

## Northern Australian Aboriginal Justice Agency

Request for proposal (RFP) – criminal legal services

**Proposals due: Wednesday 28 February 2024 at 4.00pm.**

**Important note:** Your participation in this RFP is subject to the terms set out in Attachment A (RFP Terms). By participating in this RFP process, including registering your interest or submitting a proposal, you will be taken as having accepted the RFP Terms. If you do not agree to comply with the RFP Terms, you must not participate in this RFP.

### 1 Introduction

The North Australian Aboriginal Justice Agency (**NAAJA**) delivers high quality and culturally competent legal services to Aboriginal people in the Northern Territory. NAAJA has the largest criminal law practice in the Northern Territory with offices in Darwin, Katherine, Tennant Creek and Alice Springs, representing Aboriginal people in all courts and all locations throughout the Northern Territory.

In order to manage current and forecast caseloads, NAAJA is seeking to appoint one or more legal service providers to provide qualified legal practitioners who will work on a secondment basis for NAAJA representing individuals on criminal charges in the Northern Territory. NAAJA invites qualified and experienced criminal legal service providers to submit proposals.

### 2 Who may respond to this RFP; registering intention to respond

This RFP is open for proposals from legal service providers whom NAAJA has contacted and indicated are eligible to provide a tender response, and any other legal service providers who wish to respond to this RFP and whom NAAJA believe have proven experience in providing high quality, culturally relevant legal services for Aboriginal people in the Northern Territory.

NAAJA encourages anyone who intends to respond to this RFP to register their intention with NAAJA as soon as possible, so that they may receive any further information that is issued in relation to this RFP, including responses to questions as contemplated by section 8 below. Anyone who wishes to register their interest in this RFP may do so by emailing Jared Sharp, Principal Legal Officer, NAAJA at [jared.sharp@naaja.org.au](mailto:jared.sharp@naaja.org.au)

### 3 Proposed scope of Work

The selected service provider(s) will be responsible for providing qualified legal practitioners with a current practising certificate and a minimum of 2 years of relevant criminal law experience, to NAAJA on a secondment basis to represent Aboriginal clients across a full range of criminal defence work in the Northern Territory. This includes providing criminal law services in Alice Springs each day, including duty law and ongoing casework services (including summary hearings and contested bail applications), criminal law services in Tennant Creek, including duty law and ongoing casework services (including summary hearings and contested bail applications), providing criminal law services in all Central Australian bush court, including duty law and ongoing casework services (including summary hearings and contested bail applications), and all Supreme Court criminal law services for Central Australian clients, including pleas, trials and appellate work.

Legal practitioners who are seconded to NAAJA will discharge NAAJA's obligations under its funding arrangements, including providing regular reporting as directed by NAAJA as to services provided in the relevant period.

NAAJA is seeking to appoint service providers on a multi-year basis, with an anticipated commencement date of 1 May 2024 and until 30 June 2025.

During this time, NAAJA expects caseloads to be substantial. The precise volume is difficult to quantify. It requires a calculation of the number of lawyers provided pursuant to this tender as a proportion of NAAJA's overall criminal solicitor workforce (17 lawyers). As an illustration of overall workload, there were 5996 adult criminal lodgements in the Alice Springs Local Court in 2022/2023.

#### **4 Proposals**

Interested legal services providers are invited to submit proposals by completing the response form accompanying this RFP, and submitting it to Jared Sharp, Principal Legal Officer, NAAJA by email to [jared.sharp@naaja.org.au](mailto:jared.sharp@naaja.org.au) on or before **8.00am on Monday 26 February 2024** (the **Closing Time**).

#### **5 Selection criteria**

Proposals will be evaluated based on various criteria determined by NAAJA, which may include:

(a) *Experience and expertise*

Selected service provider(s) must have a demonstrated track record in representing Aboriginal clients in criminal law matters in all Northern Territory courts.

(b) *Cultural competency*

Selected service provider(s) must have a demonstrated capacity to work in a culturally respectful and empowering way with Aboriginal peoples and communities in the Northern Territory, and an ability to ensure culturally responsive legal representation.

(c) *Cost proposal*

NAAJA is funded by both Federal and Territory Governments. Selected service provider(s) will need to propose financial arrangements which ensure that Government achieves value for money and that NAAJA is able to discharge its obligations under funding agreements in a sustainable manner. Further details on the pricing proposal are set out below.

