



## Australian Government

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### The Department Of Home Affairs

## REQUEST FOR EXPRESSION OF INTEREST FOR SELECTION OF ENGLISH LANGUAGE TESTS FOR AUSTRALIAN VISAS

**HOMEAFFAIRS/ELT01/22REOI**

### DETAILS AND REQUIREMENT

The Department of Home Affairs invites interested parties to submit Responses in accordance with the Details and Requirement of this Request for Expression of Interest and in the Response Forms and Evaluation Criteria at **Attachment A**.

This Request for Expression of Interest (REOI) consists of:

- a. the Details and Requirement;
- b. the Response Forms and Evaluation Criteria in **Attachment A**.

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## PART 1 – REOI DETAILS AND OVERVIEW OF REQUIREMENT

REOI Number	HOMEAFFAIRS/ELT01/22REOI
REOI Submission Closing Time	5:00PM on 9 September 2022 Australian Eastern Standard Time (AEST)
Contact Officer	<b>N</b> Curtin Email: <a href="mailto:ELT.Empanelment@homeaffairs.gov.au">ELT.Empanelment@homeaffairs.gov.au</a>
REOI Evaluation Criteria and Process	As set out in <b>At</b> .
Description of the Requirement	The Department of Home Affairs (the Department) invites interested parties to submit Responses to the Request for Expression of Interest for Selection of English Language Tests for Australian Visas.  Further details of the Requirement are set out in Part 2.
Content and Format Requirements	<ol style="list-style-type: none"> <li>1. The Respondent must lodge as part of its Response a Deed of Undertaking substantially in the form set out in Appendix A of <b>Attachment A</b>;</li> <li>2. The Response must be written in English and all measurement must be expressed in Australian legal units of measurement.</li> </ol>
Indicative Timetable for the REOI	<p><b>Issue REOI:</b> 29 July 2022</p> <p><b>Deadline for Submission of Respondents' Questions:</b> 5:00PM AEST on 01 September 2022.</p> <p><b>REOI Responses due:</b> 5:00 PM AEST on 09 September 2022</p> <p><b>Evaluation Process period:</b> Commencing from the REOI Closing Time and ending 12 November 2022.</p> <p><b>Respondents notified of assessment outcome of Response:</b> from November 2022.</p> <p><b>Final concordancing studies received from invited Respondents:</b> by 31 January 2024.</p> <p><b>REOI ends:</b> at the earlier of the execution of Deeds of Agreement with successful selected Respondents or the cancellation of this REOI process.</p>

Process Overview	<p>Respondents should note that this REOI is not a Request for Tender (RFT).</p> <p>The Department is using this REOI as a competitive selection process to select English language tests for Australian visas. The Department accepts scores from English language tests prescribed in migration law as evidence of various levels of English proficiency for an Australian visa application, but is not involved in the content or delivery of the tests.</p> <p>The successful Respondents will be expected to enter into a Deed of Agreement with the Department.</p>
Industry briefings	There will be no industry briefings for this REOI process.

## 1.1. Definitions

1.1.1. In this REOI, the following definitions apply:

**Best Practice Criteria for Concordancing Studies** means the criteria outlined in **Attachment A** that must be used by Respondents in conjunction with **Evaluation Criteria** in **Attachment A**.

**Commonwealth** means the Commonwealth of Australia.

**Department** means the Department of Home Affairs.

**Deed of Agreement** means an executed written commitment by an entity or an individual to perform certain services and obligations as required by the Department of Home Affairs.

**Empanelment** means the Department can accept scores from certain English language tests for Australian visas following required changes to migration legislation and departmental IT systems.

**Evaluation Committee** means the departmental officers, and members of the external and independent Language Services Advisory Panel, responsible for evaluating REOI Responses.

**Evaluation Criteria** means the criteria that the Department requires Respondents to meet, as described in **Attachment A** of this REOI.

**Evaluation Process** means the process outlined in **Attachment A** that will be used by the Department and LSAP to evaluate REOI Responses.

**Language Services Advisory Panel** means the independent panel of experts contracted by the Department to advise on English language provisions relevant to departmental portfolio responsibilities.

**Mandatory Requirements** means the Conditions for Participation or Content and Format Requirements as outlined in Part 2 of the Details and Requirement.

**Personal Information** has the same meaning as it has in section 6 of the *Privacy Act 1988* (Cth).

**REOI Closing Time** means the closing date and time for submission of REOI Responses, as set out Part 2 of the Details and Requirement.

**REOI Process** means the process being conducted by the Department to obtain Expressions of Interest from the market in relation to the Requirement that commences with the release of this REOI and concludes following the Department's evaluation of REOI Responses.

**REOI Response** means a response submitted by a Respondent to this REOI, including documents that are described as proposals, bids, offers, quotes, submissions, expressions of interest and applications.

**Respondent** means an entity who submits a Response.

## **1.2. Background**

### **1.2.1. About the Department of Home Affairs**

On 20 December 2017, the Home Affairs Portfolio, including the Department of Home Affairs, was formally established.

The establishment of the Portfolio brought together Australia's federal law enforcement, national and transport security, criminal justice, emergency management, multicultural affairs and immigration and border-related functions and agencies, working together to keep Australia safe.

From 1 July 2022, criminal and law enforcement policy and operations were transferred to the Attorney-General's portfolio under a Machinery of Government change.

