

OFFICIAL



**Australian Government**  
**Department of Infrastructure, Transport,**  
**Regional Development, Communications and the Arts**

# Briefing

File Reference: APY Art Centre Collective SA Government-led Review 2023  
 Contact: s22(1)(a)(ii)

## Procurement of a Visual Arts report: APY Art Centre Collective Review – payment

We recommend that you:

<p>1. <b>Note</b> on record Minister Burke’s verbal commitment on or about 15 May 2023 to the Australian Government providing financial assistance for the 2023 South Australian Government-led Review of the APY Art Centre Collective.</p>	<p><u>Noted</u>/ Please discuss</p>
<p>2. <b>Agree</b>, as the relevant departmental delegate, that the payment to the South Australian Government for the review of the APY Art Centre Collective is a <b>procurement</b>, for the reasons outlined below.</p>	<p><u>Agreed</u>/Not agreed Please discuss</p>
<p>3. <b>Approve</b>, as the relevant departmental delegate, entering into an arrangement under section 23(1) with the South Australian Government (ABN 52 786 403 404) and provide the commitment of relevant money under section 23(3) of the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act) valued at \$333,374.80 (inclusive of GST).</p>	<p><u>Approved</u>/ Not approved Please discuss</p>
<p>4. <b>Approve</b> the attached Procurement Approval Request (<b>Attachment A</b>), and sign the Approval to Approach the Market at page 10.</p>	<p><u>Approved</u>/ Not approved Please discuss</p>

.....  
 Dr Stephen Arnott  
 Deputy Secretary  
 Creative Economy and the Arts

13 June, 2024

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## Anangu Pitjantjatjara Yankunytjatjara (APY) Art Centre Collective (the Collective) – Review background

In April 2023, the media published allegations regarding practices at the Collective, including interference with artists' creative control and allegations of coercive control of finances and bullying. This led to a meeting between Arts Ministers from the Australian Government, South Australia and the Northern Territory on 15 May 2023, in which they agreed to co-operate on a probe of the allegations. The South Australian Government agreed to lead the formal review as South Australia is the Collective's principal funder.

The Review was completed in December 2023 and included the following activities:

- the procurement of the three reviewers (two First Nations expert members and one barrister)
- additional expertise as required (including Visual Arts expertise and expertise with remote and very remote First Nations Communities).
- travel for the reviewers, including to remote locations in the APY lands
- specialist translation services.

## Funding

We understand Minister Burke requested on or about 15 May 2023, that the Australian Government provide financial assistance for the South Australian Government-led review of the Collective. We therefore seek your written record (recommendation number 1 above) in order to fulfil the requirements of the PGPA Act and Department of Finance RMG 400 on Commitment of relevant money.

South Australia has sought funding from the Australian Government of \$333,374.80 (inclusive of GST), which totals half the amount of the Review. Minister Burke did not commit to any specific contribution amount or to any specific type of payment, and he did not outline any requirements the Australian Government would have, so to determine the best means of payment, the Visual Art and Design (VAD) Section in the Creative Industries Branch consulted the following areas:

- Department's Procurement team
- Department's Enterprise Grant Management Office (EGMO)
- Divisional legal advisor, s22(1)(a)(ii)
- Divisional Finance Business Partner, s22(1)(a)(ii)
- External Budgets section

Australian Government co-funding was reported in a range of public media, taken from a statement released by the South Australian Arts Minister. Australian Government financial support was also noted by Minister Burke with his state counterparts in the 9 June 2023 Cultural Ministers Meeting (MS23-003988, Attachment C, discussion around Agenda item 4.1).

While the payment has characteristics of both a procurement-type arrangement and a grant-type arrangement, **on balance, and especially given the Review is now completed, we recommend you determine the payment to be a procurement.**

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. We have worked with the department's Procurement team on the documentation required for the procurement.

## Why is this a procurement?

The Department of Finance's [RMG 411](#) provides guidance on how to distinguish between procurements, grants and other financial arrangements.

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Procurement of a Visual Arts report: APY Art Centre Collective Review – payment

RMG 411 paragraph two provides that in determining which financial arrangement applies officials should focus on the substantive **purpose** and **characteristics** of the arrangement and document the reasons for deciding to use a particular arrangement. They must then apply the relevant framework (i.e. policy, processes and legal requirements) to the financial arrangement once chosen.

A procurement is the process of acquiring goods and services. Relevant to this case, RMG 411 notes a financial arrangement is more likely to be a procurement if:

- The Government is acquiring goods or services for its own use, or acquisition of goods and services on behalf of another entity or a third party.
- Goods or services can be quantified, described or measured, for example: a review and report according to the process required by the Commonwealth.

We consider that the payment meets the requirements for a procurement, with the Government acquiring a good or service for its own use.

In providing funding to the South Australian Government for its Review (the Review) of the APY Art Centre Collective, the Government is acquiring a good or service for its own use:

- the Review is providing a service to the Government, namely due diligence relating to grants under the Indigenous Visual Arts Industry Support (IVAIS) program. The APY Art Centre Collective was not recommended for funding under IVAIS in 2023-24 because of the risks identified and the seriousness of the concerns that had been raised in the public domain. The Review is contributing to an assessment of risk for the current 2024-25 funding round of IVAIS and will contribute to an upcoming review of the IVAIS Grant Guidelines.

