



Australian Government

Department of the Environment, Water, Heritage and the Arts

COMMONWEALTH OF AUSTRALIA

as represented by the

DEPARTMENT OF THE ENVIRONMENT, WATER HERITAGE AND THE ARTS

***MULTI USE LIST FOR WATER ENTITLEMENT CONVEYANCING AND
RELATED SERVICES***

REFERENCE NUMBER: 0809 - 0171

PART A – APPLICATION INFORMATION

Date: *SEPTEMBER 2008*

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IMPORTANT INFORMATION FOR APPLICANTS

1. Overview of Requirement

- 1.1. The Department of the Environment, Water, Heritage and the Arts (DEWHA) develops and implements national policy, programs and legislation to protect and conserve Australia's environment, water and heritage and to promote Australian arts and culture.
- 1.2. More information on DEWHA can be found on the department's website: **www.environment.gov.au**.
- 1.3. This Multi-Use List (MUL) is being established to support the Australian Government's national plan for water, Water for the Future. The MUL is likely to be operational for two years with an end date in 2010.
- 1.4. The MUL is being established to identify a range of suppliers capable of providing DEWHA with conveyancing and other related services concerning the purchase of water entitlements and possibly land, where the purchase of land is a prerequisite to the purchase of water entitlements. A detailed Statement of Requirement is at Attachment A.

2. Information for Applicants

- 2.1.1. The MUL process aims to identify suppliers who can provide the Services.

Establishing the MUL

- 2.1.2. Interested suppliers will complete an Application Form (Part B) and provide their Application to DEWHA in accordance with this document.
- 2.1.3. DEWHA will evaluate the Applications received in accordance with Attachment B – Multi-Use List Rules and either accept or reject Applicants for membership of the MUL.

How the MUL Works

- 2.1.4. Once the MUL is established DEWHA may release quote or tender documents for specific scopes of work to those Applicants who have become members of the MUL.
- 2.1.5. DEWHA may tender a number of scopes of work at the same time.
- 2.1.6. DEWHA may approach a select number of MUL members where such an approach is commensurate with the value of the contract to be entered into. DEWHA may also approach one member of the MUL for a specific requirement.
- 2.1.7. DEWHA may conduct financial checks on the organisation.

Applicants to Read Application Information Before Applying for MUL Membership

- 2.1.8. Applicants are required to read the Multi-Use List Rules (Attachment B) and Draft Contract (Attachment C) **before** completing and submitting their Application Form (Part B).

3. Applications

- 3.1.1. Applicants should respond to this MUL by completing Part B and providing a response to each of the matters identified.
- 3.1.2. Applications should be marked with the MUL Reference Number and title found on the first page of this document.
- 3.1.3. Applications are to be forwarded to DEWHA for receipt as follows.
- a. Applicants are to provide their applications electronically to the email address below.
 - b. The electronic application must be compatible with the Microsoft Office 2003 suite of products or be in PDF file format.

**Email address for delivery of Applications:
WaterConveyancing@environment.gov.au**

4. DEWHA Contacts

- 4.1.1. All enquiries about this MUL should be directed to:

Contact Title: MUL Project Officer

Contact Email: WaterConveyancing@environment.gov.au

ATTACHMENT A STATEMENT OF REQUIREMENT

1. Overview

Water for the Future is the Australian Government's 10 year, \$12.9 billion plan to secure the long-term water supply of all Australians. Under *Water for the Future*, the Australian Government will acquire water entitlements through its water entitlement purchase program and its program to improve the efficiency of Australia's irrigation infrastructure. These programs will help to address over allocation in the Murray Darling Basin (MDB).

\$3.1 billion has been allocated under *Water for the Future* to purchase water entitlements over the next ten years through the *Restoring the Balance in the Murray-Darling Basin Program*. The purchase of up to \$157 million of water entitlements under this Program during the 2008/09 financial year will begin in September 2008. The first public call will seek offers to sell water entitlements from the Northern Murray-Darling Basin only. This will be followed later in 2008 by a call for Southern Basin sell offers. As a result of these calls, offers to sell are expected to be received from water purchasing catchments¹ across the Basin.

