

OFFICIAL



Australian Government
Department of Finance

Request for Tender – FIN/PP02/22Phase2

People Panel Services for the Australian Government *Phase 2 – Labour Hire Services*

The timetable below provides the key dates related to this RFT.

Description	Time
Closing Time	2.00pm AEDST 19 December 2022
Cut-off date for questions	2.00pm AEDST 08 December 2022
Statement of Tax Record Clarification Process Close	2.00pm AEDST 28 November 2022
Industry briefing	2.00pm AEDST 17 November 2022

Tender Submission: Tenders must be submitted in the 360 Tender System (refer paragraph 8.5)

Statement of Tax Record (STR): Respondents that do not submit a valid STR will be excluded from evaluation (refer paragraph 8.3)

Important Note: **LATE TENDERS WILL NOT BE ACCEPTED** (refer paragraph 8.11)

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PART A – PEOPLE PANEL

1. Establishment of the People Panel

1.1 Introduction

- 1.1.1 The Department of Finance (**Finance**) is establishing a Whole-of-Australian Government (WoAG) Panel for Recruitment and Search, Labour Hire and Contractor Services collectively referred to as the **People Panel**.
- 1.1.2 The People Panel will be established through a series of coordinated procurements, undertaken in phases with each phase conducted through separate open approaches to market.
- 1.1.3 The second phase in the People Panel series, this Request for Tender (**RFT**), is for Labour Hire Services only (**Labour Hire Services Panel**).
- 1.1.4 Contractor Services may be tendered through a separate open approach to market at a later date, to be determined by Finance in its sole discretion.
To clarify, Finance is not obliged to approach the market for Contractor Services but may do so at its discretion.
- 1.1.5 As a coordinated procurement, use of the Labour Hire Services Panel will be:
- (a) mandatory for non-corporate Commonwealth entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act); and
 - (b) optional for other Commonwealth Entities that are subject to the PGPA Act.
- 1.1.6 This Labour Hire Services Panel will replace:
- (a) relevant Commonwealth Labour Hire Services related panels; and
 - (b) Labour Hire Services related categories on current broader services panels.
- 1.1.7 Commonwealth Entities will be able to purchase up to five percent (5%) of their total expenditure on Labour Hire Services in a financial year from Service Providers not on the People Panel. This percentage figure may be reviewed by Finance from time to time.
- 1.1.8 Once established, Finance will administer the Labour Hire Services Panel.

1.2 Term of the Panel

- 1.2.1 The People Panel commenced with the Recruitment and Search Panel in October 2022. The Labour Hire Services Panel is anticipated to commence by 1 July 2023, for an initial four (4) year term with an option for Finance to extend the Head Agreement (at its sole discretion) for further periods up to 30 June 2031.
- 1.2.2 The dates in 1.2.1 are indicative only and remain subject to change at Finance's sole discretion.

1.3 Notices about the procurement

- 1.3.1 Information about the procurement and notification of the release of the Request for Tender for each phase of the procurement will be published on AusTender. Potential Respondents must be registered on AusTender at [New User Registration: AusTender \(tenders.gov.au\)](https://www.tenders.gov.au) to receive any information or notifications about the procurement.
- 1.3.2 Information about the procurement and notification of the release of the request for tender may also be published on the 360 Providers' Portal at [360 Providers' Portal \(apetsoftware.com.au\)](https://www.apetsoftware.com.au).

1.4 Refreshing the Panel

- 1.4.1 It is intended that Finance may, at any time during the term of the Labour Hire Services Panel:
- (a) approach the market to add other Service Providers to the Labour Hire Services Panel in one or more Service Categories; and
 - (b) add additional Service Categories to the Labour Hire Services Panel (which Respondents and other suppliers may be approached to tender for).

2. Background

2.1 Analysis

2.1.1 Finance determined that a coordinated procurement for People Panel services (including this Phase 2, Labour Hire Services) would provide a range of benefits, including:

- (a) improved quality, consistency and efficiency of purchasing labour hire services with standard terms and conditions and a performance management framework;
- (b) cost savings and efficiencies for industry by reducing administration and tendering efforts;
- (c) reduction in the time and effort for Entities and for industry participants to establish contracts;
- (d) replacing multiple panel arrangements across Government with a single panel arrangement; and
- (e) providing standardised fee structures for Entities, noting that a supplier's fees across current panels can vary significantly for the same types of services.

2.2 Estimated purchasing trends

2.2.1 Finance advises that the historic value of contracts undertaken through the Labour Hire Services related panels was approximately over \$1B per annum. This historic value does not represent or warrant any future level of Government expenditure through the Labour Hire Services Panel once fully established, noting the government commitment to reduce wasteful spending on external private labour (contractors, consultants and labour hire).

2.2.2 The information contained in paragraph 2.2.1 represents Finance's best estimates based on the data and modelling available to Finance at the time of this RFT. However, the information in paragraph 2.2.1 should not be relied upon by any Respondent, and the disclaimers in paragraph 8.18 apply in respect of this information.

PART B – ABOUT THIS REQUEST FOR TENDER

2.3 Labour Hire Services

2.3.1 This RFT is for Phase 2 – Labour Hire Services. Labour Hire is defined and characterised in this agreement for the purposes of this arrangement only.

2.3.2 To clarify, Respondents:

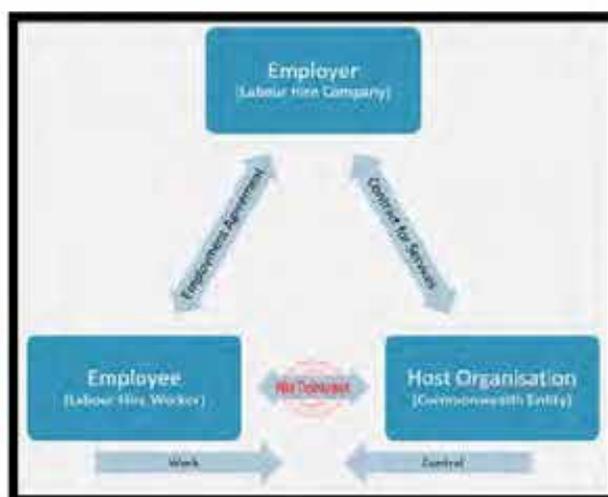
- (a) who submitted a tender for Phase 1 – Recruitment and Search Services and want to be considered for the provision of services for Phase 2 – Labour Hire Services, must also respond to this RFT;
- (b) who respond to this Phase 2 – Labour Hire Services RFT will still be required to respond to subsequent phases (if any) of the People Panel (e.g. Contractor Services);
- (c) will not be precluded from responding to subsequent phases (if any) of the People Panel (e.g. Contractor Services), if they do not submit a Tender to this Phase 2 – Labour Hire Services RFT; or
- (d) who submitted a tender for Phase 1 – Recruitment and Search Services but do not want to be considered for Phase 2 – Labour Hire Services are not required to respond to this RFT.

2.3.3 Labour Hire is defined as a "triangular employment arrangement", involving three parties: a worker supplying labour; an Entity; and an intermediary, such as a Labour Hire Supplier (see Diagram 1).

2.3.4 In the 'standard' form of this arrangement, the Entity engages a Labour Hire Supplier to provide them with labour (a Labour Hire Worker). The Labour Hire Supplier then contracts a Labour Hire Worker (via an employment agreement) to provide that labour and is responsible for paying the Labour Hire Worker and making all statutory Employment On-cost payments.

2.3.5 In a labour hire arrangement, the Labour Hire Worker has no direct employment contract with the Entity.

Diagram 1: Labour Hire Definition



2.3.6 A Labour Hire Supplier is a business that has an arrangement in place with one or more individuals to supply the individuals to perform work in and as part of an Entity's business or undertaking. The Labour Hire Supplier is obliged to pay the individual for the work performed for the Entity, including the management and payment of employee entitlements.

2.3.7 Labour Hire is characterised by the following factors:

- (a) the work is typically performed at the Entity's premises, Remote work or flexible working arrangements are at the Entity's discretion or direction;
- (b) the work is subject to the Entity's direction;
- (c) the work is supervised or managed by the Entity or another Labour Hire Worker supervised or managed by the Entity;
- (d) the work is not a specialised service;
- (e) the work is a key function of the Entity's business or undertaking; and
- (f) the work is of a similar nature to work performed or previously performed by the Entity's own employees.

The rates are paid on an hourly basis, referable to the corresponding Australian Public Service (APS) level.

The Labour Hire Services required for this RFT consist of five (5) Service Categories, with no identified sub-categories – encompassing the following APSC Job Families (see Diagram 2). A full mapping of the APSC is available at [APSC Job Family Framework | Australian Public Service Commission \(apsc.gov.au\)](https://www.apsc.gov.au/aps-job-family-framework).

To clarify, Respondents are required to nominate Service Categories that they are tendering for but not individual Job Families or Job Roles.