The Department will also require the South Australian Government to provide a short report:

- Summarising the background and objectives of the review,
- Summarising the review process (information including the appointment of the Review panel and their background, the Terms of reference, etc),
- Outlining high-level findings that are able to be shared, and
- Providing lessons learnt from the Review, including:
  - o any changes that South Australia is considering making to its policies, programs, and/or practices as a result of the Review, that may assist the Australian Government in improving its ongoing management and continual improvement of the Indigenous Visual Arts and Industry Support (IVAIS) program.
  - o any other lessons learnt that may be relevant to the management of the IVAIS program or Australian Government First Nations Visual Arts policy.

\*Given the sensitivities involved in the Review and the need to ensure that confidentiality and privacy are maintained, this report will necessarily be high-level and general in nature.

As per the *Commonwealth Procurement Rules and Accountable Authority Instructions – Procurement*, the procurement will be reported publicly on Austender. The likely title will be “Visual Arts Report”.

s42 [REDACTED] the procurement is for an ordinary and well-recognised function of government.

s22(1)(a)(ii) [REDACTED] (Divisional Finance Partner) has confirmed that departmental funding will be utilised and is allocated against the Creative Industries Branch Cost Centre.

## Next steps

Under the current AAs and Delegations, the following commitment and arrangement approvals apply.

**Commitment approval (i.e. committing funding):** SES Band 3 can make commitment up to the level of the funding for the Department.

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- We seek your commitment to funding in **Attachment A**.
- **Attachment C** contains a delegate checklist, should you wish to cross-check that we have considered all relevant requirements.

**Arrangement approval (i.e. approving expenditure):** SES Band 1 can make an expenditure approval to the limit of the Commitment approval provided.

- We will subsequently seek SES Band 1 approvals to enter into the agreement with South Australia and complete the procurement.

**Attachments**

**Attachment A:** Procurement Approval Request

**Attachment B:** Email from Procurement Team

**Attachment C:** Delegate's procurement checklist

12 June 2024

## ATTACHMENT A: PROCUREMENT APPROVAL REQUEST

<b>Date:</b>	12 June 2024	<b>Ref No:</b>	0010029412
<b>Procurement Title:</b>	Visual Arts Report		

### Purpose:

The Commonwealth, as represented by the Department of Infrastructure, Transport, Regional Development, Communications and Arts (the Department), is seeking to undertake an Approach to Market (ATM) process to procure a summary of the South Australian Government's 2023 Review of the APY Art Centre Collective, to support the Australian Government's First Nations Visual Arts policy work, including its ongoing management and continual improvement of the Indigenous Visual Arts Industry Support (IVAIS) program.

**Procurement Outcome:** [Step 1 Identify the Requirement](#). *Why do we need the goods and/or services? Include a detailed description of the goods and/or services to be provided as a result of the procurement.*

In providing funding to the South Australian Government for its Review (the Review) of the APY Art Centre Collective, the Government is acquiring a good or service for its own use:

- the Review is providing a service to the Government, namely supporting due diligence relating to grants under the Indigenous Visual Arts Industry Support (IVAIS) program. The APY Art Centre Collective was not recommended for funding under IVAIS in 2023-24 because of the risks identified and the seriousness of the concerns that had been raised in the public domain. The Review is contributing to an assessment of risk for the current 2024-25 funding round of IVAIS and will contribute to an upcoming review of the IVAIS Grant Guidelines.

The Department will require the South Australian Government to provide a report:

- Summarising the background and objectives of the review,
- Summarising the review process (information including the appointment of the Review panel and their background, the Terms of reference, etc),
- Outlining high-level findings that are able to be shared, and
- Providing lessons learnt from the Review, such as:
  - o any changes that South Australia has made or is considering making to its policies, programs, and/or practices as a result of the Review, that may assist the Australian Government in improving its ongoing management and continual improvement of the Indigenous Visual Arts and Industry Support (IVAIS) program.
  - o any other lessons learnt that may be relevant to the management of the IVAIS program or Australian Government First Nations Visual Arts policy.

The Minister for the Arts, Mr Tony Burke committed to supporting the South Australian Government's 2023 Review of the APY Art Centre Collective. This procurement will fulfil the Minister's commitment, while also achieving a benefit to the Department.

Is this procurement a consultancy?  Yes  
 No

Note: the Procurement team confirmed the procurement is not a consultancy as the recipient is the South Australian Government.

Is this a [High Risk, High Value](#) procurement?  Yes  
 No

**Market Research: [Step 1 Identify the Requirement](#)**

Market research assists the officer in understanding how a specific market works, competition within the market, recent developments, supply issues and innovation opportunities, and identifying the potential suppliers and being aware of their capabilities. A thorough understanding of the market will result in a better procurement outcome. In this section please state the market research that was conducted for the procurement, including the sources of this research.

The Creative Industries Branch considers a limited tender procurement best fits our requirements.

- a) The South Australian Government’s Review of the APY Art Centre Collective has provided due diligence to support our First Nations Visual Arts policy work and funding, and
- b) the Visual Arts and Design Section will benefit from a summary of the review and any recommendations or lessons learnt in light of the Review, to inform our policy work around First Nations Visual Arts, including potential improvements to the Indigenous Visual Arts Industry Support (IVAIS) Program.

Given the nature of the Review, the South Australian Government is the only possible supplier.

In researching this requirement, the Creative Industries Branch considered Minister Burke’s commitment to jointly funding the South Australian Government-led Review of the APY Art Centre Collective.

The Department’s Procurement team has confirmed this procurement fits the requirements of a limited tender.