### **1.2.2. English language test scores as evidence to meet English language visa requirements**

The Government remains committed to using English language requirements in migration legislation as a means to effectively manage immigration risk and ensure visa holders are able to fully participate in the Australian community.

English language requirements generally apply to applicants wishing to study or work in Australia. The Department accepts scores from prescribed English language tests as one type of evidence of various levels of English proficiency for an Australian visa application, but is not involved in the content or delivery of the tests.

The Department manages arrangements with prescribed English language test providers (such as candidate identity procedures, reporting and test verification processes, among other things) via agreements between the Department and each test provider.

## **1.3. Overview of the Requirement**

### **1.3.1. Respondents must submit evidence to meet the Evaluation Criteria (**Attachment A**). All criteria are mandatory.**

(a) Without limiting clauses 1.3.2 and 1.3.3, the Evaluation Committee will evaluate Responses against Evaluation Criteria received by the REOI closing time.

### **1.3.2. If a Respondent provides a concordancing study by the REOI closing time:**

(a) the Evaluation Committee may seek clarification or further information about the concordancing study; and

(b) a Respondent may be invited to submit a revised or new concordancing study by 31 January 2024.

### **1.3.3. If a Respondent provides a plan for a concordancing study that is evaluated as satisfying sub-criteria 4.1 and 4.2, then, subject to satisfying all other criteria, the Respondent:**

(a) will be invited to submit the concordancing study to the Department; and

(b) must submit the concordancing study to the Department ([ELT.Empanelment@homeaffairs.gov.au](mailto:ELT.Empanelment@homeaffairs.gov.au)) by 31 January 2024; and

- i. subject to satisfying all other criteria, the Response will only be successful under the REOI if that concordancing study is evaluated as satisfying sub-criteria 4.1 and 4.2.

## **PART 2 – REQUIREMENT**

### **2. Interpretation**

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In this REOI, except where the contrary intention is expressed:

- (a) words importing a gender include any other gender;
- (b) words in the singular number include the plural and words in the plural number include the singular;
- (c) section headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority, agency or other entity;
- (e) another grammatical form of a defined word or expression has a corresponding meaning;
- (f) a reference to a clause, paragraph, part, attachment, schedule or annexure is to a clause, paragraph, part, attachment, schedule or annexure to this REOI;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (h) the meaning of general words is not limited by specific examples introduced by including, 'for example' or similar expressions and the word 'include' is not a word of limitation.

To the extent of any inconsistency between any of the information in this REOI, the information will be interpreted in the following order of priority:

- (a) the Requirement in Part 2 of this REOI;
- (b) the REOI Details in Part 1 of this REOI; and
- (c) any other document forming part of this REOI.

### **3. REOI Closing Time**

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- 3.1. REOI Responses must be lodged before the Closing Time: 5:00PM AEST on 9 September 2022.
- 3.2. 5:00 PM AEST is deemed to be the correct time and will be the means by which the Department will determine that an REOI Response has been lodged by the REOI Closing Time.
- 3.3. Notwithstanding clause 3.2, the judgement of the Department as to the time an REOI Response has been lodged will be final.

- 3.4. The Department may extend the Closing Time for any or all Respondents, at its sole and absolute discretion. If it does so, the Department will issue an addendum notifying Respondents of the extension in accordance with clause 10 (Issue by the Department of Addenda and Notices).

#### **4. REOI Response Lodgement**

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##### **Virus Checking**

- 4.1. In submitting their REOI Response electronically, Respondents warrant that they have taken reasonable steps to ensure that the REOI Response files are free of viruses, malicious code, worms or other disabling features that may affect the Department's computing environment.
- 4.2. Any REOI Response found to contain viruses, malicious code or other disabling features will be excluded from the evaluation process.

##### **REOI Response File Formats, Naming Conventions and Sizes**

- 4.3. Respondents are required to lodge their REOI Response in accordance with the requirements for file format/s, naming conventions and file sizes as set out in this clause 4. Failure to comply with any or all of these requirements may result in the REOI Response not uploading successfully and/or may exclude the REOI Response from consideration.
- 4.4. The Department will accept REOI Responses lodged Portable Document Format (PDF) or as otherwise agreed in writing by the Contact Officer.
- 4.5. The REOI Response file name/s need to:
- (a) incorporate the Respondent's name;
  - (b) reflect the various parts of the REOI Response they represent, where the REOI Response comprises multiple files;
  - (c) not contain any of the following characters: \ / : \* ? " < > | ; and
  - (d) not exceed 100 characters, including the file extension.
- 4.6. REOI Response files:
- (a) may not exceed a combined file size of five (5) megabytes per upload;
  - (b) should be uploaded from a high level directory on a Respondent's desktop, so as not to impede the upload process;
  - (c) should not be selected from a secure or password protected location, or from portable media such as, but not limited to, CD, DVD or USB; and
  - (d) must be zipped (compressed) together for transmission to [ELT.Empanelment@homeaffairs.gov.au](mailto:ELT.Empanelment@homeaffairs.gov.au) (Respondents should contact the Contact Officer if they wish to use compression software other than 'WinZIP' or 'WinRAR' compression software, and may only do so if approved by the Contact Officer in writing).