Diagram 2: Labour Hire Services



3. Scope of the Panel

3.1 Services included in Labour Hire Services

3.1.1 The Services required under the Labour Hire Services Panel are for the provision of:

- (a) Labour Hire Workers to perform work for an Entity for a defined period of time, including work that is:
 - (i) performed at the Entity's premises, remote work or flexible working arrangements which are at the Entity's discretion or direction;
 - (ii) subject to the Entity's direction;
 - (iii) supervised or managed by the Entity;
 - (iv) not a specialised service;
 - (v) a key function of the Entity; and
 - (vi) substantially similar to work performed by Entity personnel.
- (b) Conversion of labour hire workers in a relevant position to be a directly engaged Entity employee.
- (c) Introduction Services, where the Service Provider introduces to the Entity an APS employee from another entity.
- (d) Placement Services, where the Service Provider facilitates the sourcing of a candidate for a non-ongoing APS position of employment.

To clarify, a Labour Hire Worker does not automatically, as a result of a Conversion, Introduction or Placement Service, become an Entity employee at any point. This activity is subject to an Entity's recruitment process.

3.2 Out of scope services

3.2.1 The Services required under the Labour Hire Services Panel do not include provision of Labour Hire Workers for:

- (a) ICT roles (roles commonly listed in the ICT and Digital Solutions job family)
- (b) Resources and construction roles (including industrial, agricultural, infrastructure, mining, forestry, fisheries, maritime, meatworkers, manufacturing, textiles, building roles)
- (c) Military engineering roles
- (d) Statutory Appointments
- (e) Non-Statutory Appointments (for example Audit committee and consultative committees)
- (f) Learning and development roles
- (g) Other WoAG coordinated procurements such as legal services and property services
- (h) Consultants as defined in [RMG423 \(Procurement Publishing and Reporting Obligations \(RMG 423\) | Department of Finance\)](#); and
- (i) Recruitment of permanent and non-ongoing Australian Public Service employees, other than the provision of Introduction and Placement Services.

3.2.2 These out of scope services may be further defined by Finance during the term of the Labour Hire Services Panel.

3.3 RFT Structure

3.3.1 This RFT is structured as follows:

- (a) **Part A** – People Panel
- (b) **Part B** – About this Request for Tender
- (c) **Part C** – Conditions of Tender
- (d) **Part D** – Evaluation of Tenders
- (e) **Attachment A** – Definitions
- (f) **Attachment B** – People Panel Job Family Mapping
- (g) **Attachment C** – Head Agreement
- (h) **Attachment D** – Information about the Tender Response Schedule Questionnaire
- (i) **Attachment E** – Evaluation Criterion 1 - Capability
- (j) **Attachment F** – Evaluation Criterion 2 - Capacity
- (k) **Attachment G** – Pricing
- (l) **Attachment H** – Sustainable Procurement and Benefits to the Australian Economy
- (m) **Attachment I** – Referee Report Template
- (n) **Attachment J** – Guidance on the Shadow Economy Procurement Connected Policy
- (o) **Attachment K** – 360 Tender System Respondent's User Guide
- (p) **Attachment L** – Respondent's Modern Slavery Questionnaire
- (q) **Attachment M** – Respondent's Declaration Information

3.4 Contractual Arrangements

3.4.1 Successful Respondents will be required to enter into a Head Agreement with the Commonwealth under the terms and conditions at **Attachment C – Head Agreement**, without substantial negotiation (although the particular Labour Hire Services for which a Respondent is selected, and the pricing, may vary between Respondents).
To clarify, it is the intent of Finance to have the same set of clauses across all successful Respondents. Finance does not intend to negotiate or draft a bespoke Head Agreement with Respondents.

3.4.2 This Phase 2 – Labour Hire Services Panel will commence from the date the Head Agreement is executed by Finance and a Successful Respondent, with Entities able to access Services under the Labour Hire Services Panel from the Services Commencement Date.

4. Timeframe for this RFT

4.1 Overview

- 4.1.1 Table 1 sets out the anticipated timeframe for the primary stages of this RFT. However, with the exception of the Closing Time which is final, subject to paragraph 8.9, the dates are indicative only and do not create an obligation on the part of Finance to take any action on the date specified.

4.2 Timetable

Table 1 – RFT Timetable

Milestone	Indicative Dates
Industry Briefing	2.00pm AEDST 17 November 2022
Statement of Tax Requirement Clarification Close	2.00pm AEDST 28 November 2022
Enquiry Cut-off Date	2.00pm AEDST 08 December 2022
Closing Time	2:00pm AEDST 19 December 2022
Services Commencement Date	Expected to be 1 July 2023

4.3 Industry Briefings

- 4.3.1 Finance intends to conduct a virtual industry briefing to provide interested parties with information about responding to this RFT. Notification of the format of the industry briefings, and details about how to register to attend, will be published on AusTender and the 360 Tendering System.

5. RFT Publishing and Addenda

5.1 RFT Publishing

- 5.1.1 Notification of this RFT will be published on both AusTender and the 360 Tender System. A link will be provided on AusTender to direct the user to this RFT in the 360 Tender System. Respondents must either register for a new account (on either AusTender and/or the 360 Providers' Portal) or sign in to an existing account to download the RFT documentation.
- 5.1.2 If the Respondent has obtained the RFT documentation from any source other than AusTender or the 360 Tender System, they must register for a new account (on either AusTender and/or the 360 Providers' Portal) and download the RFT documentation, in order to receive notification of Addenda.

5.2 Notice of Addenda

- 5.2.1 Finance has the right to add, vary, supplement or clarify any aspect of this RFT, or to provide additional information in relation to this RFT, at any time by issuing an Addendum.
- 5.2.2 Respondents who have registered and downloaded RFT documentation will be notified automatically via email of any Addenda issued.
- 5.2.3 Notification of Addenda issued in the 360 Tender System will also be published on AusTender.
- 5.2.4 The Respondent must open all Addenda in the 360 Tender System, before the 360 Tender System will allow the Respondent to submit its Tender. The 'Submit and Lock Responses' button will not appear in the 360 Tender System until all Addenda have been opened.
- 5.2.5 Respondents acknowledge that they have no claim against Finance (or the Commonwealth in any other capacity) or Simplylogical.net if they fail to become aware of any Addendum.
- 5.2.6 All Addenda issued by Finance under this paragraph 5.2 will form part of this RFT.

6. Enquiries Relating to this RFT

6.1 Enquiries from Respondents

- 6.1.1 Enquiries relating to this RFT including questions and requests for additional information or clarification must be made in writing, before the Enquiry Cut-off Date set out in 'Table 1 – RFT Timetable' in paragraph 4.2 of this RFT. Enquiries must be directed to the Request Manager through the "Contact Request Manager" feature within the 360 Providers' Portal, which opens an "Enquiries" page.
- 6.1.2 The Request Manager is the sole contact point for any queries, or requests for any information, in relation to this RFT until this RFT process has concluded.
- 6.1.3 Enquiries received before the Enquiry Cut-Off Date may be answered, subject to paragraph 6.1.6 of this RFT. Enquiries received after the Enquiry Cut-off Date will not be answered unless Finance determines, in its sole and absolute discretion, it would be in the interest of any or all Respondents to provide a response to the enquiry.
- 6.1.4 Enquiries should clearly set out the paragraph reference and document to which the enquiry relates.
- 6.1.5 Respondents should note that Finance may, where it considers it appropriate, provide the answer (if any) to an enquiry to the requesting Respondent only or to all potential Respondents on a non-attributable basis by way of an Addendum (in accordance with paragraph 5.2 of this RFT). In order to provide the answer (if any) on a non-attributable basis, Finance reserves the right to modify questions that are lodged before publishing the question and answer.
- 6.1.6 Finance may, in its sole and absolute discretion, not respond to questions or comments.

6.2 Discrepancies, Errors or Omissions in this RFT

- 6.2.1 If a Respondent finds, or reasonably believes it has found, any discrepancy, error, ambiguity, inconsistency or omission in this RFT, or any other information given or made available by Finance, the Respondent should promptly notify the Request Manager through the contact point in paragraph 6.1.1 of this RFT. The Respondent should set out in sufficient detail such discrepancy, error, ambiguity, inconsistency or omission.
- 6.2.2 The notice referred to in paragraph 6.2.1 of this RFT should be provided as soon as possible after the Respondent becomes aware of a discrepancy, error, ambiguity, inconsistency, or omission to enable Finance to take whatever corrective action, if any, it deems appropriate.
- 6.2.3 Any actual discrepancy, error, ambiguity, inconsistency or omission in this RFT or any other information given or made available by Finance will, if Finance considers (in its absolute discretion) that it is practicable and appropriate to do so, be corrected by Finance and notified to Respondents by way of an Addendum in accordance with paragraph 5.2 of this RFT (without attribution to the Respondent that provided the notice).