**Existing Arrangements: [Step 2 Selecting a Market Approach](#)**

Officers should consider whether there are any existing arrangements in place for the specified goods and/or services. Used in appropriate situations, existing arrangements can create greater efficiency in terms of cost and time savings.

Are there existing arrangements in place with a supplier?  Yes  No

If yes, what are those arrangements.

**Funding Appropriation: [Step 2 Selecting a Market Approach](#)**

The estimated value of the goods and/or services being procured should include:

- the maximum anticipated value of a contract, including all options, extensions, renewals or other mechanisms
- any taxes or charges (including GST)

**Appropriation Available** Pre-tender estimate value is \$303,068 GST exclusive for 2023-24; (do you have budget?) \$333,374.80 GST inclusive.

There is available funding for this engagement and, if approved, the funding will be sourced from:

**Creative Industries Branch**  
**Cost Centre 32021**

Has the funding availability & cost centre been confirmed?  Yes  No s22(1)(a)(ii)

The estimated expenditure for the initial contract term is \$333,374.80 GST inclusive. The proposed contract includes the options for a single extension at the discretion of the delegate.

**Procurement Approach: [Step 2 Selecting a Market Approach](#)**

State the procurement method used and the reason for using this method, including:

- if limited tender, state the CPR exemption OR condition (only one option, not both)
- if panel arrangement, include the Panel Standing Offer Number (SON) and/or panel title (note: expired panels cannot be used)

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**Methodology**

Open tender  
 Limited tender      Exemption 2. Procuring from another NCE, or a state, territory or local government  
 Mandatory Panel  
 Other Panel

**Explanation of selected Methodology**

A Limited Tender involves approaching one or more potential suppliers to make submissions when the process does not meet the rules for open tender. A limited tender can only be undertaken where the procurement meets specific exemptions (CPRs Appendix A) or specific conditions (CPRs cl. 10.3).

This procurement falls under Exemption 2 in Appendix A of the CPRs: the *procurement of goods and services from another Commonwealth entity, or a state, territory, or local government entity.*

Corporate Procurement has been consulted to ensure the methodology is consistent with the CPRs.

**Suppliers Proposed**

<b>Supplier Name</b>	South Australian Government
<b>Reason for Approaching</b>	The South Australian Government is the only entity able to provide the services and report. It commissioned the 2023 Review of the APY Art Centre Collective, and has the expertise, background and information required.

**Applicable Procurement Policies:** [Procurement Connected Policies/Legislation](#) *Considering the estimated procurement value, tick the applicable procurement policies (noting these will then need to be included in your ATM documents)*

- |   |  |
|---|--|
| <input type="checkbox"/> Indigenous Procurement Policy  | <input type="checkbox"/> Modern Slavery                    |
| <input type="checkbox"/> Workplace Gender Equality      | <input type="checkbox"/> Building Code 2016                |
| <input type="checkbox"/> Payment Times Connected Policy | <input type="checkbox"/> Black Economy                     |
| <input type="checkbox"/> Sustainable Procurement        | <input type="checkbox"/> Australian Industry Participation |

*Note: The Procurement Team has stated that, as a state government, South Australia would be bound to consider procurement connected policies in its procurements. Unless you specifically wish we do so, we are not required to include the approach to market documentation.*

**Value for Money Assessment (why should this procurement be undertaken)**

*Outline why this procurement should be conducted, what other options we have considered (ie. undertaking the works in-house) and how this procurement represents value for money, in accordance with the Commonwealth Procurement Rules.*

*Information in this section should consider:*

- [Public Governance, Performance and Accountability Act 2013](#) (PGPA Act)
- [Commonwealth Procurement Rules](#) (specifically clauses 4.1 to 4.6 of the CPRs)

This procurement represents value for money by realising Minister Burke’s commitment to supporting the South Australian Government-led Review into the APY Art Centre Collective, including to jointly fund the Review, while also allowing the department to receive information that will support our current and future policy and program work.

The Review and its findings will help us mitigate risks and therefore assist us to improve the IVAIS program and support its outcomes, which are:

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- to support a professional, viable and ethical Indigenous visual arts industry that features strong participation and provides economic opportunities for Aboriginal and Torres Strait Islander people; and
- the continued production, exhibition, critique, purchase and collection of Indigenous visual art.

The procurement will enable us to receive information that can assist us to consider changes to the IVAIS Grant Guidelines, complying with the requirements of the Commonwealth Grant Rules and Guidelines 2017, including promoting the proper use and management of public resources, namely the efficient, effective, economical and ethical use of resources.

The procurement may also assist us in the development of policy work relating to the First Nations Visual Arts Sector.

**Probity and Risk**

Document any possible risks or probity issues relevant to the procurement or contract phase and how those risks will be addressed. Information in this section should consider:

- [Accountable Authority Instruction - Probity](#)
- [Accountable Authority Instruction – Risk Management](#)
- [The Commonwealth Risk Management Policy](#)
- [High Risk High Value Policy and Guidelines](#)

**Probity concerns identified** No probity concerns have been identified. This is necessarily a limited tender, with strictly defined requirements and a single option for extension or renewal.  
There is purely a professional connection between the people in DITRDCA who are working on the tender, and the South Australian Government. Nevertheless, tender assessors will be required to sign a Conflict of Interest form.