In addition, irrigation efficiency gains will be achieved through *Water for the Future's* 10 year, \$5.8 billion *Sustainable Rural Water Use and Infrastructure Program*. The Commonwealth expects to acquire water entitlements as a result of the water savings achieved through these efficiency gains.

Land may also be purchased under these programs, where the purchase of land is a prerequisite to the purchase of required water entitlements.

The Department needs one or more firms to provide the Department with conveyancing and other related services to facilitate the transfer of ownership of water entitlements and possibly linked land title under these programs. The services sought include conveyancing, and legal advice as required on related contracts, water trading and state legislation pertaining to water trading.

The volume of conveyancing and related services generated in each water purchasing catchment is dependent on the number of offers to sell that are received and is, therefore, unknown at this stage. The 2007-08 water entitlement purchasing round with a budget of approximately \$50 million resulted in approximately 110 water entitlements requiring conveyancing. The 2008-09 budget for water entitlement purchases is \$157 million and is, therefore, expected to attract a greater volume of sell offers.

¹ The water purchasing catchments referred to are based on the Murray-Darling Basin catchments with modifications to catchments along the Murray River to accommodate trading practicalities. Refer to the Departments *Restoring the Balance in the Murray Darling Basin* website (<http://www.environment.gov.au/waterpurchasing>), for further details.

Further details on Water for the Future can be found at:

<http://www.environment.gov.au/water/index.html>

2. Objectives

The Department is seeking to establish a Multi-Use List (MUL) of suppliers with the appropriate skills, qualifications and experience to provide conveyancing services and related legal advice to facilitate the transfer of ownership of water entitlements to the Commonwealth of Australia. In some circumstances this may also involve the transfer of land ownership, where the purchase of land is a prerequisite to the purchase of required water entitlements.

3. Services Required

Services that may be sought from members of the MUL include but are not limited to the following:

- a) On behalf of the Commonwealth, apply for the necessary licences that need to be obtained prior to water entitlements being purchased or acquired in the MDB.
- b) Provide conveyancing services to transfer ownership of water entitlements purchased or acquired under Water for the Future's Restoring the Balance in the Murray Darling Basin Program and Sustainable Rural Water Use and Infrastructure Program to the Commonwealth of Australia. This will include, but is not limited to:
 - i) Confirm seller's legal ownership of offered water entitlements;
 - ii) Compare details provided by seller with information held by the relevant registers;
 - iii) Confirm the existence or not of any encumbrances;
 - iv) Determine if any regulatory barriers exist that would prevent the sale; and
 - v) In the case of a broker offering the water on behalf of the sellers, check that appropriate power of attorney arrangements exist.

For those water entitlements satisfying requirements (i) to (v):

- vi) Prepare a contract of sale;
 - vii) Co-ordinate exchange of contracts;
 - viii) Co-ordinate payment of any fees applicable to the buyer; and
 - ix) Undertake all other tasks associated with the transfer of ownership of water entitlements to the Commonwealth including issuing settlement details and lodging relevant title registrations.
- c) Provide weekly activity reports to the Department's nominated project manager detailing the status of transactions, according to relevant milestones specified by the Department including, but not limited to:
 - i) preparation of a due diligence report,
 - ii) contract issued to vendor,
 - iii) transfer-forms lodged with relevant authorities,
 - iv) settlement completed, and
 - v) transaction summary.

- d) Liaise with the project manager to identify opportunities to improve or streamline the transfer of water entitlements to the Commonwealth.
- e) Provide legal advice to the Department on water transfer issues as required including the development of standard contracts.
- f) Provide legal advice on water trading and related contractual issues and state legislation pertaining to water trading as required.