(d) *Compliance with services agreement terms*

NAAJA may take into account the extent to which respondents agree to the proposed terms of the services agreement covering their appointment.

#### **6 Pricing**

Respondents must provide a pricing proposal in the form of a daily rate for seconded legal practitioners, which will apply throughout the entire term of the services agreement. This rate may vary by experience or seniority of the staff that are seconded. The daily rate (or a pro-rata portion based on an 8 hour day, if less than 8 hours of work is performed) will be charged only for those days that the relevant legal practitioner is engaged in providing services to NAAJA. No uplift in the daily rate will apply if more than 8 hours is worked on any day. The daily rate will not be charged on weekends, holidays and other periods of leave, unless the legal practitioner is productively working with NAAJA's prior approval on those days.

No disbursements or other fees or charges are to be charged to NAAJA, and the selected service provider(s) will be responsible for paying all benefits, including salary and superannuation, and associated expenses such as practicing certificate fees, for legal practitioners who are seconded to NAAJA. These costs should be factored into the daily rate proposed by respondents.

NAAJA will be responsible for any travel and accommodation costs incurred by seconded legal practitioners when they are required to travel in the performance of services for NAAJA, in the same manner that NAAJA covers such costs for its own employees.

## **7 Services agreement**

Service provider(s) will be required to enter a services agreement with NAAJA covering their appointment. This agreement will be prepared by NAAJA, and will cover the terms set out in Attachment A. As legal practitioners will be seconded to NAAJA, the service provider will not enter into a costs or other engagement agreement with any client, rather NAAJA will do so.

## **8 Communications and questions from respondents**

Respondents are welcome to submit questions in writing to Jared Sharp, Principal Legal Officer no later than **10.00 am on Friday 23 February 2024**. NAAJA does not guarantee that it will be able to respond to all questions. Where it does so, NAAJA may provide both the question and its answer to all persons who have who have registered their interest with NAAJA.

## Attachment A – Terms of Request for Proposal

- (a) **Right to cancel or vary:** NAAJA may in its discretion cancel or vary this RFP or any aspect of it, at any time. NAAJA will endeavour to notify any such cancellation or variation to persons who have registered their interest with NAAJA or (if such cancellation or variation is after the Closing Time) respondents.
- (b) **Assumptions and reliance:** A respondent may not make any assumptions or rely on any matter in connection with this RFP, unless such matter is expressly contained in this RFP or such reliance cannot be excluded by law. The information and terms in this RFP supersede any prior communications in relation to its subject matter.
- (c) **Proposals:** Proposals will remain valid for acceptance by NAAJA for a period of 3 months after the Closing Time. The intellectual property rights in proposals remain owned by the respondent, but proposals may be used and copied by NAAJA and its service providers for the purpose of conducting the RFP, managing any services agreement that is entered into, reporting to any of NAAJA's funding bodies, their own internal administrative purposes, and as required or permitted by law. No terms and conditions in any proposal will be considered accepted by NAAJA unless expressly and separately agreed to in writing by NAAJA, and NAAJA's evaluation of a proposal that includes any such terms and conditions will not constitute acceptance of them.
- (d) **Legal practitioners to be seconded:** NAAJA may require that legal practitioners to be seconded meet with NAAJA as part of its evaluation of a proposal. NAAJA may accept a proposal in whole, or in part by specifying which legal practitioners it requests be seconded to it.
- (e) **Unethical conduct:** Respondents must not: (i) lobby any person (including any staff or Board member of NAAJA) in order to influence the outcome of this RFP; or (ii) offer or make any inducement, reward, encouragement or threat to any person (including any staff or Board member of NAAJA) in relation to this RFP. Any respondent who does so, or otherwise has a record of unethical behaviour, may in NAAJA's discretion be excluded from further participation in this RFP.
- (f) **Evaluation:** NAAJA may in its discretion reject, consider and/or accept, proposals that do not comply with all the requirements of this RFP, including late submissions. In evaluating proposals, NAAJA may take into account not only the information provided in a proposal, but also any other information that NAAJA may have or obtain. Proposals may be evaluated based on the selection criteria described in this RFP, and other criteria determined by NAAJA. NAAJA is not obliged to accept the lowest price proposal, and may accept more than one proposal.
- (g) **Dealing with respondents:** NAAJA may at any time clarify proposals, negotiate (including so as to vary proposals) and/or enter into a services agreement, with one or more respondents, with or without notice to any other respondent.
- (h) **Status of RFP:** This RFP is not intended to constitute an offer by NAAJA to enter into a services agreement, and any supply of legal services remains subject to contract.
- (i) **Costs and liability:** Respondents must bear their own costs of participating in this RFP, including preparing and submitting a proposal and negotiating any services agreement. NAAJA will not be liable for special, indirect or consequential loss or damage suffered by any respondent, and NAAJA's maximum aggregate liability to any respondent will not exceed \$5,000, whether any such loss, damage or liability is suffered in contract, tort (including negligence) or otherwise. However nothing in this paragraph (i) limits or excludes any right or remedy where it would be unlawful to do so.