**Probity Advisor Engaged**

<input type="checkbox"/>	Yes	<input type="checkbox"/>	External Probity Advisor
<input type="checkbox"/>	No	<input type="checkbox"/>	Internal Probity Advisor
<input checked="" type="checkbox"/>	N/A		The Procurement Team has advised that a probity advisor is not required for a procurement of this value. However, should you believe a probity advisor is warranted, we would seek an internal probity advisor from a separate branch in the Division.

**Probity Plan in Place**  
*(a separate Probity Plan is required for all HRHV procurements)  
(All other procurements must either include probity considerations above or have a separate Plan)*

<input type="checkbox"/>	Yes	
<input type="checkbox"/>	No	
<input checked="" type="checkbox"/>	N/A	Probity considerations are noted above.

**Risk Assessment Completed and Risk Plan in Place**  
*(a separate Risk Plan is required for all procurements valued over \$1 million and all HRHV procurements. All other procurements must identify risks below)*

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No

**Areas of risk identified (include mitigations)**

**RISK:** South Australia provides sensitive, in-confidence materials that may identify individuals or communities which provided information to the Review panel, or which was inappropriately shared.

**MITIGATIONS:** Procurement documentation will make it clear that sensitive and in-confidence material is not sought. Should we believe in-confidence material may have been provided, we will seek clarification from South Australia, clearly

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identify and label it, and store it appropriately. Appropriate Record Management processes will be followed.

**RISK:** South Australia does not meet the timeframes specified to enable a payment this financial year.

**MITIGATIONS:** verbally discuss requirements with South Australia so they are aware of what we require, and understand the limited timeframe. Include an option for limited extension of the contract, at the relevant delegate’s discretion. Discuss options with the Division’s finance business partner.

Final Risk Rating (post controls)  Severe  Medium  
 High  Low

**Conflicts of Interest**  Conflicts of Interest Declarations obtained for involved staff  
 Conflicts of Interest Declarations obtained for proposed supplier(s).  
 No conflict of interest concerns have been identified. Declarations will be placed on file. For the proposed supplier, we will be using a Commonwealth Contracting Suite contract which includes a conflict of interest declaration.

**Proposed Contract Period and Timeframes:**

*In this section state the expected time-line of the procurement, including everything in the procurement from the planning phase all the way through to contract expiration and evaluation.*

**Proposed Contract Period** Start: 18-Jun-24 or before End: 30-Jun-24

**Proposed Options to Extend** A single option to extend the contract at the delegate’s (SESB1) discretion.

**Procurement Timeframe** Report delivered: on or before 24 June.  
 Any requested additions/amendments: delivered on or before 26 June.  
 Report Finalised (accepted by the Commonwealth): on or before 28 June.

**Consultation**

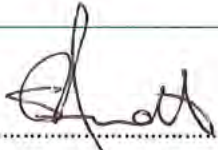
*Information in this section should consider:*

- [Accountable Authority Instruction - Procurement](#)
- [Accountable Authority Instruction - Legal Services](#)
- [Accountable Authority Instruction - Probity](#)

*Please note areas which have been or are being consulted about this particular issue and attach any relevant advice.*

- Corporate Procurement  Probity and Risk Team
- Legal Services Division  Probity Advisor Internal Advisor
- Internal Budgets and FBP Team  Other \_\_\_\_\_

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<b>Delegate Name and Signature</b>	 ..... Stephen Arnott	
<b>Position</b>	Deputy Secretary, Creative Economy and the Arts	<b>Date</b>
<b>Approval</b>	Agreed / Not Agreed <u>Agreed</u>	The Delegate is satisfied that this proposal is consistent with the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act) and the <i>Commonwealth Procurement Rules</i> .
	Approved/ Not Approved <u>Approved</u>	The Delegate approves an allocation of up to \$333,068 (GST inclusive) to this procurement, for the period from 10 June to 30 June 2024.
	Agreed / Not Agreed <u>Agreed</u>	The Delegate is satisfied the proposed procurement represents value for money.
	Agreed / Not Agreed <u>Agreed</u>	The Delegate agrees that the post controls non-financial risk rating for this procurement is assessed as LOW.
	Agreed / Not Agreed <u>Agreed</u>	The Delegate approves releasing the procurement to market in accordance with this proposal.
	Noted <u>Noted</u>	The Delegate notes that, following endorsement, approval will also be required via myWorkplace (SAP).
<b>Contact:</b>	Name: s22(1)(a)(ii) Position: EL2 Visual Arts and Design Email: s22(1)(a)(ii)@arts.gov.au	

**Attachments Checklist**

- Approach to Market**      See Appendix A
- Evaluation Plan:**      Evaluation will consider the extent to which the Potential Supplier's Response meets the Customer's Requirement. The Department's *RFQ Short Evaluation Report* will be provided to the delegate to document our reasoning and ensure Value For Money.
- Risk Plan (if required)**      N/A. A separate risk plan is required only if the procurement is valued at or above \$1.0 million or considered high risk, post controls. This procurement is low risk, with main risks and mitigations identified above.
- Probity Plan (if required)**      N/A. A separate probity plan is required only if the procurement is valued at or above \$1.0 million or considered high risk, post controls. This procurement is low risk, with main risks and mitigations identified above.

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# Appendix A: Approach to Market



## Australian Government

### Approach to Market (ATM)

To establish Contract for Procurement of Report from South Australian Government to support First Nations Visual Arts Policy work

Reference ID: 0010029412

This Approach to Market (ATM) is for the provision of:

The Commonwealth of Australia as represented by Department of Infrastructure, Transport, Regional Development and Communications and the Arts (the Customer) is seeking submissions for the provision of the services (the Requirement) as described in this ATM comprising:

- this CCS ATM, including the Statement of Requirement
- the CCS ATM Response Form
- the Commonwealth ATM Terms
- the Commonwealth Contract Terms
- the Commonwealth Contracting Suite Glossary and Interpretation.