More detailed information on the steps involved in the Australian Government's purchase on water entitlements, including due diligence and conveyancing, is provided at Annex 1.

In some circumstances the purchase of water entitlements may include the purchase of land. Services required for the transfer of land ownership are similar to those for water entitlement purchase.

The Department is not able to identify with certainty the number of water entitlement transfers that may be required. The Department does not guarantee a level of work and numbers or frequency of transfer included in this MUL Application documents are indicative only and subject to change

4. Service Delivery Requirements

Members of the MUL will be required to maintain the capacity to perform the Services in accordance with the following delivery requirements:

3.1. Technical and Management Capabilities

Members of the MUL are expected to have and maintain the skills required to:

- undertake water entitlement transfer processes (and possibly associated land transfer processes) for one or more catchments within the MDB in one or more of New South Wales, Victoria, South Australia and Queensland,
- facilitate the exchange of contracts and the settlement of the transaction with minimum delay.

Members of the MUL will be required to liaise and work cooperatively with a wide range of stakeholders that will be involved in the purchase of water entitlements (and possibly associated land transfer processes), including but not limited to:

- water brokers,
- solicitors,
- irrigators,
- irrigation authorities, and
- a range of State and Commonwealth Government Departments.

MUL members will be required to monitor the progress of transactions and provide weekly reports to the Department according to key points in the transaction process in a format specified by the Department.

MUL members may be required to undertake a large number of water entitlement transfers at any one time.

Applicants must indicate as part of their Part B – MUL Application, the capacity of the Applicant to undertake a large number of water entitlement transfers and their methodology for completing a high number including staffing and business processes. Applicants should note that water entitlement transfers can involve an extended settlement period

3.2. Experience and Expertise

Members of the MUL will be responsible for providing and maintaining personnel with:

- appropriate qualifications
- experience with conveyancing processes involved in transferring the ownership of water entitlements and land ownership where applicable
- demonstrated capability to develop contracts to facilitate the transfer of water entitlements to the Commonwealth and land ownership where applicable
- contract management and administration experience.

Any proposed subcontracting arrangements to provide technical expertise must be agreed by the Department prior to commencement of services.

3.3. Plans

A project plan, including a risk management plan, will be required to be prepared and presented as the first milestone under any contract between an MUL member and the Department. While the exact format of this plan can be negotiated with the relevant project officer prior to contract signing, an example template is provided at Annex 2 to give an indication of the level of detail required. At the commencement of any contract preparations a standard format template will be provided to MUL members to assist in preparing these plans.

3.4. Reporting and Meeting Requirements

Once the project plan is agreed, individual Due Diligence reports will be required to be provided electronically to the Department in Microsoft Word format on completion.

Weekly reports on the progress of transactions according to agreed reporting steps in the conveyancing process will also be required to be provided electronically to the Department in Microsoft Excel format for the duration of the contract period.

The acquisition of water entitlements (and possibly land where the purchase of land is a prerequisite to the purchase of required water entitlements) will begin in October 2008. MUL members are expected to be required to provide conveyancing services for entitlements (and possibly land) purchased from October 2008 to 2010.

The period during which conveyancing services will be required will depend on the willingness of water entitlement holders to sell and could be as short as one month or could be over a number of months.

The Department reserves the right to extend any agreement on an annual basis for up to an additional three years.

3.5. Timing

Members of the MUL will be asked to provide the Services within timeframes set by the Department or agreed with the Department. Members of the MUL may be asked to provide Services in urgent timeframes or over a planned program of work including milestones or phases.

Milestones may vary between contracts. An example of the type of milestones expected to be required is set out in the table below.

Example of Key Milestones

Time	Deliverable
Date to be specified	Project plan prepared and presented (including a risk management plan) to the Departmental Project Officer for review and approval.
Date to be specified	Provision of a Standard Sale Contract
Dates to be specified	Weekly report on the progress of transactions according to agreed reporting steps in the conveyancing process.
Dates to be specified	Monthly invoice

3.6. Location of Services

Members of the MUL may be requested to provide Services at any location. It is expected that delivery of most Services will occur in the suppliers own offices.