- 4.7. If an upload would otherwise exceed 5 megabytes, the Respondent should either:
- (a) transmit the REOI Response files as a compressed (zip) file not exceeding five (5) megabytes; or
  - (b) lodge the REOI Response in multiple uploads ensuring that each upload does not exceed five (5) megabytes and clearly identify each upload as part of the REOI Response.
- 4.8. If an REOI Response consists of multiple uploads, due to the number of files or file size, Respondents should ensure that transmission of all files is completed before the Closing Time.
- 4.9. REOI Responses are required to be completely self-contained. No hyperlinked or other material may be incorporated by reference.

#### **Scanned or imaged material**

- 4.10. Scanned images of signed and/or initialled pages within the REOI Response, including the Deed of Undertaking are permitted so long as the total file size does not exceed the five (5) megabyte limit. The use of scanned or imaged material, where it expands the REOI Response file size beyond the five (5) megabyte limit per upload, is prohibited.

#### **Lodgement process**

- 4.11. Respondents must email an REOI Response to [ELT.Empanelment@homeaffairs.gov.au](mailto:ELT.Empanelment@homeaffairs.gov.au).

#### **Proof of lodgement**

- 4.12. When an REOI Response lodgement has successfully completed, a separate email confirming receipt will be dispatched from [ELT.Empanelment@homeaffairs.gov.au](mailto:ELT.Empanelment@homeaffairs.gov.au) to the email address of the sender.
- 4.13. Failure to receive a receipt means that lodgement has not completed successfully. Respondents should refer to clause 4.5 and recomplete the REOI Response lodgement process until REOI Response lodgement is successfully completed.
- (a) The Department will not be liable for any loss, damage, costs or expenses incurred by Respondents or any other person if, for any reason, a Response or any other material or communication relevant to this REOI, 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.

#### **Late REOI Responses, Incomplete REOI Responses and Corrupted Files**

- 4.14. Lodgement of the REOI Response before the Closing Time is entirely the Respondent's responsibility.
- 4.15. Late REOI Responses will not be accepted unless the delay in lodging the REOI Response is as a consequence of mishandling by the Department.
- 4.16. Where electronic submission of an REOI Response has commenced prior to the Closing Time but concluded after the Closing Time, and upload of the REOI Response file/s has completed successfully, as confirmed by departmental system logs, the REOI Response will not be deemed to be a Late REOI Response. Such Responses will be identified by the Department as having commenced transmission prior to, but completed lodgement after, Closing Time.



- 4.17. Where an REOI Response lodgement consists of multiple uploads, due to the number and/or size of the files, Respondents must ensure that transmission of all files is completed and receipted before the Closing Time and clause 4.15 will only apply to the final upload commenced before the Closing Time.
- 4.18. REOI Responses that are incomplete due to a failure to upload all files by the Closing Time, REOI Responses with electronic files that cannot be read or decrypted, REOI Responses which the Department believes to potentially contain any virus, malicious code, worms, other disabling features or anything else that might compromise the integrity or security of the Department's computing environment, may be excluded from evaluation.

## **5. Department's Contact Officer and Enquiries about the REOI**

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### **Contact Officer**

- 5.1. All enquiries in relation to this REOI are to be:
- (a) directed to, and only to, the Contact Officer at [ELT.Empanelment@homeaffairs.gov.au](mailto:ELT.Empanelment@homeaffairs.gov.au); and
  - (b) received by 5:00PM AEST on 1 September 2022.
- 5.2. The Department may, at its sole and absolute discretion, refuse to accept any enquiry not made in accordance with clause 5.1.
- 5.3. The Department reserves the right to publish on its website any enquiry of the meaning of the content of this REOI and the Department's response, on a non-attributable basis.
- 5.4. If a Respondent believes that its request for clarification is confidential, it should notify the Department of this upon submitting the written request. A determination will be made by the Department, at its absolute discretion, as to whether or not the request is confidential.
- 5.5. If the Department determines the request is:
- (a) not confidential, it will advise the Respondent of this decision. The Respondent may then resubmit the request as a non-confidential request, in which case it will be dealt with in the manner outlined above, or
  - (b) confidential, the answer to the request (if any) will not be discussed by the Department to other Respondents.
- 5.6. Whether or not a request is confidential or determined by the Department to be confidential or is otherwise withdrawn by a Respondent, does not limit or otherwise affect the Department's rights under this REOI.

## **6. Intended Timeframe for the REOI Process**

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- 6.1. The REOI Details set out the Department's intended timetable for the REOI Process. However, any time or date set out in this REOI (other than the Closing Time) is indicative only, and creates no obligation on the Department, or any right in a Respondent, in relation to these dates.

- 6.2. Subject to clause 3 (REOI Closing Time), the Department may change the intended timetable in the REOI Details in its absolute discretion at any time, and without giving any notice to Respondents.

## **7. Content and Format Requirements for REOI Responses**

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### **Content and Format Requirements**

- 7.1. A Respondent must meet each of the Content and Format Requirements set out in 'Content and Format Requirements', Part 1 REOI Details.
- 7.2. Subject to clause 13, any Respondent who fails to meet any of the Content and Format Requirements set out in the REOI Details will be excluded from further consideration.
- 7.3. The Department may at any time during the Evaluation Process determine that a Respondent does not meet one or more Content and Format Requirements.

### **Format of REOI Response**

- 7.4. REOI Responses must include the information or other material required by **Attachment A**, including:
- (a) the Respondent's Deed of Undertaking in **Appendix A** of **Attachment A**;
  - (b) Responses to Evaluation Criteria in Part 4 of **Attachment A**; and
- 7.5. Clause 7.4 does not limit or add to the Content and Format Requirements.