In submitting a response, Potential Suppliers are required to comply with all requirements set out in the Commonwealth Approach to Market Terms (a copy of which is included in this document), and if successful, agree to enter into a contract which incorporates the Commonwealth Contract Terms available at <https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs#ccs-terms>.

## Statement of Requirement

### A.A.1 Key Information and Dates

#### Approach to Market

Event	Details
ATM Closing Date	17 June 2024 or before

ATM Closing Time	12:00 midday ACT local time
Question Closing Date and Time	Questions will be permitted up until 11:00 am Friday, 14 June 2024, ACT local time.
Minimum Content and Format Requirements	For a Potential Supplier's Response to be eligible for consideration the Potential Supplier's Response must comply with the matters addressed in A.B.4.2 of the Commonwealth ATM Terms.
Conditions for Participation	The Customer will exclude from participation any Potential Supplier that does not demonstrate compliance with the condition that: <ul style="list-style-type: none"> <li>- the Customer must be the South Australian Department of Premier and Cabinet.</li> </ul>

### **Proposed Contract**

<b>Event</b>	<b>Details</b>
Proposed Start Date:	On or before 18 June 2024
Proposed End Date:	The Contract will terminate on Sunday 30 June 2024.
Contract Extension Option	The Contract Term may be extended on the discretion of the Delegate, the Assistant Secretary Creative Industries Branch.

### **A.A.2 The Requirement**

The South Australian Government will provide a report:

- Summarising the background and objectives of its Review into the APY Art Centre Collective.
- Summarising the review process (including the appointment of the Review panel and their background, providing the Terms of reference, and other relevant process-related documentation.
- Outlining high-level findings that are able to be shared.\*
- Providing lessons learnt from the Review, including:
  - o any changes that South Australia is considering making to its policies, programs, and/or practices as a result of the Review, that may assist the Australian Government in improving its ongoing management and continual improvement of the Indigenous Visual Arts and Industry Support (IVAIS) program.
  - o any other lessons learnt that may be relevant to the management of the IVAIS program or Australian Government First Nations Visual Arts policy.

\*Given the sensitivities involved in the Review and the need to ensure that confidentiality and privacy are maintained, we seek only high-level information that is general in nature. If you do provide confidential and/or sensitive material, please label this clearly and identify the rationale for providing it.

#### **A.A.2(a) Standards**

Potential Suppliers must ensure that any goods and services proposed are capable of complying with all applicable Australian standards and any Australian and international standards specified in this Statement of Requirement. Potential Suppliers should note that they may be required to enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with those standards.

## Web Content Accessibility

The Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the *Web Content Accessibility Guidelines* available at:

<https://www.w3.org/WAI/intro/wcag>.

### A.A.2(b) Security Requirements

None Specified

### A.A.2(c) Work Health and Safety

Prior to commencement of the Contract, the Customer's Contract Manager and the Supplier's Contract Manager will identify any potential work health and safety (WHS) issues anticipated to arise during the term of the contract and assign management of each issue identified to the party best able to manage it. For all issues assigned to the Supplier, the Supplier will provide the Customer with a WHS plan for approval and no work will commence until the plan is approved unless agreed in writing by the Customer.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any WHS issues that arise.

### A.A.2(d) Delivery and Acceptance

The Customer must accept or reject any deliverables under the Contract in accordance with the Commonwealth Contract Terms [Clause C.C.11].

Milestone Description	Delivery Location	Due Date
Contract signed	Via email	On or before 18 June
Draft Report delivered	Via email	On or before 24 June, 2024
Any requested additions/clarifications provided.	Via email	On or before 26 June, 2024
Final Report accepted by Department Payment will occur following written acceptance of the report by the Department. At that point, we will request South Australia to provide a correctly rendered tax invoice for the total amount.	Via email	By 28 June, 2024
Contract end date		30 June 2024

**A.A.2(e) Meetings**

The Supplier is not required to attend meetings.

**A.A.2(f) Facilities and Assistance Offered by the Customer**

The Customer will not make any facilities or assistance available to the Supplier.

**A.A.2(g) Customer Material**

The Customer will not provide any material.

**A.A.3 ATM Distribution****Email Distribution**

Updates to this ATM will be distributed via email.

**A.A.4 Lodgement of Responses**

Responses must be lodged via email by the Closing Time specified in A.A.1 [Key Information and Dates].

Please provide these to:

- [ivais@arts.gov.au](mailto:ivais@arts.gov.au)
- Cc: s22(1)(a)(ii) [@arts.gov.au](mailto: @arts.gov.au)

**Response File Format, Naming Convention and Size**

The Customer will accept Responses lodged in the following formats:

- Microsoft Word (.docx)
- Microsoft Excel (.xlsx)
- PDF (.pdf)

The Response file name/s should:

- a) incorporate the Potential Supplier's full legal organisation name; and

Responses must be completely self-contained.

