel.

7 TSRA MATERIAL

- 7.1 The TSRA agrees to provide Material to the Consultant as specified in Item L [*Material to be Provided by TSRA*].
- 7.2 The TSRA grants to the Consultant a royalty-free, non-exclusive licence to use, reproduce and adapt the TSRA Material for the purposes of this Agreement.
- 7.3 The Consultant agrees to ensure that all the TSRA Material is used strictly in accordance with any conditions or restrictions set out in Item M [*Use of TSRA Material*], and any direction by the TSRA.

8. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 8.1 Intellectual Property in all Contract Material vests or will vest in the TSRA.
- 8.2 Clause 8.1 does not affect the ownership of Intellectual Property in any existing Material which is specified in Item N [*Existing Material*], but the Consultant grants to the TSRA a permanent, irrevocable, royalty-free, world-wide, exclusive licence to use, reproduce, adapt and exploit any such existing Material in conjunction with the other Contract Material.

- 8.3 If requested by the TSRA, the Consultant agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 8.
- 8.4 The Consultant warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 8.

9. DEALINGS WITH COPIES

- 9.1 This clause 9 applies to any document, device, article or medium ('copies') in which the TSRA Material, Contract Material or Confidential Information is embodied.
- 9.2 Property in all copies vests or will vest in the TSRA.
- 9.3 The Consultant agrees to establish and maintain procedures to secure the copies against loss and unauthorised access, use, modification or disclosure.
- 9.4 Upon the expiration or termination of this Agreement the Consultant agrees to deliver to the TSRA or otherwise deal with all copies as directed by the TSRA.
- 9.5 This clause 9 applies subject to any provision to the contrary in Item O [*Dealings with Copies*].

10. DISCLOSURE OF INFORMATION

- 10.1 The Consultant agrees not to disclose to any person other than the TSRA, any Confidential Information relating to this Agreement or the Consultancy Services without prior approval in writing from the TSRA.
- 10.2 The TSRA may impose any conditions or restrictions it considers appropriate when giving its approval under clause 10.1.
- 10.3 The TSRA may at any time require the Consultant to give, and to arrange for its officers, employees, agents and subcontractors engaged in the performance of the Consultancy Services to give, undertakings in writing in a form required by the TSRA, relating to the non-disclosure of Confidential Information.
- 10.4 If the Consultant receives a request under clause 10.3 it agrees to arrange promptly for all such undertakings to be given.
- 10.5 The obligations on the Consultant under this clause 10 will not be taken to have been breached where the information referred to is legally required to be disclosed.
- 10.6 This clause 10 will survive the expiration or termination of this Agreement.

11. PROTECTION OF PERSONAL INFORMATION

- 11.1 The Consultant agrees to:
- (a) use Personal Information held or controlled by it in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;

- (b) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure;
- (c) comply with the Information Privacy Principles contained in the *Privacy Act 1988* to the extent that the content of those principles apply to the types of activities the Consultant is undertaking under this Agreement, as if the Consultant were an agency as defined in the Act;
- (d) cooperate with any reasonable demands or inquiries made by the Project Officer on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* including, but not limited to, a request from the Project Officer to comply with a guideline concerning the handling of Personal Information;
- (e) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles and other obligations referred to in this clause 11;
- (f) comply as far as practicable with any policy guidelines laid down by the TSRA or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information; and
- (g) comply with any direction of the Project Officer to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Consultant that the Privacy Commissioner considers breaches the obligations in this clause 11.

12. COMPLIANCE WITH LAW

12.1 The Consultant agrees, in carrying out this Agreement, to comply with:

- (a) all relevant legislation of the Commonwealth (particularly the *Crimes Act 1914*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and *Disability Discrimination Act 1992*), or of any State, Territory or local authority; and
- (b) any obligations it has under the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*.

13. CONFLICT OF INTEREST

13.1 The Consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict with the interests of the TSRA exists or is likely to arise in the performance of the Consultancy Services.

13.2 If, during the performance of the Consultancy Services a conflict of interest arises, or appears likely to arise, the Consultant agrees to:

- (a) notify the TSRA immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the TSRA may reasonably require to resolve or otherwise deal with the conflict.

13.3 If the Consultant does not notify the TSRA or is unable or unwilling to resolve or deal with the conflict as required, the TSRA may terminate this Agreement in accordance with the provisions of clause 20 [*Termination for Default*].

13.4 The Consultant agrees that it will not, and will use its best endeavours to ensure that any officer, employee, agent or subcontractor of the Consultant does not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Consultant in providing the Consultancy Services to the TSRA fairly and independently.

14. CONDUCT AT TSRA PREMISES

14.1 The Consultant agrees that when using the TSRA's premises or facilities for the purposes of the Consultancy Services, it will comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including the TSRA's smoke-free work-place policy) whether specifically drawn to the attention of the Consultant or as might reasonably be inferred from the circumstances.