6.3 Complaints

- 6.3.1 Subject to paragraph 6.3.6, any complaints arising out of this RFT process should be lodged with the Request Manager through the contact point in paragraph 6.1.1 of this RFT.
- 6.3.2 A complaint lodged by a Respondent under paragraph 6.3 of this RFT should:
- (a) state that it is a complaint made under paragraph 6.3 of this RFT;
 - (b) contain a clear statement as to what the Respondent considers is defective in this RFT process;
 - (c) attach copies of, or references to, evidence of information to support the Respondent's view; and
 - (d) contain a statement as to what outcome the Respondent wishes to achieve from the complaint process.
- 6.3.3 Finance will seek to address the complaint as soon as practicable.
- 6.3.4 Where requested by Finance, a Respondent must co-operate with Finance (including providing information or answering questions) in the investigation and attempted resolution of any complaint in respect of this RFT process.
- 6.3.5 Finance may, in its absolute discretion in relation to a complaint described in paragraph 6.3.2 of this RFT:
- (a) refer the complaint to a probity adviser;
 - (b) have the complaint reviewed by an officer or person nominated by Finance, with a view to finding a solution to appropriately resolve the complaint; or
 - (c) contact the Respondent with a view to resolving the complaint.
- 6.3.6 Any complaint relating to this RFT which is made under the *Government Procurement (Judicial Review) Act 2018* (Cth) is to be lodged using the following link: [Government Procurement \(Judicial Review\) Act 2018 Complaints Form | Department of Finance](#).
- 6.3.7 If a Public Interest Certificate (PIC) (as defined in the *Government Procurement (Judicial Review) Act 2018* (Cth)) is issued, this will affect how any complaints submitted in accordance with the *Government Procurement (Judicial Review) Act 2018* (Cth) will be handled. Respondents are advised that:
- (a) a PIC has not, as at the date of release of this RFT, been issued for this procurement; and
 - (b) Finance may issue a PIC at any time during this procurement process, in accordance with the requirements of the *Government Procurement (Judicial Review) Act 2018* (Cth), in which case, Respondents will be notified in accordance with paragraph 5.2 of this RFT.

7. Responding to this RFT

7.1 360 Tender System

- 7.1.1 Finance is using the 360 Tender System, an online tender system, to receive Tenders in response to this RFT. The 360 Tender System comprises a 360 Providers' Portal which is a secure system hosted and supported in Australia. Respondents **must** submit their Tender through the 360 Providers' Portal.
- 7.1.2 Respondents should refer to **Attachment K – 360 Tender System Respondent's User Guide** available from this RFT and the quick reference guide [360 Providers' Portal Getting Started](#), which is available on each screen in the 360 Providers' Portal by clicking on the  icon. The guide contains instructions on:
- how to register on the 360 Providers' Portal, download and upload the required documents;
 - how to complete and submit a Tender;
 - how to change a Tender once it has been submitted; and
 - the specifications required for web browsers to submit a Tender.

7.2 Offered Services

- 7.2.1 Respondents may submit a Tender in respect of some or all of the Service Categories for this Phase 2 – Labour Hire Services, as set out in **Attachment C – Head Agreement**. Respondents are not required to tender for all Service Categories. Respondents cannot tender for only one Job Family under a Service Category.
- 7.2.2 Respondents will be required to demonstrate their capacity and capability to provide the Offered Services to the Australian Government.

To clarify, there may be multiple Successful Respondents.

7.3 Best Offer

- 7.3.1 Finance does not intend to conduct negotiations and intends to appoint Successful Respondents to the Labour Hire Services Panel primarily on the basis of the written Tenders submitted. Accordingly, the Respondent is encouraged to submit its best and unconditional offers in the first instance.

7.4 Privacy

- 7.4.1 Any Personal Information included as part of a Tender is protected by law, including the *Privacy Act 1988* (Cth), and is collected by Finance for the purposes of administering, processing, and evaluating Tenders, as well as managing the Labour Hire Services Panel.
- 7.4.2 Any Personal Information contained in a Tender may also be used by Finance, or disclosed by Finance to other parties for the purposes of administering and managing the Labour Hire Services Panel, or where agreed, or where it is required or authorised by law. For more information about how Finance handles Personal Information, the *Finance Privacy Policy* can be viewed at [Department of Finance Privacy Policy | Department of Finance](#).

PART C – CONDITIONS FOR PARTICIPATION

8. Participating in this RFT Process

8.1 Statement of Tax Requirements Optional Process

- 8.1.1 Respondents are provided an option in the 360 Tendering System to submit a copy of the Statement of Tax Record (STR) of the Respondent prior to the RFT Closing Time to seek a preliminary view as to whether their STR would, if submitted by the Respondent in their Tender (and otherwise in accordance with this RFT) meet the Minimum Content and Format Requirement specified in paragraph 8.3.3.
- 8.1.2 The final date for submitting a copy of an STR under paragraph 8.1 is 2.00pm AEDST 28 November 2022. Finance may not accept an STR under paragraph 8.1.1 after that date.
- 8.1.3 If Finance considers the STR would not meet the Minimum Content and Format Requirement specified in paragraph 8.3.3 if submitted with the Respondent's Tender, Finance will notify the Respondent of this via the 360 Tendering System.
- 8.1.4 The Respondent is solely responsible for rectifying any failure of the STR to meet the Minimum Content and Format Requirements prior to the RFT Closing Time.
- 8.1.5 Regardless of the outcome of any view expressed by Finance under the process in this paragraph 8.1. Respondents are still required to comply with the Minimum Content and Format Requirements at paragraph 8.3.
- 8.1.6 Finance offers the option in this paragraph 8.1 as an opportunity to obtain a preliminary view about the Respondent's STR but it is ultimately the Respondent's sole responsibility to ensure its STR meets the requirements of 8.3.3. Finance accepts no responsibility for any view expressed by Finance about the STR pursuant to this process.

8.2 Conditions for Participation

- 8.2.1 The Conditions for Participation are the mandatory minimum requirements that the Respondent must meet before a Tender can be considered by Finance.
- 8.2.2 Any Tender that, in the opinion of Finance, does not meet the Conditions for Participation at the Closing Time will be excluded from evaluation.
- 8.2.3 The Respondent must, at the Closing Time, meet the Conditions for Participation in paragraph 8.2.4 of this RFT.
- 8.2.4 The Respondent must:
- (a) be a legal entity;
 - (b) not be bankrupt or insolvent;

- (c) not be subject to any judicial decision against them (not including decisions under appeal) relating to employee entitlements, (or if subject to such judicial decision, the Respondent must have satisfied any resulting order); and
- (d) not be listed as a non-compliant employer under the *Workplace Gender Equality Act 2012* (Cth).

8.3 Minimum Content and Format Requirements

- 8.3.1 The Minimum Content and Format Requirements are the minimum requirements that a Tender must meet in order to be considered by Finance.
- 8.3.2 Subject to paragraph 8.12 of this RFT, any Tender that, in the opinion of Finance, does not meet a Minimum Content and Format Requirement, may be excluded from evaluation.
- 8.3.3 The Minimum Content and Format Requirements that apply to this RFT are:
- (a) the Tender must be written in English;
 - (b) subject to paragraph 8.3.4 of this RFT, the Respondent must submit with its Tender:
 - i. a Valid and Satisfactory Statement of Tax Record (STR) for the Respondent (refer **Note 1** below) that is valid at the Closing Time; or
 - ii. a receipt demonstrating that an STR has been requested from the Australian Taxation Office (ATO) for the Respondent and the Respondent must provide a Valid and Satisfactory STR to the Request Manager by emailing PeoplePanel@finance.gov.au, **within four (4) business days** from the Closing Time.

Note 1: Respondents should apply for a STR with sufficient time to meet the Minimum Content and Format Requirement in paragraph 8.3.3(c).

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

The STR **must** be issued for the Australian Business Number (ABN) of the Respondent.

If the Respondent is a partnership, a Valid and Satisfactory STR **must** be requested on behalf of the partnership and in respect of each partner that is directly involved in the delivery of the Deed. If a new partner subsequently becomes directly involved in the delivery of the Deed, a Valid and Satisfactory STR **must** be provided to Finance within a reasonable time after the partner becomes involved.

If the Respondent is a trust, a Valid and Satisfactory STR **must** be provided in respect of the trust and trustee.

If the Respondent is a joint venture, a Valid and Satisfactory STR **must** be provided in respect of each party to the joint venture. Where the joint venture operator is not a participant of the joint venture, the operator **must** also provide a Valid and Satisfactory STR.

If the Respondent is a subsidiary of a tax consolidated group, or a Multiple Entry Consolidated (MEC) group, a Valid and Satisfactory STR **must** be provided by the subsidiary and the head company.

If the Respondent is a member of a GST group, a Valid and Satisfactory STR **must** be provided by the group representative and the group member.

The Minimum Content and Format Requirement at paragraph 8.3.3(c) of this RFT applies to **all** Respondents regardless of whether or not the Respondent pays tax in Australia.

If the total value of a Contract is over \$4 million (GST inclusive), a Successful Respondent will under the terms of the Contract need to ensure that any first tier Subcontractor engaged under that Contract holds a Valid and Satisfactory STR at all times during the term of the relevant Contract.