**A.A.5 Customer's Contact Officers****A.A.5(a) ATM Contact Officer**

For all matters relating to this ATM, the Contact Officer is:

Name/Position: s22(1)(a)(ii) EL1 Visual Arts Policy

Email Address: s22(1)(a)(ii) [@arts.gov.au/](mailto: @arts.gov.au)

Telephone: P +61 (2) 6136 s22(1)(a)(ii)

**A.A.5(b) Complaints Handling**

Complaints relating to this ATM should be directed to:

Name/Position:	Director, Governance Section
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Email Address:

[www.infrastructure.gov.au/contact-us/online-enquiries](http://www.infrastructure.gov.au/contact-us/online-enquiries)

Information relating to the handling of complaints is available on the Customer's website at: [www.infrastructure.gov.au/department/tenders/procurement-complaints](http://www.infrastructure.gov.au/department/tenders/procurement-complaints).

If your issue is not resolved refer <https://www.finance.gov.au/business/procurement/complaints-handling-charter-complaints> for more information relating to complaints.

## Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

### A.C.1 Intellectual Property

The Supplier owns the Intellectual Property Rights in the Material created under the Contract.

The Supplier grants to the Customer:

a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence to exercise the Intellectual Property Rights in the Material provided under the Contract for any purpose; and

a right to sub-licence the rights in (a) above to third parties, including to the public under an open access or Creative Commons 'BY' licence.

The licence excludes the right of commercial exploitation by the Customer.

The Supplier warrants that it is entitled to grant this licence to the Customer; and that the provision of the Goods and/or Services and any Material by the Supplier under the Contract, and its use by the Customer, in accordance with the Contract, will not infringe any third party's Intellectual Property Rights and Moral Rights.

Intellectual Property Rights in Goods provided under this Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of the Contract.

### A.C.2 Payment Terms

Where the Customer and the Supplier both have the capability to deliver and receive eInvoices through the Peppol framework and have agreed to use eInvoicing, following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

In all other circumstances following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

Where the Customer fails to make a payment to the Supplier by the Business Day it is due, the Customer will pay the unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate as published on the Australian Taxation Office website [https://www.ato.gov.au/Rates/General-interest-charge-\(GIC\)-rates/](https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/).

## Commonwealth Approach to Market (ATM) Terms

### A.B.1 Background

- 1.1 Some terms in this document have been given a special meaning. The meanings are set out either in the Commonwealth Contracting Suite Glossary and Interpretation, the CCS ATM or the draft Commonwealth Contract.
- 1.2 Any queries or complaints regarding this ATM must be directed to the Customer's relevant contact officer listed in the Statement of Requirement.
- 1.3 The Customer may:
- a) amend or clarify any aspect of this ATM, prior to the Closing Time, or
  - b) suspend the ATM process or issue a Public Interest Certificate prior to Contract execution,
- by issuing an addendum to the ATM in the same manner as the original ATM was distributed or, where this is not possible, issuing a notice to all Potential Suppliers.
- 1.4 No contract will exist until the Contract is executed by the Customer. The Customer, acting in good faith, may discontinue this ATM; decline to accept any Response to this ATM or issue any contract; or satisfy its requirements separately from this ATM process.
- 1.5 Participation in this process is at the Potential Supplier's risk and cost.

### A.B.2 Precedence of Documents

- 2.1 If there is inconsistency between any of the parts of this ATM, the following order of precedence will apply:
- a) CCS ATM – Statement of Requirement
  - b) CCS ATM Response Form
  - c) CCS ATM Annexes (if any)
  - d) Commonwealth ATM Terms
  - e) Additional Contract Terms (if any)
  - f) Commonwealth Contract Terms
  - g) draft Commonwealth Contract (if any), and
  - h) CCS Glossary and Interpretation,
- so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

### A.B.3 Referenced Material

- 3.1 The Customer will make available the Customer's Material (if any) referenced in this ATM. Potential Suppliers are responsible for obtaining all other Referenced Material (if any).
- 3.2 Potential Suppliers are responsible for considering Referenced Material in framing their Response.

### A.B.4 Lodging a Response

- 4.1 By lodging a Response, Potential Suppliers agree:
- a) that their Response is subject to these Commonwealth ATM Terms
  - b) that the Response will remain open for acceptance for ninety (90) calendar days from the ATM Closing Time, and
  - c) if successful, to sign a Contract which incorporates the Commonwealth Contract Terms.

- 4.2 When lodging a Response, Potential Suppliers must:

- a) lodge their Response as specified in the Statement of Requirement using the CCS ATM Response Form provided (if any) without changing the structure or formatting of the response form
  - b) comply with any conditions for participation and ensure their Response complies with any minimum content and format requirements set out in the Statement of Requirement
  - c) ensure the Response is In English, and
  - d) ensure that prices quoted:
    - i. are in Australian currency
    - ii. show the GST exclusive price, the GST component (if any) and the GST inclusive price
    - iii. are inclusive of GST and all other taxes, duties (including any customs duties) and any government charges imposed or levied in Australia or overseas, and
    - iv. unless identified in the Potential Supplier's Response, include any and all other charges and costs and be the maximum payable by the Customer under the Contract.
- 4.3 The Customer may decline to consider a Response that is unable to be read or contains alterations, erasures, illegibility, ambiguity or incomplete details.
- 4.4 Potential Suppliers may submit Responses for alternative methods of addressing the Customer's Requirement described in this ATM, where the option to do so was stated in the ATM or agreed in writing with the Customer prior to the Closing Time. Potential Suppliers are responsible for providing a sufficient level of detail about the alternative solution to enable its evaluation.
- 4.5 Potential Suppliers and their officers, employees, agents, advisors and proposed subcontractors must not engage in any collusive, anti-competitive or any other similar conduct with any other Potential Supplier or person, or offer any unlawful inducements in relation to their Response or this ATM process.
- 4.6 The Customer will only extend the Closing Time in exceptional circumstances and, if extended, the extension will apply equally to all Potential Suppliers. The Customer will not consider any Responses received after the Closing Time specified in this ATM unless the Response is late as a consequence of the Customer's mishandling.
- 4.7 Prior to execution of a contract, the Customer may seek clarification or additional information from, and enter into discussions and negotiations with, any or all Potential Suppliers in relation to their Response. In doing so, the Customer will treat all Potential Suppliers equitably and not allow any Potential Supplier to substantially alter their Response.
- 4.8 If any Conflicts of Interest arise during the evaluation period, Potential Suppliers must notify



