



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 of Independent Film Production Consultants

REFERENCE NUMBER 0708-1626 DEWHA

PART A – APPLICATION INFORMATION

Date: August 2008

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SUMMARY OF REQUIREMENT

1. Overview of Requirement

- 1.1.1. The Department of the Environment, Water, Heritage and the Arts (DEWHA) delivers the Australian Government's environment and heritage legislation, policies and programmes. The department undertakes this work by looking for solutions that are efficient, equitable and feasible, based on:
- Understanding environmental problems using science;
 - Adopting economic, regulatory or administrative instruments that can be targeted at environmental problems;
 - Carrying out the Australian Government's environment and heritage policies and programmes in a way that supports the nation's social and economic interests; and
 - Cooperating across all levels of government, with industry, with international partners, and with the community.
- 1.1.2. More information on DEWHA can be found on the department's website: www.environment.gov.au.
- 1.1.3. This MUL is a part of the provision of independent film production consultants to assist the administering of the location and post, digital and visual effects production (PDV) offsets.
- 1.1.4. A full description of the Services required can be found at Attachment A – Statement of Requirement.
- 1.1.5. The MUL is likely to be operational for two years with an end date in 2010.

2. Background

- 2.1.1. The Department in cooperation with the Film Certification Advisory Board (FCAB) is responsible for the management of the Australian Screen Production Incentive, which is the Australian Government's incentive for film, television and other screen production in Australia.
- 2.1.2. The incentive is available in three streams for applicants who meet the Location Offset Eligibility Criteria (Clause 2.1.4 – 2.1.8), and the PDV Offset Eligibility Criteria (Clause 2.1.9 – 2.1.10). The three streams include:
- a. the Producer Offset, a 40 per cent rebate on the qualifying spend of qualifying Australian films and a 20 per cent rebate for other qualifying media;

- b. the Location Offset, a 15 per cent rebate on Australian spend of large-budget productions that do not satisfy the significant Australian content test for the Producer Offset; and
 - c. the PDV Offset, a 15 per cent rebate on the qualifying PDV expenditure of large budget productions, including those not necessarily shot in Australia.
- 2.1.3. The services required under this MUL arrangement refer only to the assistance in the administration of applications for the Location Offset (Clause 2.1.2 b) and the PDV Offset (Clause 2.1.2 c).
- 2.1.4. Further information regarding the incentive can be found at: http://www.arts.gov.au/film/australian_screen_production_incentive.
- 2.1.5. The FCAB provides the Minister for the Environment, Heritage and the Arts with a written report on its assessment of the application against the requirements of Division 376 of the *Income Tax Assessment Act 1997*.
- 2.1.6. The FCAB has the capacity under the Location Offset Rules 2008 and the PDV Offset Rules 2008 to seek the advice from a Service Provider that is experienced in independent film production such as a line producer or production manager on the audited expenditure statements provided as part of the application process.
- 2.1.7. The Service Provider's assessment assists the FCAB to determine whether an application satisfies the requirements for the issue of a certificate of eligibility for a Location Offset or PDV offset under Division 376 of the *Income Tax Assessment Act 1997*.
- 2.1.8. The Department assists with the facilitation of the incentive by liaising between the Service Provider and the FCAB and providing any administrative assistance that may be required.
- 2.1.9. The Department aims to create a MUL of Service Provider's that are experienced in independent film production to provide advice and assist with the assessment of applications against the Eligibility Criteria.
- 2.1.10. The Department anticipates that between six (6) and eight (8) film projects will be seeking certification for the offsets per year, and that each may take between five (5) to ten (10) days of work, depending on the scale of the application.
- 2.1.11. The size and duration of each assessment will be detailed in the scope of work sent to one or more of the successful applicants.

3. Information for Applicants

- 3.1.1. The MUL process aims to identify Service Provider's who can provide the Services.
- 3.1.2. Once the MUL is established DEWHA may release tender documents for specific scopes of work to those Applicants on the MUL. A more detailed description of the Services required is at Attachment A – Statement of Requirement.
- 3.1.3. DEWHA may tender a number of scopes of work at the same time.
- 3.1.4. DEWHA may approach a select number of Applicants on the MUL 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.
- 3.1.5. DEWHA may conduct financial checks on the organisation.
- 3.1.6. Applicants are required to read the Multi-Use List Rules (Attachment B) and Draft Contract (Attachment C) **before** completing and submitting their Application (Part B).

4. Applications

- 4.1.1. Applicants should respond to this MUL by completing Part B and providing a response to each of the areas identified.
- 4.1.2. Applications should be marked **Application for Multi-Use List of Independent Film Producers Consultants 0708-1626** and forwarded to DEWHA for receipt.
- 4.1.3. **Applications are to be prepared electronically and delivered to:**

Email address for delivery of application:

greg.jericho@environment.gov.au.

5. DEWHA Contacts

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

*Greg Jericho
Assistant Manager, Location and PDV Offset
Department of the Environment, Water, Heritage and the Arts
GPO Box 787
CANBERRA ACT 2603
Tel: +61 (0)2 6275 9609*



ATTACHMENT A STATEMENT OF REQUIREMENT

1. Essential Requirements:

- 1.1.1. Applicants must have experience within the last five (5) years of film production management working with the budgets of large screen productions (a budget in excess of \$10 million), in roles including line producer, producer, production manager, and/or production consultant.
- 1.1.2. Applicants must have the capacity to complete the assessment report in a five (5) to ten (10) day time frame.