Applicants are required to indicate the jurisdictions and regions / catchment areas they are able to provide the Services in.

3.7. Government Legislation and Policies Affecting the Services

Members of the MUL will be required to adhere to all relevant Government legislation as outlined in the draft Contract. This legislation covers areas such

as occupational health and safety, equal employment opportunity, privacy, records and record keeping and confidentiality.

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1. Rules

1.1. Interpretation

1.1.1. Throughout this MUL, unless the contrary intention appears:

- a. words in the singular include the plural and the plural include the singular; and
- b. words importing a person include a partnership and a body, whether corporate or otherwise.

1.2. Definitions

1.2.1. The following words have these meanings in this MUL unless the contrary intention appears:

- a. **Applicant** means any person or organisation considering or applying for this MUL.
- b. **Application** means any application submitted in response to this MUL.
- c. **Attachment** means an attachment to the MUL.
- d. **Commonwealth** means the Commonwealth of Australia as represented by the Department of the Environment, Water, Heritage and the Arts.
- e. **Contract** means the Draft Contract for the provision of the Services annexed to this MUL (Attachment C).
- f. **CPGs** means *Commonwealth Procurement Guidelines*.
- g. **Department** means the Department of the Environment, Water, Heritage and the Arts.
- h. **DEWHA** means the Department of the Environment, Water, Heritage and the Arts.
- i. **MUL** means this Multi-Use List Application document, all of its parts and sections.

1.2.2. Unless the context indicates otherwise, where words used in this MUL are defined terms under clause 1.1 of the Draft Contract, they have the same meaning in this MUL.

1.3. AusTender - Australian Government Tendering System

1.3.1. AusTender is the Commonwealth's business opportunities website, located at www.tenders.gov.au. AusTender allows Applicants to download documentation electronically.

1.3.2. DEWHA accepts no responsibility if an Applicant fails to become aware of any alteration, correction or notice, which would have been apparent from a visit to

the AusTender website or from other information available from the Department.

- 1.3.3. Applicants should direct all communications relating to this MUL to DEWHA using the contact details at clause 4 of the section titled ***Important Information for Applicants***.

1.4. Invitation Documents

- 1.4.1. This invitation for inclusion on this MUL consists of the following documents:
- a. Part A of this MUL;
 - b. Part B of this MUL; and
 - c. the Draft Contract issued with this MUL at Attachment C of this Part A.

1.5. Application Lodgement

- 1.5.1. Applications must be lodged in accordance with clause 3 of the section titled Important Information for Applicants at Part A of this document.
- 1.5.2. The MUL remains open for lodgement of applications until DEWHA determines there is no longer a need for the Services. DEWHA will advise all current members of the MUL and any current applicants for membership of the MUL that the MUL is to be terminated at the time of termination.

1.6. Errors & Alterations

- 1.6.1. Applicants should immediately notify DEWHA in writing at the address detailed in clause 4 of the section titled Important Information for Applicants if an Applicant reasonably believes there is discrepancy, error, ambiguity, inconsistency or omission in this MUL.

1.7. Disclosure of Information

- 1.7.1. Subject to 1.7.2, DEWHA will keep all Applications submitted confidential.
- 1.7.2. Applicants should note that DEWHA may disclose any information contained in or regarding an Application without written authority of the Applicant to:
- a. Parliamentary Committees;
 - b. Employees and advisers engaged by the Commonwealth; and
 - c. other Commonwealth departments, agencies, bodies, enterprises, authorities and Ministers,

for the purposes of this Application process, and any legal, policy or other Commonwealth accountability requirements.

1.8. Freedom of Information

- 1.8.1. Applicants should be aware that the *Freedom of Information Act 1982* gives members of the public certain rights of access to documents in the possession of the Commonwealth and its agencies. The Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of the Commonwealth, which may include the Application, any subsequent contract and related documents.