## **8. Part REOI Responses**

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- 8.1. Respondents are to offer to provide the entire Requirement and no REOI Responses for only part of the Requirement will be allowed.
- 8.2. Where the REOI Details indicate that only part of the Requirement will be allowed, **Attachment A** sets out which part or parts of the Requirement may be the subject of an REOI Response.

## **9. Consortia or Joint REOI Responses; Subcontract arrangements**

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- 9.1. An REOI Response is required to be submitted by a single legal entity who proposes to execute a Deed of Agreement in favour of the Department for provision of and maintenance of the Requirement. A consortium may submit an REOI Response on the basis that one legal entity will take full responsibility. The Respondent should provide full details of that legal entity (or proposed legal entity), the consortium members and any proposed subcontractors.
- 9.2. The Respondent must not subcontract the whole of its obligations under the Deed of Agreement but the Respondent may, with the prior consent of the Department, subcontract part of the Requirement. The Respondent must ensure that its subcontractors, when undertaking any part of the Requirement, are aware of their obligations to comply with the same terms and conditions of any agreement as that imposed on the successful Respondent.
- 9.3. The Respondent must:
- (a) agree to the public disclosure of the names of any subcontractors engaged to perform any of the Requirement; and

- (b) inform relevant subcontractors that their participation in fulfilling any of the Requirement may be publicly disclosed.

9.4. The Respondent must ensure that its subcontractors, when undertaking any part of the Requirement, are aware of their obligations to comply with the same terms and conditions of the agreement as that imposed on the successful Respondent.

## **10. Issue by the Department of Addenda and Notices**

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10.1. Prior to the Closing Time, the Department may vary, supplement or clarify this REOI by issuing notices and other information as addenda posted on the page for this REOI on the Department's website.

10.2. The Department will notify Respondents who have registered and downloaded this REOI documentation via email of the issue of any addenda. It is in the interest of Respondents to ensure they have correctly recorded their contact details prior to downloading REOI documentation. If Respondents have not recorded their details correctly, they should amend their details and download this REOI documentation again.

10.3. Respondents are required to monitor the Department's website and collect addenda as notified.

10.4. The Commonwealth will accept no responsibility if a Respondent fails to become aware of any addendum notice which would have been apparent from a visit to the departmental webpage for this REOI. A Respondent will not be allowed to amend its REOI Response as a result of its failure to be aware of any issued addenda.

10.5. Each addendum forms part of this REOI upon issue.

10.6. If a Respondent finds or reasonably believes it has found any discrepancy, error, ambiguity, inconsistency, omission or misleading statement in this REOI, or in any other information given or made available by the Department, the Respondent should promptly notify the Contact Officer in writing setting out the Error in sufficient detail. Any consequential amendment of this REOI or information provided by the Department will be made available to all Respondents in accordance with this clause 10.

## **11. Issue by the Department of Requests for Clarification**

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11.1. If the Department requires clarification of information contained in an REOI Response, it will request clarification from the Respondent in writing. The Department will not accept information provided in response to a request for clarification if that information alters the original REOI Response in any material respect. If the Respondent fails to supply clarification to the satisfaction of the Department, the Department may exclude the REOI Response from further consideration.

11.2. Respondents should:

- (a) respond to any request for clarification within the time period and in the format specified by the Department;
- (b) ensure that clarifying information provided answers the Department's enquiry and is fully consistent with the REOI Response submitted by the Respondent; and
- (c) not seek to materially alter any aspect of their REOI Response by providing additional information to the Department.

- 11.3. The Department may require the Respondent to submit similar information to that required by this REOI in respect of any proposed subcontractors if that information was not already required to be included in the REOI Response.
- 11.4. The Respondent should not interpret a request to clarify the REOI Response as being an indication that its organisation will or will not be a preferred Respondent. The Respondent should treat all communications with the Department which relate to this REOI as strictly confidential and not disclose the details of any contacts to any third parties. A Respondent's failure to observe confidentiality may result in the exclusion of their REOI Response from further consideration.

## **12. Corrections by a Respondent After Lodgement**

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- 12.1. If, after submission of an REOI Response but before the Closing Time, a Respondent becomes aware of any discrepancy, error or omission in the REOI Response and wishes to lodge a correction or additional information, it must resubmit its whole REOI Response in accordance with this REOI, clearly stating that the REOI Response is a replacement REOI Response. Where more than one REOI Response has been submitted, the Department will evaluate the last submitted REOI Response.
- 12.2. The Department is not under any obligation to consider any corrections or additional information provided after the Closing Time. The Department will consider this material only where it considers it appropriate to do so.

## **13. Unintentional Errors of Form**

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- 13.1. **An unintentional error of form is an error that the Department is satisfied:**
- (a) represents incomplete information not consistent with the Respondent's intentions and, if relevant, capabilities at the time the REOI Response was lodged; and
  - (b) does not materially affect the competitiveness of the REOI Response.
- 13.2. If the Department considers that there are unintentional errors of form in a REOI Response, the Department may request the Respondent to correct or clarify the error, but will not permit any material alteration or addition to the REOI Response.

## **14. Presentations and Interviews**

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- 14.1. The Department may, at its sole discretion, require the Respondent to give a presentation on its REOI Response to either the Department or LSAP, or attend an interview via phone or online. Such requirements will be at the Department's sole discretion. The Department will advise the Respondent of any requirements for the presentation or interview.
- 14.2. Any costs incurred by the Respondent in relation to any presentations or interviews will be borne by the Respondent.