- 8.3.4 If a Respondent does not submit an STR in accordance with the requirements set out above, the Respondent's Tender **will be excluded** from evaluation as per paragraph 9.5. A Respondent's reliance on third party advice, such as from their accountant, will not exempt the Respondent from this requirement. A receipt demonstrating that an STR has been requested from the ATO is not an STR.
To clarify, Respondents must ensure that an STR is submitted in accordance with the requirements set out above. Failure to meet this requirement will result in the Respondent's Tender being excluded from evaluation.
- 8.3.5 Reliance on previous procurement processes undertaken by Finance, or any previous decisions related to acceptance of STRs will not exempt the Respondent from the STR requirements set out above.
To clarify, Finance will not accept or enter into any correspondence citing precedence from previous or other procurement processes.
- 8.3.6 Finance may decide not to exclude a Respondent from further consideration due to a failure by the Respondent to provide an STR receipt or STR by the required timeframe, as required by the Minimum Content and Format Requirements if Finance, in its sole discretion, is satisfied that the failure may be substantially contributed to by the ATO, and subject to the Respondent providing:
- (a) evidence that it has lodged an application for an STR prior to the Closing Time if it does not have, or is unable to provide, an STR receipt; and
 - (b) a Valid and Satisfactory STR immediately upon receipt from the ATO.
- 8.3.7 For the avoidance of doubt, Finance will not enter into a Head Agreement with a Respondent that does not have a Valid and Satisfactory STR.

8.4 Referees

- 8.4.1 Respondents **should** provide two (2) Referee Reports on the Referee Company or entity letterhead as part of their Tender. The Referee Report template is at **Attachment I – Referee Report Template** and available on the 360 Providers' Portal.
- 8.4.2 Respondents should submit their completed Referee Reports through the 360 Tender System with their Tender at the Closing Time.
- 8.4.3 Finance reserves the right, in its absolute discretion, to contact Referees to make its own enquiries to verify claims made in a Respondent's Tender (including, without limitation, contacting a person who is not nominated as a Referee by the Respondent), or request additional referees.

8.5 Completing and Submitting Tenders

- 8.5.1 Respondents must use the 360 Tender System to complete the Tender Response Questionnaire (**Attachment D – Information about the Tender Response Questionnaire**) which will constitute the Respondent's Tender. Tenders cannot be lodged on AusTender, or by email, post, courier, hand or any other method.
- 8.5.2 Access to and use of the 360 Providers' Portal is subject to the terms and conditions governing the 360 Tender System. In participating in this RFT, the Respondent must comply with those terms and conditions and any applicable instructions, processes and procedures as advised on the 360 Providers' Portal, available at [Providers' Portal Terms of Use.pdf \(apetsoftware.com.au\)](#).
- 8.5.3 Respondents are required to follow the instructions in the 360 Providers' Portal when completing their Tender and attach any information as requested, in the format provided. The 360 Providers' Portal will advise if a question has not been correctly completed. Failure to complete any mandatory aspects of the Tender Response Questionnaire will result in the Respondent not being able to proceed with completing or submitting its Tender.
- 8.5.4 Respondents are required to respond to questions in the Tender Response Questionnaire for each Offered Service that they are offering to provide services under.
- 8.5.5 Respondents must not reformat or corporate brand any attachments they upload to the 360 Providers' Portal, and must not embed or separately provide any video files as part of its Tender. If video files are embedded or separately provided, Finance will not consider these video files.
- 8.5.6 Respondents must include completed answers in their responses. Information not submitted through the 360 Providers' Portal will not be considered.
- 8.5.7 Respondents must adhere to any page/word/character limits stipulated in the Tender Response Questionnaire. Any pages/words/characters that exceed the limits stipulated will not be considered.
- 8.5.8 Respondents must allow sufficient time to complete the submission of their Tender prior to the Closing Time, to allow enough time to resolve any issue that may arise and seek help if required.

8.6 Changing or Withdrawing a Tender

- 8.6.1 Prior to the Closing Time, Respondents can re-open their submitted Tender in the 360 Providers' Portal to make changes. After re-opening a Tender, the Respondent must re-submit the amended Tender in the 360 Providers' Portal. If any assistance is required, the Respondent should contact 360 Tender System Support through the contact points in paragraph 8.7.1.
- 8.6.2 Prior to the Closing Time, Respondents can withdraw their Tender from the 360 Providers' Portal by re-opening their Tender and not resubmitting it.

8.7 360 Tender System Support

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

360 Tender System Support

Email: support@simplylogical.net

Telephone (within Australia): 02 51 004 009

Telephone (International): +61 251 004 009

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

8.8 Respondents' Responsibility in Relation to Submitting a Tender

8.8.1 Respondents acknowledge that:

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

8.8.2 Before submitting a Tender in the 360 Providers' Portal, the Respondent must:

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

8.8.3 The Respondent must ensure that the person who submits a Tender in the 360 Providers' Portal has the authority to do so on behalf of the Respondent, including making the warranties and representations set out in this RFT on the Respondent's behalf. Tenders

submitted through the 360 Providers' Portal will be deemed to be authorised by the Respondent.

8.9 Closing Time

- 8.9.1 Tenders must be submitted in the 360 Providers' Portal before the Closing Time, which is set out in 'Table 1 – RFT Timetable' in paragraph 4.2 of this RFT.
- 8.9.2 Prior to the Closing Time, Finance may extend the Closing Time for the submission of Tenders at its sole and absolute discretion, and will issue an Addendum in accordance with paragraph 5.2 of this RFT notifying Respondents of any decision to extend the Closing Time.
- 8.9.3 If a Respondent does not submit the Tender before the Closing Time, the Tender will not be accepted by the 360 Providers' Portal. Only Tenders with a status of 'submitted' in the 360 Providers' Portal after the Closing Time will be considered by Finance. Any conditions or advice set out in the 360 Providers' Portal, or otherwise provided by 360 Tender System Support, that suggest a position to the contrary do not apply.
- 8.9.4 The judgement of Finance as to the time a Tender has been submitted will be final.

8.10 Proof of Submission

- 8.10.1 When a Tender has been submitted successfully in the 360 Providers' Portal:
- (a) the Tender status in the 360 Providers' Portal will change to 'submitted';
 - (b) the "Final Step" page will have a green tick. The display screen will also record the time and date the Tender was received by the 360 Providers' Portal and will be conclusive evidence of successful submission of a Tender; and
 - (c) an email receipt of the Tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.
- 8.10.2 Failure to receive a receipt in accordance with paragraph 8.10.1 means that submission was not successful. Where no 'submitted' status is visible on the 360 Providers' Portal, the attempted submission will be deemed to have been unsuccessful.
- 8.10.3 The Respondent should contact the 360 Tender System Support in paragraph 8.7 as a matter of priority if they do not receive a receipt and believe they have successfully submitted their Tender.

8.11 Late Tenders

- 8.11.1 Any attempt to lodge a Tender after the Closing Time will not be permitted by the 360 Providers' Portal. A Tender will be deemed late if it is not properly submitted in the 360 Providers' Portal by the Closing Time (**Late Tender**).
- 8.11.2 Finance will not accept a Late Tender, unless the Tender is late due solely to mishandling by Finance or the 360 Tender System.

8.12 Unintentional Errors of Form and Illegible Tenders

- 8.12.1 If Finance considers that there are unintentional errors of form in a Tender, Finance may request the Respondent to correct or clarify the error, but will not permit any material alteration or addition to the Tender.
- 8.12.2 Respondents should not interpret a request under paragraph 8.12.1 as being an indication of the outcome of the RFT process. The Respondent should treat all requests under paragraph 8.12.1 as confidential information.
- 8.12.3 Finance is not obliged to consider any Tender that it considers to be illegible. If Finance considers that all or part of a Tender is illegible for any reason, it may, at its sole discretion, seek clarification from the Respondent, but is not obliged to do so.

8.13 Incomplete Tenders and Corrupt Files

- 8.13.1 Incomplete Tenders, including those that Simplylogical.net or Finance believes may contain any virus, worms, malicious code, disabling features, or anything else that might compromise the integrity or security of the 360 Tender System and/or Finance's computing environment may be excluded from the Evaluation Process at Finance's sole and absolute discretion. Simplylogical.net reserves the right to delete a Respondent's account if it finds the Respondent's Tender contains a virus, worms, malicious code, disabling features, or anything else that might compromise the integrity or security of the 360 Tender System.
- 8.13.2 Notwithstanding paragraph 8.8.1 of this RFT, Finance may consider an incomplete Tender and seek clarification from the Respondent only where this does not materially alter or add to the Tender submitted.
- 8.13.3 In submitting a Tender, Respondents warrant to Finance that they have taken reasonable steps to ensure that any uploaded files are free of viruses, worms, malicious code or other disabling features which may affect the 360 Tender System and/or Finance's computing environment.

8.14 Tender Validity Period

- 8.14.1 Tenders submitted in response to this RFT must remain open for acceptance by Finance for 12 months after the Closing Time.
- 8.14.2 If this procurement is suspended under the *Government Procurement (Judicial Review) Act 2018* (Cth), the Tender Validity Period is extended by the period of suspension, up to a maximum of 18 months after the Closing Time.

8.15 Conflict of Interest

- 8.15.1 Respondents must notify Finance as soon as practicable after becoming aware of any actual, potential or perceived conflict of interest at any time prior to or during this RFT process which could affect the performance of its obligations if the Respondent was to enter into **Attachment C – Head Agreement**.
- 8.15.2 If the Respondent has or may have an actual, potential or perceived conflict of interest, Finance may, at its discretion:

- (a) exclude the Tender from further consideration; or
- (b) impose conditions on the Respondent for the management of the actual or potential conflict of interest.