1.9. Compliance with Commonwealth Policies and Legislation

- 1.9.1. The successful Applicants must, when using the Commonwealth's premises or facilities, comply with all reasonable directions and procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.
- 1.9.2. Commonwealth policies require DEWHA to publish on the AusTender (Contracts Reported) website the award of all contracts valued at \$10,000 or more. It is also required that DEWHA publishes a list of all contracts valued at \$100,000 or more as a list accessible through its website. This includes details of whom the contract was awarded, the contract price, and includes details as to confidentiality. Guidance on deciding if information can be maintained under a confidentiality provision can be found at website:
http://www.finance.gov.au/procurement/confidentiality_contractors_info.html
- 1.9.3. Applicants should be in compliance with their obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and not be proposing to enter into any subcontracting arrangements with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the Act. It is also Australian Government policy not to contract with parties engaging illegal workers.
- 1.9.4. The attention of Applicants is drawn to Division 2 of the *Archives Act 1983* (the Archives Act), particularly section 24 dealing with the disposal, destruction or transfer of Commonwealth records (as that term is defined in the Archives Act), which must be effected with the permission of the National Archives of Australia or in accordance with a practice or procedure approved by the National Archives of Australia. Applicants should obtain, and will be deemed to have obtained, their own advice on the impact of this legislation on their participation in this process.

1.10. GST

- 1.10.1. All Applicants should be aware that under the GST Law, the Commonwealth is treated as a taxable enterprise. GST will be applied to goods and services supplied by a successful Applicant in respect of the performance of a contract.

1.11. Australian Business Number

1.11.1. Your ABN should be stated in Part B.

1.12. Applicable Law

1.12.1. The Law applying in the Australian Capital Territory applies to the MUL, and the Application process. Each Application must comply with all relevant laws in preparing and lodging its Application and taking part in the MUL process.

1.13. Ownership of Application

1.13.1. All documents submitted in response to this MUL shall become the property of the Commonwealth. The Commonwealth may use, reproduce or modify any Application for the purposes of assessing the Application, but will keep Applications confidential (subject to clause 1.7).

1.14. Financial Viability

1.14.1. Applicants should indicate in Part B that their organisation is financially viable. Financially viable means an Applicant has not had any of the following events occur in respect of it:

- a. A meeting of creditors being called or held;
- b. The appointment of a liquidator, provisional liquidator or administrator;
- c. The appointment of a controller (as defined in section 9 of the Corporations ACT), or analogous person appointed, including in respect of any of its property;
- d. A failure to comply with a statutory demand in respect of the payment of any debt;
- e. An inability to pay debts as they fall due or otherwise becoming insolvent;
- f. Becoming incapable of managing its own affairs for any reason;
- g. Taking any step resulting in insolvency under administration as defined in section 9 of the Corporations Act);
- h. Any action being commenced to bankrupt or wind-up its affairs; or
- i. Entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors, or any analogous event.

1.14.2. DEWHA may request an Applicant supply relevant financial statements to conduct evaluations of an Applicants financial position. For this purpose, Applicants should be prepared to provide details of relevant financial data concerning the applicant.

1.15. Costs

1.15.1. Applicant's participation in any stage of the MUL process is at the Applicant's sole risk, cost and expense. The onus is on the Applicant to inform itself appropriately.

1.16. Right to Terminate

1.16.1. DEWHA may terminate this MUL process at any time if it is in the public interest to do so.

1.17. Right to Request Further Information

1.17.1. Notwithstanding any other requirement of the MUL, DEWHA may require the Applicant to submit additional information to allow further consideration of its Application.

1.17.2. Should the Applicant fail to submit any of the information required by the date and time stipulated by DEWHA, its Application may be excluded from further consideration.

1.17.3. Any request by DEWHA for further information shall not be, nor be deemed to be, a representation by DEWHA that the Application will be, or is likely to be, accepted.