## **15. The Evaluation Criteria and Evaluation Process**

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- 15.1. The Department will conduct the evaluation of REOI Responses in accordance with the Evaluation Process set out in **Attachment A**.
- 15.2. REOI Responses will be evaluated on the basis of the Evaluation Criteria specified in **Attachment A**.

- 15.3. When evaluating the REOI Response, the Department may:
- (a) use any material provided in response to one Evaluation Criteria in the evaluation of other criteria;
  - (b) seek clarification or information from any Respondent, whether or not similar information has been sought from other Respondents;
  - (c) make independent enquiries about any matters that may be relevant to the evaluation including security and probity checks in relation to the Respondent, its subcontractors and any related entities or their personnel (and a REOI Response may be excluded by the Department if the Respondent does not provide, at its cost, all reasonable assistance to the Department in this regard);
  - (d) obtain information regarding the capacity and capability of a Respondent from referees nominated by the Respondent or any other person contacted by the Department; and
  - (e) use any relevant information obtained in respect of a Respondent either through this REOI process or by independent enquiry.

## **16. No Contract; Disclaimer; Acceptance of Respondent's Offer**

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- 16.1. This REOI is an invitation to apply for evaluation by the Department and is not to be taken as an offer to enter into a contract or agreement, or any sort of recommendation. This REOI does not include any tax, legal, commercial or investment advice.
- 16.2. Lodging an REOI Response will constitute a request for evaluation in accordance with this REOI by the Respondent.
- 16.3. The Department may empanel any or all English language tests delivered by the Respondent, for any or all levels of English language proficiency prescribed in migration legislation. No Respondent will necessarily be empanelled by the Department.
- 16.4. The empanelment of an English language test delivered by a Respondent is subject to the execution of a Deed of Agreement in a form acceptable to the Department, between the Respondent and the Department.
- 16.5. The issue of this REOI (and/or the submission of any REOI Response) does not create any legal relationship or obligation (or quasi-legal relationship or obligation) in respect of:
- (a) the process to be followed (including in relation to evaluation and assessment of any REOI Response); or
  - (b) empanelling any test delivered by the Respondent.
- 16.6. Despite clause 16.5, if a court finds there to be a contract between the Department and a Respondent regarding the conduct of this REOI process, the Respondent agrees that the Department's liability for negligence, breach of statute, and any breach of the terms of such a contract is limited to the Respondent's costs of participation in the REOI process. For the avoidance of doubt, the Department is not liable for any lost profit, lost opportunity or other losses of the Respondent.

## **17. Outcome of the REOI Process**

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- 17.1. This REOI is the selection process for English language tests for Australian visa purposes.

- 17.2. Respondents are advised that the submission of a REOI Response is not a guarantee of further invitations to participate in any subsequent REOI processes relating to the selection of the English language tests for Australian visas.
- 17.3. The Department proposes to enter into a Deed of Agreement with the successful Respondents (if any) of this REOI Process.

## **18. Debriefing**

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- 18.1. If the Respondent would like a debriefing, it should contact the Contact Officer to arrange a suitable time.
- 18.2. Respondents will be debriefed against the Evaluation Criteria. In accordance with Commonwealth policy, a Respondent will not be provided with information concerning other REOI Responses or Respondents, except for publicly available information and except in so far as comparative statements can be made without breaching confidentiality.

## **19. Intellectual Property Rights in REOI Documents**

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- 19.1. All Intellectual Property Rights in this REOI are vested in the Commonwealth.
- 19.2. Respondents agree that all REOI Responses become the property of the Department and that the Department, and anyone assisting the Department, may copy, adapt, modify, disclose, communicate or do anything else to all material contained in the REOI Response which the Department considers necessary for the purpose of:
- (a) evaluating or clarifying the REOI Response (including any subsequent offer);
  - (b) negotiating any resultant agreement with the Respondent;
  - (c) managing any resultant agreement with the Respondent;
  - (d) complying with any law;
  - (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) providing information to another person in the situations specified in clause 20 (Confidentiality); and
  - (g) anything else related to the REOI process, including audit and complying with governmental and parliamentary reporting requests and requirements.
- 19.3. However, clause 19.2 does not transfer ownership of any Intellectual Property Rights in the information contained in the REOI Responses to the Department (these remain vested in the person with the original ownership of that intellectual property).

## **20. Confidentiality**

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### **General**

- 20.1. Respondents acknowledge that the Department is subject to a number of specific requirements, which support internal and external scrutiny of its activities. These include:
- (a) disclosure requirements under the *Freedom of Information Act 1982* (Cth);
  - (b) compliance with record keeping policies, standards and guidelines;
  - (c) compliance with record keeping obligations under the *Archives Act 1983* (Cth); and
  - (d) the obligation to investigate and report on any complaints received under the *Government Procurement (Judicial Review) Act 2018* (GP(JR) Act).

### **Disclosure to Parliament and its Committees**

- 20.2. Respondents acknowledge that Federal Parliament and its Committees have the power to require the disclosure of Commonwealth agreements and contract information to enable them to carry out their functions.

### **Department's confidentiality obligations**

- 20.3. Subject to clauses 20.4 and 20.5, the Department undertakes to keep confidential any Confidential Information provided to the Department by Respondents prior to the Respondent's execution of any Deeds of Agreement and, in respect of unsuccessful Respondents, after the execution of such deeds.