8.15.3 If the Respondent is unable or unwilling to comply with the conditions imposed under this paragraph 8.15, or otherwise resolve the actual or potential conflict of interest in a manner satisfactory to Finance, Finance may, at its discretion, exclude the Tender from further consideration.

8.16 Non-compliance with Other Terms or Requirements

8.16.1 Other than where paragraphs 8.2, 8.3, or 8.9.1 apply, non-compliance with a term or requirement in this RFT by a Respondent does not, in Finance's absolute discretion, automatically exclude a Tender, notwithstanding that the term or requirement is expressed in mandatory terms. However, Finance may exclude any Tender that does not comply with such a term or requirement that is expressed to be mandatory.

8.17 Respondents' Responsibility to Inform Themselves

8.17.1 By submitting a Tender, each Respondent represents to Finance that:

- (a) it has examined this RFT, **Attachment C – Head Agreement**, all documents referred to in this RFT, all other information made available to the Respondent (including any Addenda), all applicable legislation and policies, and has examined all further information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Tender;
- (b) if successful, it has the capability and capacity to properly provide the Offered Services;
- (c) its Tender is submitted in accordance with this RFT;
- (d) the information contained in its Tender is true and correct and the Respondent has satisfied itself as to the accuracy and completeness of its Tender including tendered Fees based on its own examination and assessment;
- (e) it has relied entirely on its own enquiries and has not relied on any representation, warranty or other conduct by or on behalf of Finance, except as expressly provided in this RFT and any Addenda; and
- (f) it has obtained independent advice, as it considers is appropriate.

8.17.2 In submitting a Tender, the Respondent also represents that it does not rely on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending this RFT other than amendments made by Finance in accordance with paragraph 5.2 of this RFT.

8.18 Acknowledgement and Disclaimer

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

- (a) any information contained in this RFT, although believed to be accurate at the date of release of this RFT, may change;
- (b) where information contained in this RFT relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, express or implied, is made by Finance, the Commonwealth and their officers, employees, agents, advisers or subcontractors that the statements as to future matters contained in this RFT will be accurate;
- (c) this RFT is intended to reflect and summarise information concerning the Government's requirements for the establishment of the Labour Hire Services Panel and is not necessarily a comprehensive description of it; and
- (d) except to the extent required by law and only to the extent so required, Finance, the Commonwealth and their officers, employees, agents, advisers or subcontractors will not be liable to any person or body for any loss, damage, cost, liability or expense arising from reliance on any information or representations, actual or implied, contained in or omitted from this RFT or other information provided by Finance or the Commonwealth, including any view expressed by Finance in relation to the Respondent's STR submitted pursuant to paragraph 8.1.1.

8.19 Responsibility for Tender Costs

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

8.20 No Contract or Liability

- 8.20.1 This RFT is an invitation to treat, and must not be construed, interpreted, or relied upon, whether by expression or implication, as an offer capable of acceptance by any person, or as creating any form of contractual (including a process contract), quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds.
- 8.20.2 Except as required by law and only to the extent so required, Finance and the Commonwealth (in its other capacities) is not liable to any Respondent, on the basis of any contract or other understanding (including, without limitation, any form of contractual, quasi contractual, restitutionary or promissory estoppel rights or rights based on similar legal or equitable grounds) whatsoever, or in negligence, as a consequence of any matter relating or

incidental to this RFT or a Respondent's participation in this RFT process, including (without limitation) instances in which:

- (a) a Respondent is not invited to participate in any subsequent process as part of or following completion of this RFT process;
- (b) this RFT or RFT process is varied including when paragraph 5.2.1 of this RFT applies;
- (c) Finance or the Commonwealth (in its other capacities) decides to terminate this RFT process or not to contract for all, or any, of the requirements;
- (d) Finance or the Commonwealth (in its other capacities) exercises or fails to exercise any of its rights under or in relation to this RFT;
- (e) a Tender, enquiry or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised; or
- (f) the Respondent suffers any loss, damage, cost or expense arising from any information or representation, actual or implied, contained in or omitted from this RFT, or by reason of any reliance by any person on such information or representation.

8.20.3 Paragraph 8.20.2 does not apply to any valid claims by the Respondent against Finance or the Commonwealth under the *Government Procurement (Judicial Review) Act 2018* (Cth).

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

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

8.21 Offers and Acceptance of Offer

8.21.1 Submitting a Tender will constitute an offer by the Respondent to enter into a Head Agreement to become a Service Provider who may provide the Offered Services based on the terms and conditions set out in **Attachment C – Head Agreement**. The offer is capable of being accepted for a period of not less than the Tender Validity Period described in paragraph 8.13.1 of this RFT.

To clarify, it is the intent of Finance to have the same set of clauses across all successful Respondents. Finance does not intend to negotiate or draft a bespoke Head Agreement with Respondents.

*Respondents must submit details of any non-compliance with **Attachment C – Head Agreement** in its response in the 360 Tender System as identified in **Attachment D – information and Guidance about the Tender Response Questionnaire**.*

- 8.21.2 A Tender is not taken to have been accepted unless, and until, a Head Agreement has been executed by the Respondent and the Commonwealth.
- 8.21.3 Acceptance of a Tender and entry into a Head Agreement does not indicate any obligation on the Commonwealth or any Entity to source a minimum amount of, or any, Services from a Respondent.

8.22 Termination of RFT Process

- 8.22.1 Without limiting any of its rights under this RFT, at law or otherwise, Finance may, in its absolute discretion, suspend, defer, reduce scope, amend or terminate this RFT process at any time if Finance determines that:
- (a) it is in the public interest to do so;
 - (b) Finance is required by law to do so;
 - (c) no Tender represents value for money;
 - (d) no conforming or compliant Tenders are received;
 - (e) the Commonwealth's requirements have changed so as to make this RFT or part of this RFT redundant, unachievable within the scope of the Services or if to continue, would be inconsistent with Finance or Commonwealth policy ;
 - (f) no Respondent is sufficiently capable of meeting the terms and conditions in **Attachment C – Head Agreement**; or
 - (g) termination of this RFT would be in line with any direction of the Australian Government.
- 8.22.2 If Finance suspends, defers or terminates this RFT process, then Finance will:
- (a) notify Respondents to this effect; and/or
 - (b) issue an Addendum in accordance with paragraph 5.2.1 of this RFT.

8.23 Finance's Additional Discretions

- 8.23.1 Notwithstanding anything else contained in this RFT and without limiting its rights at law or otherwise, Finance may:
- (a) alter, vary or amend any part of this RFT (including the attachments outlined in paragraph 3.3.1 of this RFT);
 - (b) accept a Tender without prior notice to any other Respondent;
 - (c) seek amended Tenders from any one or more Respondent(s) or Preferred Respondent(s), or allow any Respondent to amend its Tender;

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

8.24 Commonwealth's Confidential Information

8.24.1 Respondents should not, except in accordance with paragraph 8.24.2 of this RFT:

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

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

8.24.2 Respondents may only copy, record or disclose information referred to in paragraph 8.24.1 of this RFT to Respondent's personnel, a Related Body Corporate, or an officer, employee, or subcontractor of a Related Body Corporate, or a person assisting the Respondent, to the extent that the person to whom that information is disclosed needs to know the information for the purposes of the Respondent:

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

and provided that the Respondent obtains from such other person an undertaking for, or the person is otherwise subject to, the same obligations of confidentiality as are applicable to the Respondent in accordance with paragraph 8.25 of this RFT.

8.24.3 Finance may, in its sole and absolute discretion, exclude from further consideration any Tender submitted by a Respondent that has engaged in any behaviour contrary to paragraphs 8.24.1 or 8.24.2 of this RFT.

8.25 Respondent's Confidential Information

8.25.1 Subject to paragraphs 8.25.2 and 8.25.3 of this RFT, for the duration of this RFT process until the execution of a Head Agreement with the Successful Respondents, Finance will treat as confidential any information provided by a Respondent.

8.25.2 Finance may disclose a Respondent's confidential information to the extent that the information is:

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

- (d) disclosed by Finance in response to a request made by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) disclosed by Finance in response to a request made by the Auditor-General, or by a person authorised by the Auditor-General;
- (f) disclosed by Finance within Finance, or to an Entity if this serves the Commonwealth's legitimate interests;
- (g) authorised or required by law to be disclosed; or
- (h) in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

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

8.25.4 If a Respondent wishes for information:

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

which may be included in any resultant Head Agreement to be protected as confidential information if it is selected as a Successful Respondent, the Respondent must identify in its Tender the information that the Respondent considers that should be protected as confidential information, and the reasons why. To avoid doubt, the Respondent only needs to identify information that may be included in any resultant Head Agreement, and does not need to identify other information which would not be relevant to include in the Head Agreement (as the confidentiality of such information is already covered by paragraph 8.25.6(b)).

8.25.5 Without limitation, information which will not be included in the Head Agreement includes a Respondent's Referee(s) and Referee Details, examples detailing previous experience delivering relevant services, corporate structure, methodologies and tools, personal information of any Respondent's employees, responses to Evaluation Criteria, previous or current customers and information on the financial position and viability of the Respondent.