## Commonwealth Approach to Market (ATM) Terms

the Customer immediately and comply with any reasonable directions issued by the Customer. All communications must be confirmed in writing.

### A.B.5 Evaluation

- 5.1 The Customer will evaluate Responses in accordance with the ATM and consistent with the *Commonwealth Procurement Rules* to determine the best value for money outcome for the Customer.
- 5.2 The Customer will exclude from consideration any Response that does not meet the minimum content and format requirements and the conditions for participation (if any) as set out in the Statement of Requirement.
- 5.3 The criteria for evaluation are the:
  - a) extent to which the Potential Supplier's Response meets the Customer's Requirement set out in this ATM
  - b) extent to which the Potential Supplier demonstrates its capability and capacity to provide the Requirement, and
  - c) whole of life costs to be incurred by the Customer. Evaluation will take account of the quoted price and any costs that the Customer will incur as a result of accepting the Potential Supplier's Response.
- 5.4 Unless stated otherwise in the Approach to Market documentation, the above three (3) criteria for evaluation will be of equal importance.
- 5.5 The Customer may at any time exclude a Response from consideration if the Customer considers that the Response is clearly not competitive.
- 5.6 Potential Suppliers should note that the Commonwealth's *Indigenous Procurement Policy* (IPP) will apply to the Customer in respect of this procurement. During evaluation, the Customer may favourably consider the Potential Supplier's ability to assist the Customer to meet its IPP obligations. More information is available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
- 5.7 If requested by the Customer, the Potential Supplier must be able to demonstrate its ability to remain viable for the duration of the Contract and must promptly provide the Customer with such information or documentation as the Customer reasonably requires.
- 5.8 The Customer reserves the right to contact the Potential Supplier's referees, or any other person, directly and without notifying the Potential Supplier.
- 5.9 The Customer will notify all Potential Suppliers of the final decision and, if requested, will debrief Potential Suppliers following award of the Contract.

### A.B.6 Reporting Requirements

- 6.1 Potential Suppliers acknowledge that the Customer is subject to legislative and administrative accountability and transparency requirements including disclosure to Parliament and its Committees.

- 6.2 Without limiting the Customer's right to disclose other information, for any contracts awarded, the Customer may publicly disclose the Supplier's name, postal address and other details about the Contract, including contract value.
- 6.3 Potential Suppliers acknowledge that the Customer may disclose the names of any Subcontractors engaged in respect of the Contract. Potential Suppliers should also note the requirements of the *Freedom of Information Act 1982* (Cth).

### A.B.7 Confidentiality of Potential Supplier's Information

- 7.1 Potential Suppliers should note that, if successful, parts of their Response may be included in a subsequent Contract. Potential Suppliers must identify and justify any aspects of their Response or the proposed Contract that they consider should be kept confidential.
- 7.2 Potential Suppliers should note that the Customer will only agree to treat information as confidential in cases that it considers consistent with Australian Government legislation and policies. In the absence of such an agreement, Potential Suppliers acknowledge that the Customer has the right to publicly disclose the information.

### A.B.8 Criminal Code

- 8.1 Potential Suppliers acknowledge that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).
- 8.2 Potential Suppliers must ensure that any intended Subcontractors participating in the Potential Supplier's Response are aware of the information in this clause.

### A.B.9 Personal Information

- 9.1 Potential Suppliers agree to provide the Customer, or its nominee, relevant Personal Information relating to the Potential Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security breach relating to this ATM. When providing Personal Information to the Customer, the Potential Supplier warrants that they will have obtained consent or provided reasonable notification in accordance with the *Privacy Act 1988* (Cth).



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## Commonwealth Contracting Suite Glossary and Interpretation

### Glossary

In the Commonwealth Contracting Suite (CCS):

**"Additional Contract Terms"** means the terms and conditions set out in the section of the Approach to Market, RFQ or the Contract as relevant with the heading 'Additional Contract Terms'.

**"Additional DoSO Terms"** means the terms and conditions set out in the section of the DoSO with the heading 'Additional DoSO Terms'.

**"Approach to Market"** or **"ATM"** means the notice inviting Potential Suppliers to participate in the relevant procurement.

**"Business Days"** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned, as defined by the *Corporations Act 2001* (Cth), and also excludes the period between Christmas Day and New Year's Day.

**"Closing Time"** means the closing time and date as specified in the Approach to Market.

**"Commonwealth Contracting Suite"** or **"CCS"** means the suite of proprietary documents developed for Commonwealth procurements.

**"Commonwealth Procurement Rules"** means the legislative instrument issued by the Finance Minister under section 105B of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which establishes the framework under which entities govern and undertake their own procurement.