### **Limitation of obligation of confidentiality**

- 20.4. The obligation of confidentiality in clause 20.3 does not apply if the Confidential Information:
- (a) is disclosed by the Department to its advisers, contractors or employees solely in order to evaluate the REOI Responses, provide advice during the REOI process and/or during agreement negotiations;
  - (b) is disclosed by the Department to the responsible Minister;
  - (c) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (d) is shared by the Department within its organisation, or with another Commonwealth Agency, where this serves the Commonwealth's legitimate interests;
  - (e) is authorised or required by law to be disclosed;
  - (f) is disclosed by the Department to defend any claim or proceeding in relation to the REOI process or a resultant Deed of Agreement;
  - (g) is disclosed by the Department to investigate or manage a complaint made in connection with this REOI process;
  - (h) is in the public domain otherwise than due to a breach of clause 20.3; or
  - (i) is disclosed with the consent of the Respondent.

- 20.5. The Department may provide any information supplied by a Respondent in its REOI Responses or as part of this REOI process to any other Commonwealth Agency to assist that agency determine if it wishes to take advantage of the Respondent's offer to provide the Requirement to that agency. The provisions of this clause 20 will apply in respect of the relevant Commonwealth Agency as if references to the Department were references to that agency.

### **Preservation of confidentiality**

- 20.6. Once the REOI process has been finalised, the Department will not keep such information provided by the successful Respondent(s) confidential unless it, in its absolute discretion, considers it appropriate to do so.

## **21. Conflict of Interest**

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- 21.1. Respondents are required to immediately notify the Department if the Respondent becomes aware of an actual or potential conflict of interest at any time before the completion of the REOI process which is not fully disclosed in its REOI Responses. A conflict of interest may exist if:
- (a) the Respondent or any of its personnel have a relationship (whether professional, commercial or personal) with any personnel in the Department; or
  - (b) the Respondent has a relationship with, and obligations to, an organisation which would affect the performance of the Requirement or would bring disrepute to or embarrass the Department; or
  - (c) the Respondent or any of its personnel have a relationship which could affect the Department's security.
- 21.2. If a Respondent has or may have an actual or potential conflict of interest, the Department may at its discretion:
- (a) enter into discussions to seek to resolve the conflict of interest;
  - (b) impose conditions on the Respondent for the management of the actual or potential conflict of interest; or
  - (c) take any other action which it considers appropriate.
- 21.3. If a Respondent is unwilling or unable to enter into discussions under clause 21.2.(a), comply with the conditions imposed under clause 21.2.(b) or otherwise resolve the actual or potential conflict of interest in a manner satisfactory to the Department, the Department may then exclude the REOI Response from further consideration (including terminating any agreement negotiations).

## **22. Compliance with Commonwealth policies**

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### **The Australian National Audit Office**

- 22.1. The attention of Respondents is drawn to the *Auditor-General Act 1997* (Cth), which provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records in the possession of a Commonwealth agency.



- 22.2. Respondents should obtain, and will be deemed to have obtained, their own independent advice on the impact of the *Auditor-General Act 1997* (Cth) on its participation in this REOI process and any subsequent agreement.
- 22.3. It is intended that any resultant Deed of Agreement will contain a right of access by the Auditor-General, or an authorised person, to information, documents, records and the Department's assets, including those on the Respondent's premises, which are related to the relevant deed.

### **Privacy Legislation**

- 22.4. The *Privacy Act 1988* (Cth) establishes a national scheme providing for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by public and private sector organisations.
- 22.5. Respondents should obtain, and will be deemed to have obtained, their own independent advice on the impact of the *Privacy Act 1988* (Cth) on their participation in this REOI process and any subsequent Deed of Agreement.
- 22.6. It is intended that any resultant Deed of Agreement will require the Contractor to comply with the *Privacy Act 1988* (Cth).

### **Freedom of Information**

- 22.7. The *Freedom of Information Act 1982* (Cth) gives certain rights to the community to access information in the possession of the Commonwealth, which may include any REOI Response submitted and any Deed of Agreement resulting from this REOI process and related documents. Access is only limited by certain exceptions and exemptions as set out in that Act.
- 22.8. Respondents should obtain, and will be deemed to have obtained, their own independent advice on the impact of this legislation on their participation in this REOI process and any subsequent Deed of Agreement.

### **Workplace Gender Equality**

- 22.9. In accordance with Commonwealth policy, the Department will not enter into arrangements with Respondents who are not compliant under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act). It is intended that any resultant contract will require that, in the performance of the contract, the successful tenderer must:
- (a) comply with its obligations, if any, under the WGE Act;
  - (b) if the term of the contract exceeds 18 months, the successful Respondent must provide a current letter of compliance with the WGE Act within 18 months from the Deed of Agreement commencement date and following this, annually to the Department; and
  - (c) notify the Department if the successful Respondent becomes non-compliant with the WGE Act during the term of the Deed of Agreement.
- 22.10. For further information about the WGE Act, Respondents should contact the Workplace Gender Equality Agency (WGEA) on (02) 9432 7000.

- 22.11. Respondents must indicate as part of the Respondent's response at **Attachment A**, 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 the REOI Response, or prior to entering into any Deed of Agreement.