15. ACCESS TO CONSULTANT'S PREMISES

15.1 The Consultant agrees to give to the Project Officer, or to any persons authorised in writing by the Project Officer, reasonable access to premises occupied by the Consultant where the Consultancy Services are being performed, and permit those persons to inspect Material relevant to the Consultancy Services.

16. INDEMNITY

16.1 The Consultant agrees to indemnify the TSRA from and against any:

- (a) liability incurred by the TSRA;
- (b) loss of or damage to property of the TSRA; or
- (c) loss or expense incurred by the TSRA in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the TSRA, arising from:
 - (i) any act or omission by the Consultant, its officers, employees, agents or subcontractors in connection with this Agreement;
 - (ii) any breach by the Consultant of its obligations or warranties under this Agreement;
 - (iii) any use or disclosure by the Consultant, its officers, employees, volunteers, bailees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
 - (iv) the use by TSRA of the Contract Material,

where there was fault on the part of the Consultant whose conduct gave rise to that liability, loss or damage, or loss or expense.

16.2 The Consultant's liability to indemnify the TSRA under clause 16.1 will be reduced proportionately to the extent that any negligent act or omission of the TSRA contributed to the relevant liability, loss or damage, or loss or expense.

- 16.3 The right of the TSRA to be indemnified under this clause 16 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the TSRA is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 16.4 In this clause 16, "TSRA" includes officers, employees and agents of the TSRA.
- 16.5 This clause 16 will survive the expiration or termination of this Agreement.

17. INSURANCE

- 17.1 The Consultant agrees, for so long as any obligations remain in connection with this Agreement:
- (a) to effect and maintain the insurance specified in Item P [*Insurance*], for all the Consultant's obligations under this Agreement, including those which survive the expiration or termination of this Agreement; and
 - (b) upon request, provide proof of insurance acceptable to the TSRA.

18. DISPUTE RESOLUTION

- 18.1 The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
- (a) first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
 - (b) secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
 - (c) thirdly, the parties have ten business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
 - (d) lastly, either party may commence legal proceedings if:
 - (i) there is no resolution or agreement; or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days.
- 18.2 Despite the existence of a dispute, the Consultant will (unless requested in writing not to do so) continue to perform the Consultancy Services.
- 18.3 This clause 18 does not apply to:
- (a) action by either party under or purportedly under clause 20 [*Termination For Default*],
 - (b) action by TSRA under or purportedly under clause 3.2 [*Fees, Allowances and Assistance*], or clause 19 [*Termination and Reduction for Convenience*]; or
 - (c) either party commencing legal proceedings for urgent interlocutory relief.

19. TERMINATION AND REDUCTION FOR CONVENIENCE

- 19.1 The TSRA may, at any time by notice, terminate this Agreement or reduce the scope of the Consultancy Services immediately.
- 19.2 Upon receipt of a notice of termination or reduction the Consultant agrees to:
- (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination and to protect the TSRA Material and Contract Material; and
 - (c) continue work on any part of the Consultancy Services not affected by the notice.
- 19.3 Where there has been a termination under clause 19.1, the TSRA will be liable only for:
- (a) payments and assistance under clause 3 [*Fees, Allowances and Assistance*] for services rendered before the effective date of termination; and
 - (b) reasonable costs incurred by the Consultant and directly attributable to the termination.
- 19.4 Where there has been a reduction in the scope of the Consultancy Services, the TSRA's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 3 [*Fees, Allowances and Assistance*] will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Consultancy Services.
- 19.5 The TSRA will not be liable to pay compensation under clause 19.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this Agreement, together exceed the fees set out in Item F [*Fees*].
- 19.6 The Consultant will not be entitled to compensation for loss of prospective profits.

20. TERMINATION FOR DEFAULT

- 20.1 Where a party fails to satisfy any of its obligations under this Agreement, the other party if it considers that the failure is:
- (a) not capable of remedy, may, by notice, terminate this Agreement immediately; or
 - (b) capable of remedy, may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.
- 20.2 The TSRA may also, by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Consultant:
- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the Corporations Law, or an order has been made for the purpose of placing the corporation under external administration; or
 - (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

21. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 21.1 The Consultant agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the TSRA, or as otherwise able to bind or represent the TSRA.
- 21.2 The Consultant is not by virtue of this Agreement an officer, employee, partner or agent of the TSRA, nor does the Consultant have any power or authority to bind or represent the TSRA.

22. WAIVER

- 22.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 22.2 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- 22.3 In this clause 22, 'rights' means rights or remedies provided by this Agreement or at law.