Note 2: Information about confidentiality in the procurement cycle is available at [Confidentiality throughout the Procurement Cycle | Department of Finance](#).

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

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

- internal costing information or information about profit margins;
- proprietary information, for example information about how a particular technical or business solution is to be provided that may compromise the supplier's commercial interests elsewhere, including competing in future tender processes;
- pricing structures (where this information would reveal whether a potential supplier was making a profit or loss on the supply of a particular good or service);

- artistic, literary or cultural secrets. These may include photo shoots, historic manuscripts, or secret Indigenous culture; and
- intellectual property including trade secrets and other intellectual property matters where they relate to a potential supplier's competitive position.

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

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

8.25.6 Following the entering into of any Head Agreement, Finance will:

- (a) where Finance has agreed to information being confidential under paragraph 8.25.4, keep information contained in the Successful Respondents' Tender that is subsequently incorporated into any Head Agreement, and information contained in, or obtained or generated in performing, the Head Agreement confidential in accordance with the terms of the relevant Head Agreement;
- (b) keep information contained in the Successful Respondents' Tender that is not subsequently incorporated into any Head Agreement entered into with the successful Respondent confidential in accordance with this RFT; and
- (c) keep information contained in any Unsuccessful Respondents' Tender confidential in accordance with this RFT.

8.25.7 In considering whether to agree to keep information confidential under any resultant Head Agreement, Finance will have regard to principles on confidentiality throughout the procurement cycle. These principles are available at: [Confidentiality throughout the Procurement Cycle | Department of Finance](#).

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

8.25.9 Respondents should also note that in accordance with the *Commonwealth Procurement Rules*, non-corporate Commonwealth Entities and prescribed Corporate Commonwealth Entities must report entity agreements, contracts, and standing offers on AusTender consistent with the thresholds specified in the *Commonwealth Procurement Rules*, within 42 calendar days of entering into the agreement. These requirements also apply to the Head Agreement entered into with any Successful Respondents.

8.26 Use of Tender Documents

8.26.1 Subject to paragraph 8.27 of this RFT, Respondents submit Tenders on the basis that all Tenders and any other documentation provided by Respondents to Finance will become the property of Finance upon submission or provision to Finance.

- 8.26.2 Finance will retain all information and documents submitted in response to this RFT:
- (a) to enable evaluation of Tenders and to respond to any dispute about this RFT;
 - (b) to comply with obligations relating to accountability and record keeping;
 - (c) for the purposes of this RFT process and the preparation and management of any resultant Head Agreement; and
 - (d) for any other purpose permitted by this RFT.

8.27 Intellectual Property Rights in Respect of Tenders

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

8.28 Restrictions on Advertising and Public Statements

- 8.28.1 Except with the prior written approval of Finance, Respondents must not, at any time during this RFT process or subsequently, publish any statement or make any public statement (including by means of advertisement or otherwise) making any reference to this RFT process. This includes Respondents discussing any aspect of this RFT with the media.
- 8.28.2 Finance may, at its discretion, exclude the Tender from further consideration at any time where Finance considers this restriction has not been complied with.
- 8.28.3 Participation in this RFT process does not limit a Respondent's rights to comply with any law or rule of a stock exchange.

8.29 Ethical Requirements

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

8.30 False or Misleading Claims

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

8.31 Anti-competitive Conduct

- 8.31.1 Respondents and their respective officers, employees, agents and advisors should not engage in any anti-competitive conduct, coercive conduct or any other unlawful or unethical conduct that contravenes any law, with any other Respondent or any other person in relation to the preparation of their Tender or this RFT process.
- 8.31.2 Respondents must not engage in any collusive or cartel conduct, including any consultation, communication, contract, arrangement or understanding, with any competitor other than, and in accordance with law:
- (a) when certain joint venture arrangements exist between the Respondent and a competitor;
 - (b) when the Respondent and a competitor have an agreement that has been authorised by the ACCC; or
 - (c) when the Respondent has communicated with a competitor for the purpose of subcontracting for the provision of a portion of the Services, and provided that the communication with that competitor is limited to the information required to facilitate that particular subcontract.

- 8.31.3 If Finance suspects conduct described in paragraph 8.31.1 or 8.31.2 of this RFT has occurred, it may notify the appropriate regulatory authority and provide that authority with information regarding the Respondent and its conduct. The provision of such information will not be taken to be an infringement of any obligation of confidentiality to the Respondent.
- 8.31.4 In addition to any other remedies available under any law, Finance may, in its sole and absolute discretion, exclude a Respondent from further consideration under this RFT if the Respondent, or any corporation or person, including directors or senior managers associated with their Tender, have ever contravened the anti-competitive conduct provisions in Part IV of the *Competition and Consumer Act 2010* (Cth) or equivalent laws in Australia or overseas or otherwise engages or has engaged in collusive tendering, anti-competitive conduct or any other similar conduct in relation to the preparation of its Tender or this RFT process.

8.32 Unlawful Inducements

- 8.32.1 Respondents and their respective officers, employees, agents or advisers should not violate any applicable laws or Commonwealth policies regarding offering inducements in connection with the preparation of their Tender or this RFT process.
- 8.32.2 In addition to any other remedies available under any law or any contract, Finance may, at its absolute discretion and at any time, immediately reject any Tender submitted by a Respondent that violates or has violated any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the preparation or submission of a Tender.
- 8.32.3 Respondents should not engage in, or procure or encourage others to engage in, activity that would result in a breach of the *Lobbying Code of Conduct*.

8.33 Improper Assistance from Commonwealth or ex-Commonwealth Staff

- 8.33.1 Each Respondent must arrange for a partner, director or other appropriately authorised officer (being the Respondents' Authorised Representative) to declare in its Respondent's Declaration that its Tender has not been prepared with the improper assistance of any Commonwealth officer or employee or the use of any information obtained unlawfully or in circumstances that constitute a breach of confidentiality or fidelity on the part of that person or a breach of section 122.4 and 122.4A of the Criminal Code which is a Schedule to the *Criminal Code Act 1995* (Cth) or the *Public Service Act 1999* (Cth) or information otherwise improperly obtained from Finance or any other department or Commonwealth Entity, or from an employee, ex-employee, contractor or ex-contractor of Finance, or any other department or Commonwealth Entity.
- 8.33.2 Respondents should not communicate with or solicit information concerning or directly relating to this RFT from employees, consultants, contractors, or former employees, consultants or contractors of Finance or the Commonwealth, other than through the Request Manager.

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

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

8.34 Governing Law

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

9. Commonwealth Legislative and Policy Requirements

9.1 Compliance with Legislation and Policies

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

9.2 Workplace Gender Equality Act 2012 (Cth)

- 9.2.1 Commonwealth policy prevents the Commonwealth from entering into contracts with suppliers who are non-compliant under the *Workplace Gender Equality Act 2012 (Cth)* (WGE Act). The Head Agreement requires that the Successful Respondent must comply with its obligations, if any, under the WGE Act.
- 9.2.2 Respondents must indicate in their Tender whether or not the organisation is a 'relevant employer' under the WGE Act and, if applicable, provide a current letter of compliance as part of their Tender submission. An updated letter of compliance must be provided prior to entering into a Head Agreement.

9.3 Employee Entitlements

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

9.4 Indigenous Procurement Policy

- 9.4.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see *Indigenous Procurement Policy* for further information).
- 9.4.2 The Respondent acknowledges that if any resultant Contract under the Head Agreement is a High Value Contract, the Mandatory Minimum Requirements for Indigenous participation will apply. See clause 16.4 of the **Attachment C – Head Agreement** for more information. In this paragraph 9.4:

- (a) **High Value Contract** has the meaning in the *Indigenous Procurement Policy*;

- (b) **Indigenous Procurement Policy** means the policy of that name, as amended from time to time, available on the Indigenous Procurement Website available at: [Indigenous Procurement Policy | National Indigenous Australians Agency \(niaa.gov.au\)](#)); and
- (c) **Mandatory Minimum Requirements** means the mandatory minimum Indigenous participation requirements imposed for High Value Contracts by the *Indigenous Procurement Policy*.

9.5 Shadow Economy Procurement Connected Policy

- 9.5.1 The *Shadow Economy Procurement Connected Policy* applies to this procurement. Details about this policy are available on The Treasury's website at [Shadow Economy Procurement Connected Policy | Treasury.gov.au](#).
- 9.5.2 As required under clause 11(a) of the policy, the policy applies to the process to establish a panel arrangement when the total value of orders under the arrangement are collectively estimated to be over \$4 million including GST.
- 9.5.3 To comply with the requirements of this policy, the Respondent must submit with its Tender:
- (a) a Satisfactory STR for the business tendering for the Deed, that is Valid at the Closing Time; or
- (b) a receipt demonstrating that a STR has been requested from the ATO for the business tendering for the Deed and the Respondent must provide a Valid and Satisfactory STR to the Request Manager by emailing PeoplePanel@finance.gov.au, within four (4) business days from the Closing Time.
- 9.5.4 This requirement has been included as a Minimum Content and Format Requirement, refer paragraph 8.3.3 of this RFT. This means that, subject to paragraph 8.12 of this RFT, any Tender that in the opinion of Finance does not meet this requirement may be excluded from evaluation (see paragraph 8.3.2 of this RFT).
- 9.5.5 Information about how to apply for a STR is provided on the ATO's website at [Statement of tax record | Australian Taxation Office \(ato.gov.au\)](#).
- 9.5.6 Finance has prepared some guidance to assist Respondents to understand the requirements of the *Shadow Economy Policy*. This guidance is provided at **Attachment J – Guidance on the Shadow Economy Procurement Connected Policy** of this RFT.

