

# **INVITATION TO TENDER – OPPORTUNITY TO SUPPLY DIGITAL COPIES OF COURT JUDGMENTS TO THE NATIONAL ARCHIVES (MULTIPLE CONTRACTS AVAILABLE)**

**CLOSING DATE FOR RESPONSES – MIDDAY, 21 JANUARY 2022**

## **1. Objective**

- 1.1 The National Archives (TNA) is seeking to secure for the nation the historical public record of the decisions of the senior courts and upper tribunals by acquiring, through purchase or donation, digital copies of Court Judgments and Tribunal Decisions. These will be preserved for posterity and made available for public access, including, where it is appropriate to do so, by publication as part of a new service on The National Archives website.
- 1.2 The scope of this tender is to acquire digital copies of Court Judgments and Tribunal Decisions, with a particular focus on published judgments. These might be born digital copies of handed down judgments (for example those which have been sent to law reporters or legal publishers by the clerk or judge), digital transcriptions of extempore judgments, or digitised images of the paper records of judgments (including from publications).
- 1.3 TNA wishes to procure multiple, overlapping sets of judgements and tribunal decisions for corroboration purposes. As such, TNA envisages awarding multiple contracts as a result of this procurement exercise, the number of contracts awarded being dependent on the volume and quality of submissions received and on affordability within the total allocated budget of circa £500,000.

## **2. Background**

- 2.1 In June 2021, The Ministry of Justice made a policy announcement that The National Archives is to store, preserve and publish Court Judgments and Tribunal Decisions for England and Wales.
- 2.2 Court records are vital public records, within the scope of the Public Records Act 1958. We are seeking to acquire digital copies of Court Judgments and Tribunal Decisions as part of the public record of the courts. Since the founding of the Public Record Office in 1838, court records have been a large and central part of The National Archives' collection. From a record keeping perspective, judgments are the most important records of the courts. The judgment records the decision of the court and the reasons for the decision. As well as being public records, in

our common law system, based on precedent, court judgments are a primary source of law.

- 2.3 The publication of judgments and decisions has significantly impacted their value as public records, particularly in the web era. It does not matter who has published the documents, the value of the judgments as records has grown through wider dissemination and use. In addition to their evidential and legal value, judgments also have considerable social and historical value. The records are likely to retain this historical value even once the legal value has passed.
- 2.4 We are acting in relation to our powers under the Public Records Act 1958. In particular, we are using the power given to the Keeper of Public Records in Section 2(4)(h) of the Act to “acquire records and accept gifts and loans”. We will archive the judgments we receive in accordance with the Act and in the public interest. This provides us with the legal basis for preserving and providing access to the records, including for processing the personally identifiable information in the documents.
- 2.5 Where it is appropriate, we intend to publish the judgments, for access free of charge, on The National Archives website. We will strictly adhere to any restriction or condition on publication imposed by the court and we have the means to provide alternative forms of public access from our Kew site.
- 2.6 Where judgments are published on the website by The National Archives and the Crown holds the rights, we will make the documents available for re-use. However, we cannot license any third-party rights in the documents and judgments or decisions containing third-party rights will not be licensed for re-use.

### **3. The Requirement**

#### *Court Judgments and Tribunal Decisions*

- 3.1 The National Archives is looking to acquire by 31 March 2022, by purchase or donation, multiple sets of judgments and decisions in order to make the corpus as complete as possible and to corroborate the records by using different sources. As Public Records belonging to the Crown, judgments have legal, evidential, social, and historic value.
- 3.2 We are interested in digital copies of Court Judgments and Tribunal Decisions for both historical and recent cases, from medieval times through to the present day.

We are particularly interested in the published judgments of the Supreme Court, House of Lords, Court of Appeal, High Court of Justice, Family Court and their predecessor courts. Also in scope are the published decisions of the Upper Tribunals. Of most importance are judgments or decisions from legally significant cases which have set or affirmed precedents in the law.

3.3 We are also keen to acquire digital copies of decisions of the Judicial Committee of the Privy Council, to complement the paper records held by The National Archives.

3.4 We would welcome digital copies of House of Lords judgments. We are seeking permission from suppliers that we provide digital copies of any House of Lords judgments that we acquire through this procurement to the Parliamentary Archives, who are preserving the original paper records for the nation.

#### *Versions and formats*

3.5 We are interested in obtaining judgments and decisions in any one or all of the following:

- Original versions (as supplied);
- Published versions (with formatting changes or redactions);
- Born digital;
- Digital Surrogates (e.g. images or scans of judgments or paper transcripts).