23. ASSIGNMENT AND NOVATION

- 23.1 The Consultant cannot assign its obligations, and agrees not to assign its rights, under this Agreement without, in either case, prior approval in writing from the TSRA.
- 23.2 The Consultant agrees not to do any act which has as its object an assignment of the Consultants obligations or rights under this agreement, without first consulting the TSRA.

24. APPLICABLE LAW

- 24.1 The laws of Queensland apply to this Agreement.

25. NOTICES

- 25.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with as follows:
- (a) if given by the Consultant to the TSRA – marked for the attention of the Project Officer at the address indicated in Item Q [*TSRA's Address for Notices*] or as otherwise notified by TSRA; or
 - (b) if given by the TSRA to the Consultant – signed by the Project Officer and marked with the address indicated in Item R [*Consultant's Address for Notices*] or as otherwise notified by the Consultant.
- 25.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.
- 25.3 A notice, request or other communication will be deemed to be received:
- (a) if delivered by hand, upon delivery;

- (b) if sent by pre-paid ordinary post within Australia, upon the expiration of two business days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

26. TAXES, DUTIES AND GOVERNMENT CHARGES

- 26.1 Subject to this clause, all taxes, duties and government charges ("Taxes") imposed or levied in Australia or overseas in connection with this Contract will be paid by the TSRA, or as the TSRA might arrange.
- 26.2 Without limiting clause 26.1, the TSRA will pay Goods and Services Tax ("GST") on the goods, services and other supplies made by the Consultant under this Contract ("the supplies") to the extent that they are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax Act) 1999* ("the GST Act")
- 26.3 In relation to any GST payable under clause 26.2, the Consultant will issue the TSRA with a tax invoice in accordance with the GST Act.

THE SCHEDULE

A. Proposal and Quotation

The Consultancy Services to be provided are described in the following documents.

- i. A proposal from the Consultant dated <<date>> and headed <<Title of the Tender response from the consultant>> (Attachment A)
- ii. Terms of Reference attached (Attachment B)

B. 'Consultancy Services' (see clauses 1.1 and 2.1)

Legal Services as specified in various *Invitations to Offer* which may be issued by the TSRA Principal Legal Officer as Annexures to this Schedule from time to time.

C. Required Contract Material (see clauses 1.1 and 2.1)

- i) Legal Services as specified in various *Invitations to Offer* which may be issued by the TSRA Principal Legal Officer as Annexures to this Schedule from time to time in relation to
 - a) Applications for the Determination of Native Title
 - b) Indigenous Land Use Agreements
 - c) Land Dispute Resolution
 - d) Native Title Compensation Claims
 - e) Registered Native Title Body Corporate Legal Issues
 - f) Prescribed Body Corporate Support
 - g) Future Acts
 - h) General Litigation
 - i) General Advice
- ii) Related services as specified in various *Invitations to Offer* which may be issued by the TSRA Principal Legal Officer as Annexures to this Schedule from time to time

D. Standards and Best Practice (see clause 2.1)

The Consultant is required to adhere to leading industry practices for equivalent services within the Australian Public Service (APS) framework as referenced in online publications available on the Australian National Audit Office website referenced "Commonwealth Procurement Guidelines and Best Practice Guidance".

E. Time-frame (see clause 2.1)

- (a) The Consultancy will commence upon execution of this contract.

(b) The Required Contact Material under Items C(i) and C(ii) are to be delivered by the consultant and accepted by the TSRA Project Officer (Item K) no later than date specified in the relevant *Invitation to Offer*.

(c) The Standing Offer Contract remains in force until 30 June 2022 unless ended in accordance with the Termination provisions in Clauses 19 and 20.

F. Fees (see clauses 3.1 and 19.5)

The consultant will be paid the hourly or daily rates in accordance with Table F-1. The quantum of the payment will be based on the identified categories of staff and the level of effort specified in the relevant *Invitation to Offer* for the conduct of this consultancy.

| Serial | Category | Hourly Rate (Services) | Daily Rate (Services) | Hourly Rate (Travel) |
|--------|-----------------------------------|------------------------|-----------------------|----------------------|
| 1 | Senior Counsel | \$ | | |
| 2 | Junior Counsel | \$ | | |
| 3 | Partner / Director | \$ | | |
| 4 | Special Counsel | \$ | | |
| 5 | Senior Associate | \$ | | |
| 6 | Lawyer 6 + Years PQE ¹ | \$ | | |
| 7 | Lawyer 4-6 Years PQE | \$ | | |
| 8 | Lawyer 1-3 Years PQE | \$ | | |
| 9 | Graduate Lawyer | \$ | | |
| 10 | Paralegal | \$ | | |
| 11 | Research Clerk | \$ | | |
| 12 | Administrative Staff | \$ | | |

Table F-1 Schedule of Fees

The schedule of payments is to be as specified in the relevant *Invitation to Offer*.