### **Prohibition of Illegal Workers**

- 22.12. Respondents should note that it is the Department's policy not to enter into arrangements with an entity engaging Illegal Workers. The declaration in **Attachment A** – Appendix A contains a statement from the Respondent confirming that it will comply with this policy.
- 22.13. An Illegal Worker means a person who is a non-citizen of Australia who:
- a) does not hold a valid visa and who performs work in Australia; or
  - b) holds a valid visa and who performs work in Australia in breach of a visa condition that:
    - i) prohibits him or her from working in Australia; or
    - ii) restricts the work that he or she may perform in Australia.

### **Anti-Terrorism Measures**

- 22.14. The Respondent and any nominated subcontractors proposed in the REOI Response must not be listed as terrorists under section 15 of the *Charter of the United Nations Act 1945* (Cth). A consolidated list of such persons, entities and associated assets is maintained by the Department of Foreign Affairs and Trade under the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.
- 22.15. The Department will not enter into any agreement with a person or organisation on the list, and Respondents are required to declare that they are not listed (see the declaration in Appendix A).

### **Ombudsman**

- 22.16. Respondents should be aware of the *Ombudsman Act 1976* (Cth), which provides rights of access to places occupied by Commonwealth contractors to conduct investigations at those places.
- 22.17. Respondents should obtain, and will be deemed to have obtained, their own independent advice on the impact of this legislation on their participation in this REOI process and any subsequent Deed of Agreement.
- 22.18. It is intended that any resultant Deed of Agreement will include a right of access by the Ombudsman to the Respondent's premises and/or relevant documents.

### **Fair Work Act 2009 (Cth)**

- 22.19. Respondents are required to comply with all applicable workplace relations laws, including:
- (a) the *Fair Work Act 2009* (Cth) or any other applicable workplace relations laws;
  - (b) work health and safety laws; and
  - (c) worker's compensation laws.

## **Fraud Control**

- 22.20. Respondents' attention is drawn to the Australian Government's position on fraud control, set out in the Commonwealth Fraud Control Guidelines (available at: [www.ag.gov.au](http://www.ag.gov.au)).

## **Subcontracting**

- 22.21. Where subcontractors are specified in the REOI Response, the Respondent is required to identify whether the subcontractor complies with the *Fair Work Act 2009* (Cth).

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## **23. Public Statements**

- 23.1. Respondents may not make any public statements (by means of advertisement or otherwise) in relation to this REOI, without the prior written consent of the Department. However, nothing in this clause is to be read as limiting a Respondent's right to enter into public debate or criticism of the Australian Government, its agencies, or personnel.

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## **24. Ethical Dealing**

- 24.1. The Respondent must not:
- (a) lodge an REOI Response that has been compiled with improper assistance of employees or former employees of the Department or uses information improperly obtained or in breach of an obligation of confidentiality;
  - (b) engage in misleading or deceptive conduct in relation to REOI Responses or the REOI process;
  - (c) engage in any collusive REOI Response, anti-competitive conduct, or any other unlawful or unethical conduct with any other Respondent, or any other person in connection with the preparation of their REOI Response or the REOI process;
  - (d) attempt to solicit information from or influence improperly any officer, employee or agent of the Department, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the REOI process; or
  - (e) otherwise act in an unethical or improper manner, or contrary to any law.
- 24.2. The Department may exclude from consideration any REOI Response lodged by a Respondent that, in the Department's opinion, has engaged in any behaviour contrary to clause 24 in relation to the REOI process. This right is in addition to any other remedies the Department may have under law or in any agreement with a successful Respondent.

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## **25. Acknowledgement and Disclaimer**

- 25.1. The Respondent acknowledges and agrees that:
- (a) by lodging an REOI Response it accepts the conditions set out in this REOI;
  - (b) lodgement of their REOI Response on time and in accordance with these Details and Requirement is entirely their responsibility;
  - (c) the Department will not be liable for any loss, damage, costs or expenses incurred by Respondents or any other person if, for any reason, a REOI Response or any other material or communication relevant to this REOI is not received on time, is corrupted or altered or otherwise not received as sent, cannot be read or decrypted, or has its security or integrity compromised;

- (d) the Department does not warrant that unauthorised access to information and data transmitted via the internet will not occur (Respondents should take their own measures to protect information transmitted electronically);
- (e) under subsection 137.1 of the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence;
- (f) the Respondent is deemed to have:
  - i. examined this REOI, any documents referred to in it, and any other information made available in writing by the Department to Respondents for the purpose of this REOI;
  - ii. examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its REOI Response;
  - iii. satisfied itself as to the correctness and sufficiency of its REOI Response;
  - iv. obtained independent advice on the effect of all relevant legislation in relation to the Respondent's participation in this REOI; and
- (g) the Department may exclude any REOI Response which is made subject to any due diligence or other investigation to be performed after a REOI Response is submitted.

25.2. All information (whether written, oral or in any other form) which has been and may subsequently be made available to the Respondent is provided on the following conditions:

- (a) in deciding to lodge or not lodge an REOI Response, or in the interpretation of this REOI, the Respondent does not rely on:
  - i. any representation (whether oral or in writing) other than as expressed in this REOI; or
  - ii. other conduct of the Department, or any of its officers, employees, advisers or agents;
- (b) any information contained in this REOI or otherwise provided by the Department may not be accurate and/or may change;
- (c) where any such information relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, expressed or implied, is made by the Department, or any of its officers, employees, agents or advisers that the statements contained in this REOI or otherwise provided by the Department will be achieved;
- (d) this REOI is designed to reflect and summarise information concerning the Requirement only and is not a comprehensive description of it;
- (e) neither the delivery of this REOI nor any Deed of Agreement made subsequent to this REOI will imply that there has been no material change since the date of this REOI or since the date as at which any information contained in this REOI is stated to be applicable;

- (f) except as required by law and only to the extent so required, the Department and its respective officers, employees, agents and advisers will not be liable to any person or body for any loss, damage, cost or expense arising from any information or representations, actual or implied, contained in or omitted from this REOI or other information provided by the Department , or by reason of any reliance by any person or body on any such information or representation; and
- (g) the Respondent should seek its own professional advice as appropriate and should not construe this REOI or other information provided by the Department as investment, commercial, legal or tax advice.