2. Requirements

- 2.1.1. The Department requires Service Providers that are suitably experienced and skilled in independent film production (such as a line producer or production manager) to assess applications against the Location Offset and/or PDV Offset Eligibility Criteria.
- 2.1.2. Applicants should possess a demonstrated understanding of relevant legislation, in particular, Division 376 of the *Income Tax Assessment Act 1997*.
- 2.1.3. The Eligibility Criteria for the Location Offset and PDV Offset are detailed below.

Location Offset Eligibility Criteria

- 2.1.4. The Service Provider will be required to assess applications against the following key Eligibility Criteria for the Location Offset:
 - a. a production which commences principal photography on or after 8 May 2007; or
 - b. an animated production which commences production of the visual image on or after 8 May 2007.
- 2.1.5. If the project is a television series, there are maximum timeframes for completion:
 - a. Where a television series is predominantly an animation, it must be made within a period of 36 months.
- 2.1.6. Where a television series is not predominantly an animation, principal photography for the series must be completed within 12 months.

- 2.1.7. The key criterion to access the Location Offset is a minimum level of Qualifying Australian Production Expenditure (QAPE) of A\$15 million on the production of the film. Where QAPE is at least A\$15 million and less than A\$50 million, this expenditure must be at least 70 per cent of the film's total (worldwide) production expenditure. Where QAPE is A\$50 million or more, it will qualify for the offset regardless, of the percentage ratio of QAPE to the film's total production expenditure.
- 2.1.8. If the film is a television series, QAPE must also average at least A\$1 million per hour of the series.

PDV Offset Eligibility Criteria

- 2.1.9. The Service Provider will be required to assess applications against the following key Eligibility Criteria for the PDV Offset:
- 2.1.10. The minimum level of PDV production work in Australia of A\$5 million on the production of the film, and that PDV work in Australia must have commenced on or after 1 July 2007.

Service Requirements

- 2.1.11. The Service Provider will be required to:
- a. ensure that applications to the Location Offset and PDV Offsets are subject to the appropriate level of scrutiny, particularly in terms of production budgets;
 - b. examine application for a Location Offset or PDV Offset against the key Eligibility Criteria for the offset particularly in terms of production budgets;
 - c. advise the FCAB of the relative validity of an applicant's budgetary information;
 - d. provide an independent overall assessment of the audited expenditure statements for the information of the FCAB, including clearly identified advice in a detailed assessment report, on:
 - i. whether specific items claimed in the applicant's audited statements are reasonably attributable to production expenditure and QAPE, as applicable;

- ii. whether costs charged for specific items are made on an arm's length basis; and
- iii. the extent to which costs between subsidiary companies and parent/associate companies are commercially reasonable.

Format

- 2.1.11. The Service Provider will be required to provide one hard copy of the assessment report to the Department, together with one electronic copy which is CD-R compatible with Microsoft Word for Windows 2003 (or equivalent) format.

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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. **Contract** means the Draft Contract for the provision of the Services annexed to this MUL (Attachment C).
 - e. **CPG** means *Commonwealth Procurement Guidelines*.
 - f. **DEWHA** means the Department of the Environment and Water Resources;
 - g. **Essential Requirements** are those requirements that DEWHA deems as essential in the provision of the Services.
 - h. **MUL** means this Application for the provision of independent film production consultants to assist the administering of the location and post, digital and visual effects production (PDV) offsets Services Multi-Use List including any schedules and Attachments.
 - i. **Project Officer** means the DEWHA Contact Officer detailed at clause 5 of the MUL.
- 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.

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 Project Officer.

1.3.3. Applicants should direct all communications relating to this MUL to the Project Officer.

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.

1.5. Application Lodgement

1.5.1. Applications must be lodged in accordance with clause 4 of the Summary of Requirement.

1.5.2. The MUL remains open for lodgement of applications until DEWHA determines there is no longer a need for the Services. At this time the department will advise all members of the MUL and any current applicants for membership of the list that the MUL is to be terminated.

1.6. Errors & Alterations

1.6.1. Applicants should immediately notify the Project Officer in writing at the address detailed in clause 5 of the MUL if an Applicant reasonably believes there is discrepancy, error, ambiguity, inconsistency or omission in this MUL.

1.7. Privacy Legislation

1.7.1. The Draft Contract will require the successful Applicant to comply with the Information Privacy Principles contained in the Privacy Act 1988 (Cth) and its amendments, in relation to personal information handled by the Applicant.

1.8. Disclosure of Information

1.8.1. Subject to 1.8.2, DEWHA will keep all Applications submitted confidential.

- 1.8.2. 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.

1.9. Freedom of Information

- 1.9.1. 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.

1.10. Compliance with Commonwealth Policies and Legislation

- 1.10.1. 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.
- 1.10.2. 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
- 1.10.3. 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.

- 1.10.4. 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.

1.11. GST

- 1.11.1. 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.

1.12. Australian Business Number

- 1.12.1. Your ABN should be stated in Part B.

1.13. Applicable Law

- 1.13.1. 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.

1.14. Ownership of Application

- 1.14.1. 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 1.8).

1.15. Financial Viability

- 1.15.1. Applicants should indicate in Part B, Clause 5 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.

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

1.16. Costs

1.16.1. 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.

1.17. Right to Terminate

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

1.18. Right to Request Further Information

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

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

1.18.3. 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.

1.19. DEWHA Right to Negotiate

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

1.19.2. 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.

1.20. Addenda

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

1.21. No Contract

1.21.1. 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.

1.22. Removal from the MUL

1.22.1. 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, Clause 1.1.1).

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)