G. Allowances and Costs (see clause 3.1)

Disbursements which are specified in the *Invitation to Offer* will be reimbursed at cost on production of a tax invoice / receipt or other documentary evidence acceptable to the Principal Legal Officer.

Unless otherwise specified in this Agreement, no allowances or other costs will be paid by the TSRA

Travel reimbursement will be paid at the TSRA travel allowance rates.

H. Facilities and Assistance (see clause 3.1)

Such normal office services and facilities as are reasonably required by the Consultant's personnel for the performance of the Consultancy Services identified in the relevant *Invitation to Offer* will be provided by the TSRA for the duration of the consultancy.

¹ Post Qualification Experience

Where stated in the relevant *Invitation to Offer*, travel within the Torres Strait from Ngurapia (Horn Island) to and from Torres Strait communities will be provided by the TSRA. Unless specified in the *Invitation to Offer*, the Consultant is responsible for all travel arrangements and costs between mainland Australian points of departure / arrival and Ngurapai (Horn Island).

I. Invoice Procedures (see clause 3.3)

The payment of fees for Consultancy Services will be processed within 30 days from the receipt of a correctly rendered invoice (a tax invoice which complies with the GST Act) including the following information:

- (a) Tax Invoice number
- (b) Date of Tax Invoice
- (c) Standing Offer Contract Number and *Invitation of Offer* Reference
- (d) NTO Purchase Order Number
- (e) NTO Matter Reference Number
- (f) NTO In-house Lawyer Name

Tax Invoices must be broken down into the following categories:

- (a) Professional Fees
- (b) Outlays/Disbursements (with supporting documentation)
- (c) Counsel Fees
- (d) Expert Fees

Schedule of professional fees should include:

- (a) Date
- (b) Fee Earner
- (c) Narrative
- (d) Time
- (e) Fee

Fee Earner Summary should include:

- (a) Fee Earner
- (b) Fee Earner Initials
- (c) Hours
- (d) Rate
- (e) Total Fees of each Fee Earner

J. 'Specified Personnel' (see clauses 1.1 and 5)

The Consultant shall ensure that the Consultancy Services outlined in Item B are undertaken by the persons identified in the relevant *Invitation to Offer*.

K. 'Project Officer' (see clauses 1.1 and 2.1)

The TSRA Contract Officer shall be the Project Officer with responsibility for supervision of the Contract, on behalf of the TSRA and authority to issue and receive any written notification under the Contract.

The TSRA Principal Legal Officer is responsible for all legal advice provided across the organisation and will be responsible for the coordination, instruction, management and supervision of the services specified in the relevant *Invitation to Offer* issued under the Contract.

L. Material to be Provided by TSRA (see clause 7.1)

Any material to be provided by the TSRA will be identified in the *Invitation to Offer* and provided to the Consultant within five working days of acceptance of the *Invitation to Offer*.

M. Use of TSRA Material (see clause 7.3)

The TSRA Material shall remain the property of the TSRA and, on the expiration or earlier termination of this Contract or of any *Invitation to Offer* issued under this Contract, the Consultant shall return to the TSRA all TSRA Material if so requested.

N. Existing Material (see clause 8.2)

Any items identified by the Consultant as being Existing Material are to be listed in the relevant *Invitation to Offer*

O. Dealings with Copies (see clause 9.5)

The Consultant shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

P. Insurance (see clause 17.1)

Public Liability. The Consultant shall maintain public liability insurance for an amount of not less than five million dollars (\$5,000,000)

Worker's Compensation

The Consultant shall maintain workers' compensation insurance for an amount required by Queensland State Legislation,

Professional Indemnity

The Consultant shall maintain professional indemnity insurance for an amount required by the Law Society in the State or Territory in which the head office of the firm is located.

Q. TSRA's Address for Notices (see clause 25.1)

Contract Officer
Torres Strait Regional Authority
PO Box 261
Thursday Island QLD 4875
contractadmin@tsra.gov.au

R. Consultant's Address for Notices (see clause 25.1)

<<Insert Address>>

SIGNED as an Agreement.

SIGNED on behalf of the Torres Strait Regional Authority by:

<<Name>>

<<Appointment>>

Signature

Date

IN THE PRESENCE OF

Witness Name

Witness Signature

SIGNED on behalf of <<Name of Consultancy Firm>> **by:**

Name

Signature

Position

Date

IN THE PRESENCE OF

Witness Name

Witness Signature

DRAFT

RESPONSE FROM TENDERER

<<To be inserted prior to Contract execution>>

STATEMENT OF WORK - REQUEST FOR TENDER
STANDING OFFER CONTRACT FOR THE PROVISION OF LEGAL AND RELATED SERVICES

REFER TO ANNEX A TO REQUEST FOR TENDER DOCUMENT NTO 2017-419-1

This Annex will be attached to the Contract prior to execution