3.6 We prefer to receive judgments in XML or the Microsoft Word (.docx) format, but we will also accept PDF, plain text, HTML or digitised images.

#### *Context and provenance*

3.7 We would welcome, but we do not require, associated metadata, including the court or tribunal, citation, case reference, date, parties, panel and representatives.

3.8 We would like to know as much as possible about the context and provenance of the judgments. This will augment the publishing history of the material. We would like to know:

- how and when you received or acquired the judgment;
- if there have been any adaptations you made to the judgment (e.g. for publication);

- any information with regard to anonymisation orders and/or publishing restrictions.

#### Licensing and third-party rights

- 3.9 The aim is to enable appropriate re-use of Court Judgments and Tribunal Decisions, excluding where intellectual property rights within the material belong to third parties.
- 3.10 This opportunity involves the supply of the digital copies of judgments and decisions and where applicable a perpetual licence in relation to any rights the supplier might have in the material supplied, to enable preservation and public access, including, where appropriate, through publication, by The National Archives.
- 3.11 Given judgments are public records subject to Crown copyright, suppliers will need to explain what rights they have acquired in the material they supply. We intend to fully attribute the material made available to the public. Accordingly, it will be important for suppliers to detail the provenance of the digital copies they make available to us.

#### Receiving the records

- 3.12 We can receive digital copies of records in the way that is most convenient and cost effective for you, as a supplier. The options include:
- Secure FTP
  - Secure download site (files on S3)
  - Secure receipt of a physical hard disk
  - Website archiving (e.g. a list of URLs).

## **4. ADDITIONAL INFORMATION FOR POTENTIAL SUPPLIERS**

#### Public Access and Re-use

- 4.1 We will provide *appropriate* public access, to judgments. This will include publishing those judgments which have been approved for publication by the courts on our website.
- 4.2 Where published, and in the case where there is no third-party IP, we intend to licence the judgments for re-use by third parties. The conditions of the license will

be specifically designed to manage the issues with re-using Court Judgments and Tribunal Decisions.

4.3 We are working with the judiciary to develop processes for take-down of Court Judgments and Tribunal Decisions, including relating to historical cases. We have a low-risk appetite for legal compliance (risk averse) and strong internal governance around access, closure or re-closure, and publishing decisions (including digitisation and take-down).

#### Data protection or restrictions

4.4 We will naturally respect and adhere to the instructions of the courts and tribunals (for example regarding anonymisation orders and publishing restrictions).

4.5 We are subject to:

- The Freedom of Information Act 2000
- Data Protection Act 2018 and UK GDPR
- We have a statutory right to process personal data in the records we hold under the PRA - “*archiving purposes in the public interest*” means we are exempted from, inter alia, erasure requirements under UK GDPR (Art. 17).
- Re-use of Public Sector Information Regulations 2015.

#### Our technical approach to publishing

4.6 We will archive the Court Judgments and Tribunal Decisions, adding descriptions to our Catalogue, and accession the records to our digital preservation infrastructure, where they will be permanently preserved.

4.7 We will publish the Court Judgments and Tribunal Decisions on a new website, where users will be able to access the information freely.

4.8 We have 48,937 judgments from BAILII, covering decisions from April 2003 to June 2021. Of these, 40,250 are in RTF (transformed to .docx), and 8,687 are in PDF.

4.9 We are transforming all the Court Judgments into the Legal Document Mark-up language for publication and data supply. This a widely adopted international open standard for legal and legislative documents, that uses XML. The data will be held in XML and published using HTML5.

4.10 We have the capability to mark-up and extract certain types of metadata (i.e. the Court, parties; neutral citation). This metadata will allow users to search for Court Judgments on our website.

- 4.11 The new publishing service will keep a publishing history of each document. This will enable re-users to keep up to date with changes to the texts.
- 4.12 There will be an API to make the XML for judgments available in an open standards-based, machine readable format for appropriate re-use, subject to the terms of use and licensing conditions.

## **5. HOW TO RESPOND**

5.1 Please submit your tender response to [procurement@nationalarchives.gov.uk](mailto:procurement@nationalarchives.gov.uk) by **Midday, 21 January 2022**. Your tender response must comprise the following:

5.2 **A comprehensive description of your proposed service offering.** It is for potential suppliers to determine what format this description should take so as to describe their offering in a clear, comprehensive and unambiguous fashion. However, please ensure that within this description you specify as a minimum:

- Write a brief narrative summarising your proposal;
- Include a description of the set of judgments and decisions that you can offer; broken down by type of court; dates of coverage; versions and formats (see *section 3.1-3.6*). Provide some examples (attachments), if possible.
- Tell us about the provenance of the judgments (see *section 3.7 and 3.8*); and if you can supply any associated metadata.
- Tell us if there are any known restrictions, or if there have been any adaptations for publication (see *section 3.8*).
- If you have acquired intellectual property rights in the documents, confirm you are able to offer a perpetual license to The National Archives. Highlight if there are any third-party rights in the material (see *section 3.9-3.11*).
- Describe how you will send us the digital copies of records (see *section 3.12*). Confirm that this can be completed by 31 March 2022.