## Attachment B – Term Sheet for Services Agreement

The services agreement will reflect the following terms. Please note, however, that the following terms will be elaborated upon, and other terms will be included, in the services agreement prepared by NAAJA.

Topic	Details
1 <b>Term of appointment</b>	1 year and 2 months.
2 <b>Exclusivity</b>	The Service Provider's appointment is non-exclusive. NAAJA may appoint other service providers or perform the services itself.
3 <b>Seconded personnel</b>	The legal practitioners to be seconded will be specified. If any seconded legal practitioners leave the employ of the Service Provider, a mechanism will provide for a replacement legal practitioner to be made available if NAAJA wishes that to occur.
4 <b>Fees</b>	NAAJA will pay the Service Provider a daily rate for the secondment of legal practitioners, as specified in section 6 of this RFP. GST may be charged where applicable, subject to provision of a valid tax invoice.
5 <b>Terms of secondment</b>	<p>Seconded legal practitioners will work under the direction and control of NAAJA, in the manner of employees. They will be required to attend NAAJA's offices and court locations in the same manner as NAAJA's own employees, and comply with NAAJA's internal staff policies and procedures. Seconded legal practitioners will, however, remain the employees of the Service Provider, who must continue to pay and maintain their salary and all other employment benefits and entitlements.</p> <p>Any applications for leave by seconded legal practitioners must be provided to NAAJA at the same time they are provided to the Service Provider, and approved by both NAAJA and the Service Provider.</p> <p>If any actual or perceived conflict of interest arises in relation to any work to be performed by a seconded legal practitioner, the seconded legal practitioner and the Service Provider must bring the matter to the attention of NAAJA, and work with NAAJA in good faith to agree on an appropriate course of action.</p> <p>Seconded legal practitioners will owe a duty of confidentiality to NAAJA, and will not disclose confidential information to the Service Provider, unless required to do so in order for the Service Provider to resist or defend any claim arising out of the secondment.</p> <p>As a consequence of the secondment arrangements, NAAJA accepts the risks associated with the work done by seconded legal practitioners in the course of the secondment.</p>
6 <b>Compliance</b>	<p>The Service Provider and seconded legal practitioners must comply with all applicable laws.</p> <p>Where NAAJA receives a direction from its funding provider which is relevant to the Service Provider's obligations, then the Service Provider must comply with that direction, and procure that its seconded legal practitioners also do so.</p>
7 <b>Termination</b>	<p>(a) The secondment of a legal practitioner may be terminated by NAAJA with immediate effect if:</p> <p>(i) they cease to be qualified to provide the relevant services, including if their practising certificate is cancelled or lapses;</p>

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- (ii) their work-related performance, including standard of work, is considered by NAAJA in its discretion to be unsatisfactory; or
    - (iii) they breach any of NAAJA's policies or procedures, or otherwise engage in conduct that NAAJA considers in its discretion is unsatisfactory;
  - (b) The secondment of a legal practitioner may be terminated by NAAJA for convenience at any time upon 3 months prior written notice.
  - (c) Each party will have the right to immediately terminate the Agreement in whole or (in the case of NAAJA) in respect of one or more legal practitioners if:
    - (i) the other party commits a material breach and, the breach being capable of remedy, fails to remedy it within 30 days' of receiving notice to do so;
    - (ii) the other party commits a material breach and that breach is not capable of remedy; or
    - (iii) the other party is insolvent.
  - (d) In addition, NAAJA will have the right to terminate the Agreement in whole or in respect of one or more legal practitioners if:
    - (i) the Service Provider or any legal practitioner causes NAAJA to breach its funding agreement with Government or other funding provider;
    - (ii) NAAJA's funding agreement with Government is suspended or terminated for any reason; or
    - (iii) if a NAAJA funding provider directs it to do so.
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