9.6 Modern Slavery Act 2018

- 9.6.1 Finance committed to ensuring compliance with the Commonwealth *Modern Slavery Act 2018* (the Act) through the national Modern Slavery Reporting Requirement (reporting requirement). More information on this policy can be found at [Modern slavery \(homeaffairs.gov.au\)](#).
- 9.6.2 The Act defines modern slavery as including eight (8) types of serious exploitation: trafficking in persons; slavery; servitude; forced marriage; forced labour; debt bondage; deceptive recruiting for labour or services; and the worst forms of child labour.
- 9.6.3 The Respondent must take reasonable steps to identify, assess and address risks of modern slavery practices in the operations and supply chains used in the provision of the Services.

- 9.6.4 The Respondent must complete the required Questionnaire at **Attachment L – Respondent’s Modern slavery Questionnaire** as part of their response.

9.7 Australian Industry Participation Plan

- 9.7.1 Respondents should note that, where a Contract formed under the Head Agreement is valued at \$20 million (GST inclusive) or more and where stated in the Contract, the *Australian Industry Participation National Framework* principles, including requirements for an Australian Industry Participation Plan may apply. More information on Australian Industry Participation Plan requirements can be found at [Australian industry participation | Department of Industry, Science and Resources](#).

9.8 Payment Times Policy

- 9.8.1 It is Commonwealth policy to ensure suppliers operating in the supply chains of Australian Government procurement contracts are not left waiting for payments from large businesses (annual income of over \$100 million). The *Payment Times Policy* can be found at [Payment Times Procurement Connected Policy | Treasury.gov.au](#).
- 9.8.2 Respondents should note that, where a Contract formed under the Head Agreement is valued over \$4 million (GST inclusive) and the Respondent is a large business (annual income of over \$100 million), the Respondent will be required to pay their subcontracts valued up to \$1 million within 20 calendar days.

9.9 Australian National Audit Office

- 9.9.1 The Auditor-General has statutory powers to obtain information in respect of the Commonwealth. The *Auditor-General Act 1997* (Cth) provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records.
- 9.9.2 In addition to the Auditor-General’s powers under the *Auditor-General Act 1997* (Cth), Successful Respondents will be required to provide the Auditor-General or an authorised person, access to information, documents, records and its assets, including those on the Respondent’s premises. This will be required at reasonable times on giving reasonable notice for the purpose of carrying out the Auditor-General’s functions and will be restricted to information and assets which are in the custody or control of the Respondent, its employees, agents or Subcontractors, and which are related to the Head Agreement.
- 9.9.3 Such access will apply for the Head Agreement Period and for a period of seven (7) years from the date of expiration or termination.
- 9.9.4 Respondents should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* (Cth) on their participation in the Tender.

9.10 Freedom of Information

- 9.10.1 The attention of Respondents is drawn to the *Freedom of Information Act 1982* (Cth) (the FOI Act), which gives members of the public a right of access to documents in the possession of the Commonwealth, unless exempted. The attention of Respondents is also

drawn to the *Australian Information Commissioner Act 2010* (Cth), which provides for the establishment of the Office of the Australian Information Commissioner to perform the FOI functions.

- 9.10.2 Respondents should obtain, and will be deemed to have obtained, their own independent, professional advice on the impact of this legislation on their participation in this RFT process.
- 9.10.3 Respondents should note that under the FOI Act, Finance may be required to publish certain information in the possession of its contracted Service Providers and their subcontractors on its website where it would not be unreasonable to publish the information. Finance may therefore require its contracted Service Providers and their subcontractors to provide information necessary to enable Finance to meet any reporting obligations it has under the FOI Act.

9.11 Benefits to the Australian Economy

- 9.11.1 As stated in paragraph 10.6.1(e) of this RFT, Commonwealth policy requires Finance to consider the economic benefit of the procurement to the Australian economy as part of its Value for Money Assessment.
- 9.11.2 Respondents are required to indicate how their organisation provides a benefit to the Australian economy in their Tender.
- 9.11.3 Guidance is provided at **Attachment H – Sustainable Procurement and Benefits to the Australian Economy** of this RFT.

9.12 Standards

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

9.13 Archives requirements

- 9.13.1 The Head Agreement will require the Respondent to comply with the requirements of the *Archives Act 1983* (Cth) (Archives Act) and any Records Disposal Authority in respect of Commonwealth Records which are under the custody or control of the Respondent. In this paragraph 9.13, Commonwealth Records and Records Disposal Authority have the same meaning as in the Archives Act.

9.14 Tax and GST

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

PART D – EVALUATION OF TENDERS

10. Evaluation Process

10.1 Tender Evaluation Team

10.1.1 A Tender Evaluation Team will be established to evaluate Tenders. Finance may appoint advisers to assist the Tender Evaluation Team.

10.2 Evaluation Overview

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

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

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

10.2.3 The Tender Evaluation Team will undertake the evaluation using a staged process as described in Table 2:

Table 2 – Evaluation Stages

Stage	Description
Stage 1	Initial Screening for Compliance
Stage 2	Detailed Evaluation
Stage 3	Financial Analysis
Stage 4	Value for Money Assessment
Stage 5	Final Determination
Risk Assessment	Will be conducted throughout the Evaluation Process
Verification Activities	May occur at any stage of the Evaluation Process

10.2.4 Finance may conduct some or all of the processes set out in this **Part D – Evaluation of Tenders** at the same time or in a different order to that stated, if required, so that an efficient and appropriate Value for Money Assessment is undertaken.

- 10.2.5 The Tender Evaluation Team may set aside or reject a Tender at any time, on the basis that:
- (a) the Tender does not demonstrate an acceptable level of capacity, capability, experience, quality or compliance against any of the Evaluation Criteria;
 - (b) it has become clear to the Tender Evaluation Team that the Respondent has not provided adequate information or there are other reasons (including technical, financial, commercial, legal or risk related reasons) why the Respondent is clearly not competitive;
 - (c) the Tender or the Respondent does not comply with a term or requirement of this RFT that is expressed to be mandatory; or
 - (d) the Tender is clearly uncompetitive when compared with the other Tenders received.
- 10.2.6 The Tender Evaluation Team will evaluate primarily on the basis of the information contained in Tender against the Evaluation Criteria. However, the Tender Evaluation Team may also:
- (a) consider additional information not provided in a Tender, including information available through Verification Activities;
 - (b) make independent enquires about any matters that may be relevant to the evaluation of a Tender;
 - (c) decide not to assess information in a Tender which is not specifically required by this RFT, such as marketing information supplied with a Tender or information that is accessed via a link embedded in the Tender; and
 - (d) use information from any part of a Tender in the assessment of any of the Evaluation Criteria.

10.3 Stage 1: Initial Screening for Compliance

- 10.3.1 Each Tender will initially be assessed to determine:
- (a) whether it has been properly submitted by the Closing Time (or Finance has accepted the Tender under paragraph 8.11 of this RFT);
 - (b) its compliance with the Conditions for Participation; and
 - (c) its compliance with the Minimum Content and Format Requirements.
- 10.3.2 Only Tenders that are assessed as compliant in accordance with paragraph 10.3.1 of this RFT will proceed to Stage 2.
- 10.3.3 If a Tender is excluded from further consideration in the Stage 1, the Respondent will be advised in writing that its Tender has been excluded, outlining the reasons for such a decision.

10.4 Stage 2: Detailed Evaluation

- 10.4.1 The Tender Evaluation Team will conduct a detailed assessment of the information provided by the Respondent in its Tender.
- 10.4.2 Respondents must address all of the following two (2) Evaluation Criteria. Tenders will be assessed against this Evaluation Criteria, based on the Respondent's answers in their Tender:

Criterion	Description
Evaluation Criterion 1 - Capability	The extent to which the Respondent has the demonstrated capability to provide the Services, in accordance with the Statement of Requirement. Please refer to Attachment E – Evaluation Criterion 1 – Capability for information required to demonstrate capability.
Evaluation Criterion 2 - Capacity	The extent to which the Respondent has the demonstrated capacity to provide the Services in accordance with the Statement of Requirement. Please refer to Attachment F – Evaluation Criterion 2 - Capacity for information required to demonstrate capacity.

- 10.4.3 The Tender Evaluation Team will consider whether the Respondent meets the requirements of this RFT.
- 10.4.4 The Tender Evaluation Team will also consider any risks inherent in the Respondent's Tender and the results of any Verification Activities.
- 10.4.5 The detailed evaluation will result in a rating being applied to the Tender in relation to each Service Category for which the Respondent has offered Services.