1.18. DEWHA Right to Negotiate

1.18.1. DEWHA may negotiate the contents of an Application with any Applicant.

1.18.2. Any request by DEWHA to negotiate all or any part of a Application shall not be, nor be deemed to be, a representation by DEWHA that the Application will be, or is likely to be, accepted.

1.19. Addenda

1.19.1. If DEWHA amends this MUL electronic advice will be issued to current suppliers listed on the MUL. The Applicant should ensure their application is correct and up to date.

1.20. No Contract

1.20.1. Nothing in this MUL shall be construed so as to give rise to any contract between DEWHA and any Applicant until a Contract is entered into with one of the successful Applicants.

1.21. Removal from the MUL

1.21.1. DEWHA may at any time after the establishment of the MUL exercise its discretion to remove an applicant from the MUL.

2. Evaluation

2.1. Evaluation Process

- 2.1.1. Applications will be assessed on a pass / fail basis consistent with Commonwealth purchasing policies.
- 2.1.2. Applicants should complete Part B and submit the completed document as their Application. Applicants must provide the evidence required at a particular item or indicate compliance with the rules outlined in Part B in order to be successful in applying for membership of the MUL.

2.2. Essential Requirements

- 2.2.1. DEWHA will exclude an Application from further consideration if DEWHA considers that the Application does not comply with an essential requirement identified in the Statement of Requirement (Attachment A).

2.3. Clarification and Additional Information

- 2.3.1. DEWHA may seek clarification of Applications or require further information from all or any Applicants.

2.4. Successful Applicants

- 2.4.1. DEWHA will advise successful applicants that they have been included on the MUL in writing at the end of the evaluation process.

2.5. Advice to Unsuccessful Applicants

- 2.5.1. DEWHA will promptly notify each unsuccessful Applicant in writing that its Application has not been accepted/shortlisted and, where requested, provide unsuccessful Applicants with an explanation of the reasons for its decision.

2.6. Debrief

- 2.6.1. All unsuccessful Applicants are entitled to a debrief. This debrief will provide feedback on the relative merits of their Application bid against the requirements outlined in Part B, but will not refer to any other Application and will not disclose the confidential information of any other Applicant.

3. Applications

3.1. Preparing Applications

- 3.1.1. Applicants should respond to the MUL by completing Part B and addressing the matters identified.

3.2. Subcontracts

3.2.1. The Draft Contract requires that the Applicant not subcontract the whole of its obligations under a Contract but the Applicant may, with the prior consent of DEWHA, subcontract part of its obligations.

3.3. Security Clearance

3.3.1. Vetting and clearance requirements will depend upon the degree and level of physical and information access required to provide the Services.

3.3.2. Copies of documents relevant to any security clearance should be provided. If Applicants have no security clearance they will be required to undergo security clearance processes for themselves, their staff and any subcontractors. The costs of such clearance processes will be borne by the Applicant under the Contract.

3.4. General Conditions of the Draft Contract

3.4.1. DEWHA expects the successful Applicant to provide the Services in accordance with the Contract. Applicants should complete the statement in Part B indicating their acceptance of the terms and conditions of the Draft Contract.

3.4.2. DEWHA reserves the right to negotiate the terms and conditions of the Draft Contract with any or all of the Applicants. If DEWHA and an Applicant cannot agree on the terms and conditions to be applied to the Contracts created under this MUL, DEWHA reserves the right to exclude the Applicant from the final MUL.

3.5. Insurance

3.5.1. The successful Applicant must, at its own expense, take out, provide and maintain during the Term of any Contract entered into with DEWHA, the insurances specified in the Draft Contract.

3.5.2. If requested, the Applicant must provide DEWHA with a copy of a certificate of currency or any other proof of insurance which is acceptable to DEWHA. The Applicant's insurance policy details or compliance with this requirement must be provided in Part B.

ATTACHMENT C DRAFT CONTRACT

(refer to the attached Draft Contract)