25.3. The Respondent is responsible for all costs and expenses related to the preparation and lodgement of their REOI Response, any subsequent negotiations and any other action or response in relation to this REOI.

## **26. Department's Rights**

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- 26.1. Notwithstanding anything else contained in this REOI or limiting the Department's rights at law or otherwise, the Department may:
- (a) vary the Details and Requirement of this REOI, or the structure, requirements or processes referred to in this REOI at any time;
  - (b) vary the timing referred to in this REOI;
  - (c) determine at any stage or stages after the Closing Time, short list(s) of Respondents on any basis that the Department considers appropriate;
  - (d) cease, suspend or vary the REOI process, or any part of it, where this is in the public interest or where this is required by law;
  - (e) seek additional information from any Respondent or third party at any time (including but not limited to, from, or in respect of a Respondent's proposed subcontractors or agents);
  - (f) provide additional information to all Respondents at any time (and where the information is provided after the Closing Time, allow the submission of revised REOI Responses);
  - (g) seek and/or contact any contacts or referees other than those proposed by Respondents;
  - (h) seek amended REOI Response or call for new REOI Responses;
  - (i) add to, alter, delete or exclude any part of the Requirement;
  - (j) select and negotiate with one or more Respondent(s) (including but not limited to parallel negotiations) and/or discontinue any of those negotiations at any time for any reason;
  - (k) publish or disclose the names of successful Respondents or those who are shortlisted as a result of evaluations; and
  - (l) allow or not allow a related entity to take over an REOI Response in substitution for the original Respondent.

- 26.2. The Department will not be liable or in any way responsible for any loss, cost, expense, claim or damage incurred by a Respondent because the Department:
- (a) exercises or fails to exercise any of the Department's rights under this REOI; or
  - (b) fails to inform a Respondent of its exercise or non-exercise of those rights.
- 26.3. The Department may reject any REOI Response lodged by a Respondent that is engaging or has engaged in any conduct that contravenes any laws or contravenes the Details and Requirement as set out in this REOI.

## **27. Right to terminate**

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- 27.1. Without limiting the Department's rights under this REOI, at law or otherwise, the Department may, at its sole discretion, suspend or terminate this REOI process at any time, without the requirement to give prior notice if:
- (a) the Department does not receive any REOI Responses in response to this REOI;
  - (b) the Department does not receive any REOI Response in response to this REOI which meet the requirements outlined in the Statement of Requirement;
  - (c) the Department determines it is in the public interest to do so.

## **28. Applicable Law**

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- 28.1. The laws of the Australian Capital Territory apply to this REOI process.

## **29. Complaints**

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- 29.1. If Respondents wish to lodge a formal complaint regarding this REOI process, the complaint is to be directed in writing to the Contact Officer by email to [ELT.Empanelment@homeaffairs.gov.au](mailto:ELT.Empanelment@homeaffairs.gov.au).
- 29.2. A Respondent who makes a complaint is requested to clearly identify the issue of concern and to provide any supporting facts and evidence.
- 29.3. On the request of the Commonwealth, all Respondents are to cooperate with the Commonwealth in the resolution of any complaint regarding this REOI process.

## **30. Lobbying Code of Conduct**

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- 30.1. Respondents must not engage in, or procure or encourage others to engage in, activity which would result in a breach of the Lobbying Code of Conduct (the "Lobbying Code") or the Australian Public Service Commission (APSC) Circular 2008/4, Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government. The Lobbying Code requires that Government Representatives shall not knowingly be a party to a lobbying activity where the Lobbyist is not registered on the Prime Minister and Cabinet's Register of Lobbyists.

## **31. Department's Information**

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- 31.1. Respondents must not, and must ensure that their employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any:
- (a) confidential information concerning the affairs of the Department, the Commonwealth or a third party acquired or obtained from the Department; or

- (b) document, data or information provided by the Department in the course of the Respondent preparing or amending an REOI Response and which the Department indicates to Respondents is confidential or which Respondents know or ought reasonably to know is confidential.
- 31.2. The Department's information in the possession of the Respondent must be stored in accordance with the minimum standards for that type of information, as defined in the [Protective Security Policy Framework](#). By submitting a REOI Response, Respondents agree to grant the Department the right for it, or its agent, to inspect premises to ensure compliance with storage requirements.
- 31.3. The Department may require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to Respondents), and all copies of such information made by Respondents, be:
  - (a) returned to the Department - in which case Respondents will be required to promptly return all such information to the address identified by the Department; or
  - (b) destroyed by Respondents - in which case Respondents will be required to promptly destroy all such information and provide the Department with written certification that the information has been destroyed.
- 31.4. The Department may exclude from further consideration any REOI Response lodged by a Respondent who has engaged in any behaviour contrary to this clause 31.