**5.3 Provide us with your proposed contract price.**

- Include the cost of initial compilation, selection, preparation and supply.

**5.4 Describe any sub-contracting arrangements.**

- Describe if there are sub-contracting arrangements in place;

**5.5 Note any assumptions you have made in preparing your tender response.**

**5.6 Provide your proposed terms of business.**

## 6. EVALUATION CRITERIA

6.1 Tender responses will be evaluated as follows:

Category	Maximum Available Unweighted Score	Weighting	Maximum Available Weighted Score
<b>Quality</b> (Response to Sections 5.1, 5.2, 5.4, 5.5 and 5.6 of this ITT)	10	7	70
<b>Price</b> (Response to Section 5.3 of this ITT)	10	3	30
<b>Totals</b>			<b>100</b>

6.2 Criteria used to evaluate the **Quality** category will be as follows:

<b>10 Points</b>	<b>Outstanding:</b> <ul style="list-style-type: none"><li>• Potential Supplier has provided a response that addresses all parts of the requirement</li><li>• Potential Supplier has provided evidence to support all elements of their response</li><li>• The evidence supplied is convincing and highly relevant to the requirement</li><li>• Potential Supplier's response is clear and easy to understand</li><li>• Where relevant, Potential Supplier has demonstrated a high level of capability to deliver new and innovative service approaches</li></ul>
<b>7 Points</b>	<b>Good:</b> <ul style="list-style-type: none"><li>• Potential Supplier has provided a response that addresses all parts of the requirement</li><li>• Potential Supplier has provided evidence to support most elements of their response</li><li>• The evidence supplied is good and relevant to the requirement</li><li>• Potential Supplier's response is clear and easy to understand</li><li>• Where relevant, Potential Supplier has demonstrated some level of capability to deliver new and innovative service approaches</li></ul>

<b>4 Points</b>	<p><b>Average:</b></p> <ul style="list-style-type: none"> <li>• Potential Supplier has provided a response that addresses some parts of the requirement</li> <li>• Potential Supplier has provided evidence to support some elements of their response, but not all</li> <li>• The evidence supplied has some limited relevance to the requirement</li> <li>• Potential Supplier's response is not always clear and easy to understand</li> <li>• Where relevant, Potential Supplier has demonstrated limited capability to deliver new and innovative service approaches</li> </ul>
<b>1 Point</b>	<p><b>Poor:</b></p> <ul style="list-style-type: none"> <li>• Potential Supplier has provided a response that fails to address most parts of the requirement</li> <li>• Potential Supplier has provided little or no evidence to support most elements of their response</li> <li>• The evidence supplied is very weak and has very limited relevance to the requirement</li> <li>• Potential Supplier's response is not always clear and easy to understand</li> <li>• Where relevant, Potential Supplier has demonstrated little or no capability to deliver new and innovative service approaches</li> </ul>

6.3 Please note that TNA envisages awarding multiple contracts as a result of this procurement exercise, the number of contracts awarded being dependent on the volume and quality of submissions received and on affordability within the total allocated budget of circa £500,000. In order to be considered for contract award, submissions will need to achieve a minimum unweighted score of 7 in the Quality category.

#### 6.4 PROCUREMENT TIMETABLE

<b>Publication of ITT</b>	22 <sup>nd</sup> December, 2021
<b>Deadline for Submission of Clarification Questions to <a href="mailto:procurement@nationalarchives.gov.uk">procurement@nationalarchives.gov.uk</a></b>	Midday, January 7 <sup>th</sup> , 2022
<b>TNA to respond to Clarification Questions Received</b>	January 14 <sup>th</sup> , 2022



<b>Deadline for Submission of Tender Responses to</b> <a href="mailto:procurement@nationalarchives.gov.uk">procurement@nationalarchives.gov.uk</a>	Midday, January 21 <sup>st</sup> , 2022
<b>Contract Award Decision</b>	By February 4 <sup>th</sup> , 2022
<b>End of Standstill Period and Contract Award Confirmation</b>	February 14 <sup>th</sup> , 2022