10.5 Stage 3: Financial Analysis

- 10.5.1 In assessing Tenders in Stage 3, the Tender Evaluation Team will consider:
- the Fees submitted by each Respondent in its Tender including in **Attachment G – Pricing**, and including any omissions or apparent errors in the pricing; and
 - the result of any Verification Activities (if relevant).
- 10.5.2 In assessing if each Respondent's Fees contribute to a Value for Money outcome, the Tender Evaluation Team will undertake a comparative analysis of Respondents' fees (if possible), and may:
- categorise the Respondents by organisation size;
 - consider whether any other component of the Respondent's Tender may impact on pricing;

- (c) where possible, compare pricing against other current or previous Entity arrangements for labour hire services, including applying an adjustment for the Wage Price Index or Consumer Price Index; and
- (d) where possible, undertake modelling to quantify benefits for the Government.

10.5.3 The Financial Analysis will result in a rating being applied.

10.6 Stage 4: Value for Money Assessment

10.6.1 Value for Money is a comprehensive assessment that takes into account both price and the value represented by the assessment of capability and capacity, in the context of the risk profile presented by each Tender. Finance is not obliged to accept the lowest priced Tender. Value for Money involves assessing various factors over the entire procurement cycle. In determining Value for Money, the Tender Evaluation Team will consider each Respondent's:

- (a) assessment from Stage 2 and Stage 3 of the Evaluation Process, which includes an assessment of risk;
- (b) the results of any Verification Activities (if relevant);
- (c) the level of compliance with Commonwealth legislation and policy;
- (d) the level of compliance with the Head Agreement, noting that it is the intent of Finance to maintain the same set of clauses across all Respondents;
- (e) economic benefits to the Australian economy;
- (f) in addition to those risks identified in the Stage 2 and Stage 3 Evaluation Process, any other risks to the Government the Tender Evaluation Team identifies; and
- (g) any other matter that Finance or the Tender Evaluation Team considers relevant and allowed to be considered under this RFT.

10.7 Stage 5: Final Determination

10.7.1 Stage 5 considers the outcomes of the Value for Money Assessment.

10.7.2 The Tender Evaluation Team may also give consideration to the number of Service Providers selected for the Labour Hire Services Panel (and each Service Category) according to Government's expected requirements under each Service Category.

10.7.3 The Final Determination process will identify:

- (a) with consideration of paragraph 10.7.2, the Successful Respondents (if any) that will be offered a Head Agreement to sign;
- (b) the Preferred Respondents (if any) that may proceed to negotiations in accordance with paragraph 10.8, where it is considered that negotiations could improve the Value for Money outcome;
- (c) any Unsuccessful Respondents; or

- (d) any other outcome considered appropriate as a result of the Value for Money Assessment.

10.8 Negotiations

- 10.8.1 Finance does not intend to conduct detailed negotiations and intends to appoint Successful Respondents to the Labour Hire Services Panel primarily on the basis of the written Tenders submitted.
- 10.8.2 In accordance with paragraph 10.7.3, to achieve the best value for money, Finance may enter into negotiations with one or more Preferred Respondents (if any) (including, without limitation, in parallel and in relation to fees or any other matter), to seek improvements to a Preferred Respondent's offer, based on the Preferred Respondent's Tender.
- 10.8.3 Finance intends to enter into a Head Agreement with the Successful Respondents on substantially the same terms and conditions at **Attachment C – Head Agreement**, without detailed negotiations, if selected as a Successful Respondent.
- 10.8.4 If Finance concludes that a Respondent has retracted, or attempts to retract, their Tender or any undertakings made in its Tender during negotiations, Finance may choose not to proceed with that Respondent and/or exercise another right given by this RFT.
- 10.8.5 Finance may (in its absolute discretion) discontinue negotiations with any Respondent at any stage.
- 10.8.6 Communications between Finance and any Preferred Respondent(s) during the negotiations must be kept confidential by the Preferred Respondent(s).
- 10.8.7 Finance will conduct a further Value for Money Assessment of Preferred Respondents (if any) taking into account the outcomes of any negotiations.
- 10.8.8 Finance's decision in relation to the outcome of this RFT process, and the identification of Successful Respondents and Unsuccessful Respondents is final.

11. Verification Activities

11.1 Clarification of Tenders

- 11.1.1 Finance may, at any point during the Evaluation Process, ask a Respondent to clarify information with respect to any aspect of its Tender.
- 11.1.2 A person responding to a request for clarification on behalf of the Respondent will be deemed to be authorised by the Respondent to do so.
- 11.1.3 Failure to respond to a request for clarification in the manner requested and by the required time may have an adverse impact on the evaluation of the affected Tender.
- 11.1.4 Respondents should not interpret a request under paragraph 11.1.1 as being an indication of the outcome of the RFT process. The Respondent should treat all requests under paragraph 11.1.1 as confidential information.

11.2 Referee Checks

- 11.2.1 The Tender Evaluation Team may at any stage of the Evaluation Process:
 - (a) contact a Referee, including to verify any aspect of the provision of services by the Respondent to that Referee;
 - (b) request additional Referee Contact Details from a Respondent; or
 - (c) contact any other person to whom a Respondent has provided services to (even if not stated in their Tender) in relation to the provision of services by the Respondent.

11.3 Financial Viability and Financial Checks

- 11.3.1 Finance may conduct an independent financial viability assessment of the Respondent by engagement of a third party at any stage during the Evaluation Process.
- 11.3.2 The financial viability assessment referred to in paragraph 11.3.1 of this RFT may be conducted at any time prior to signature of any resultant Head Agreement with a Successful Respondent.
- 11.3.3 On request by Finance, the Respondent must reasonably assist Finance with any financial viability assessment conducted under paragraph 11.3.1 of this RFT.
- 11.3.4 If requested, the documents to be made available by the Respondent will include a balance sheet, profit and loss statements and accompanying notes and documents forming part of the financial statements for the preceding two (2) years.
- 11.3.5 This process is used to minimise risk to the Australian Government. The process is not used to measure the profitability of an organisation or its potential for success in the market.

11.4 Security, Probity and Other Checks

- 11.4.1 Finance may perform such security, criminal history, probity, financial and regulatory investigations and procedures as Finance may determine are necessary.

- 11.4.2 Respondents must promptly provide Finance with such information or documentation as Finance requires in order to undertake such checks and procedures. If the Respondent does not promptly provide all reasonable assistance to Finance in this regard, this may be taken into account by Finance in its assessment of the Respondent against the Evaluation Criteria.
- 11.4.3 Finance may take into consideration the results of information obtained from the outcomes of the checks or procedures in its assessment of the Respondent against the Evaluation Criteria.
- 11.4.4 Without limiting paragraph 11.4.1 of this RFT, Finance may conduct criminal history checks, and/or checks with regulatory entities (including but not limited to the Australian Securities and Investment Commission, the ACCC, and State and Territory authorities) on the Respondent, its board of directors, its management and/or its proposed personnel and Related Bodies Corporate, if Finance considers that the results may affect any aspect of the assessment of the Tender against the Evaluation Criteria or Finance's assessment of risk in relation to the Respondent.

12. Post Evaluation

12.1 Notification of Successful and Unsuccessful Respondents

- 12.1.1 Respondents will be notified in writing and advised if their Tender is successful or unsuccessful at the conclusion of this RFT process.
- 12.1.2 Written debriefings will be made available, on request, (at the time and in the manner Finance reasonably determines) to Unsuccessful Respondents outlining the reasons the submission was unsuccessful. Written debriefings will also be made available, on request, to Successful Respondents (if any).

Attachment A – Definitions

Please refer to **Attachment A – Definitions** set out in the separate document as provided.

Attachment B – People Panel Job Family Mapping

Please refer to **Attachment B – People Panel Job Family Mapping** set out in the separate document as provided.

Attachment C – Head Agreement

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

Attachment D – Information and Guidance about the Tender Response Questionnaire

Please refer to **Attachment D – Information and Guidance about the Tender Response Questionnaire** set out in the separate document as provided.

Attachment E – Evaluation Criterion 1 - Capability

Please refer to **Attachment E – Evaluation Criterion 1 - Capability** set out in the separate document as provided.

Attachment F – Evaluation Criterion 2 - Capacity

Please refer to **Attachment F – Evaluation Criterion 2 - Capacity** set out in the separate document as provided.

Attachment G – Pricing

Please refer to **Attachment G – Pricing** set out in the separate document as provided.

Attachment H – Sustainable Procurement and Benefits to the Australian Economy

Please refer to **Attachment H – Sustainable Procurement and Benefits to the Australian Economy** set out in the separate document as provided.

Attachment I – Referee Report Template

Please refer to **Attachment I – Referee Report Template** set out in the separate document as provided.

Attachment J – Guidance on the Shadow Economy Procurement Connected Policy

Please refer to **Attachment J – Guidance on the Shadow Economy Procurement Connected Policy** set out in the separate document as provided.

Attachment K – 360 Tender System Respondent’s User Guide

Please refer to **Attachment K – 360 Tender System Respondent’s User Guide** set out in the separate document as provided.

Attachment L – Respondent’s Modern Slavery Questionnaire

Please refer to **Attachment L – Respondent’s Modern Slavery Questionnaire** set out in the separate document as provided.

Attachment M – Respondent’s Declaration Information

Please refer to **Attachment M – Respondents Declaration Information** set out in the separate document as provided.