**"Confidential Information"** means any information that any Party does not wish to be shared outside those involved in the Contract or Standing Offer Arrangement. It can include anything that has been acquired, developed or made available to any of the Parties in the course of the relationship between the Parties. It includes, but is not limited to, information:

- a) specifically identified as confidential in the Contract or DoSO
- b) where disclosure would cause unreasonable detriment to the owner of the information or another party, or
- c) where the information was provided under an understanding that it would remain confidential.

**"Conflicts of Interest"** means any real or apparent situation where the personal interests of the Supplier, its officers, employees, agents or Subcontractors could improperly influence the Supplier's performance of the Contract or DoSO as relevant.

**"Contract"** means the documents (specified in the Commonwealth Contract Terms or the Commonwealth Purchase Order Terms as relevant) as executed or amended from time to time by agreement in writing between the Supplier and the Customer.

**"Contract Details Schedule"** means the section in a Contract issued under the DoSO with the heading 'Contract Details Schedule'.

**"Contract Manager"** means the 'Contract Manager' for the Customer or Supplier representative (as relevant) specified in the Contract.

**"Contract Price"** means the maximum contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

**"Correctly Rendered Invoice"** means an invoice that:

- a) is correctly addressed and includes any purchase order number or other Customer reference advised by the Customer's Contract Manager and the name and specified contact details of the Customer's Contract Manager
- b) relates only to the Goods and/or Services that have been accepted by the Customer in accordance with the Contract or a payment or milestone schedule identified in the Contract
- c) is correctly calculated and charged in accordance with the Contract
- d) is for an amount which, together with previously Correctly Rendered Invoices, does not exceed the Contract Price, and
- e) is a valid tax invoice in accordance with the GST Act.

**"Customer"** means the party specified in the Contract as the Customer.

**"Deed of Standing Offer"** or **"DoSO"** means the documents (specified in the Commonwealth DoSO Terms) as executed or amended by agreement in writing between the Lead Customer and the Supplier.

**"Delivery and Acceptance"** means the process by which Goods and/or Services are delivered to the Customer and accepted by the Customer as meeting the terms specified in the Contract.

## Commonwealth Contracting Suite Glossary and Interpretation

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**“DoSO Manager”** means the ‘DoSO Manager’ for the Lead Customer or Supplier representative (as relevant) specified in the DoSO.

**“Electronic invoicing”** or **“eInvoicing”** means the automated exchange of invoices directly between the Customer and Supplier’s software or financial systems via the Peppol network, as long as both Parties are Peppol eInvoicing enabled.

**“Eligible Data Breach”** means an ‘Eligible Data Breach’ as defined in the *Privacy Act 1988* (Cth).

**“End Date”** means the date specified in the Contract or DoSO (as relevant) on which the agreement ceases.

**“Fraud”** means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means and includes alleged, attempted, suspected or detected fraud.

**“General Interest Charge Rate”** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

**“Goods and/or Services”** means:

- a) the Goods and/or Services and any Material, and
- b) all such incidental Goods and/or Services that are reasonably required to achieve the Requirement of the Customer,

as specified in the Contract and, where relevant, offered under a Standing Offer Arrangement.

**“GST”** means a Commonwealth goods and services tax imposed by the GST Act.

**“GST Act”** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“Indigenous Procurement Policy”** means the procurement connected policy as described at the National Indigenous Australians Agency website <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>.

**“Intellectual Property Rights”** means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are current or future or registered or capable of being registered, including without limitation in relation to, copyright, designs, trade marks (including unregistered marks), business and company names, domain names, databases, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

**“Lead Customer”** means the party specified in the DoSO as the Lead Customer.

**“Material”** means any material used or brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

**“Moral Rights”** means the rights in Part IX of the *Copyright Act 1968* (Cth), including the right of attribution, the right against false attribution and the right of integrity.

**“Notice”** means an official notice or communication under the Contract or DoSO (as relevant) in writing, from one Contract or DoSO Manager to the other Contract or DoSO Manager (as the case may be), at the postal address, or email address, or facsimile number set out in the Contract or DoSO or as notified by the relevant Party.

**“Peppol”** means the Pan-European Public Procurement On-Line framework as described at the Australian Taxation Office website <https://www.ato.gov.au/Business/eInvoicing/Peppol/>.

**“Party”** or **“Parties”** means (as relevant) the Customer and Supplier specified in the Contract or the Lead Customer and Supplier specified in the DoSO.

**“Personal Information”** means information relating to a natural person as defined in the *Privacy Act 1988* (Cth).

**“Potential Customer”** means an Australian Government entity that is identified within the DoSO as being able to use the Standing Offer Arrangement.

**“Potential Supplier”** means any entity who is eligible to respond to an ATM.

**“Pricing Schedule”** means a schedule of maximum pricing rates that a Supplier can offer in an RFQ for Goods and/or Services as set out in the DoSO.

**“Public Interest Certificate”** means a certificate issued under section 22 of the *Government Procurement (Judicial Review) Act 2018* (Cth).

**“Referenced Material”** means any materials referenced in the ATM, including but not limited to, reports, plans, drawings or samples.

**“Request for Quote”** or **“RFQ”** means any notice inviting quotations to provide specific Goods and/or Services under the DoSO.

## Commonwealth Contracting Suite Glossary and Interpretation

**“Required Capabilities”** means:

- a) In the DoSO ATM, the description of the Lead Customer’s required Goods and/or Services. These may be categorised into several descriptions of Required Capabilities.
- b) In the DoSO, the description of the Goods and/or Services that a Supplier is approved to offer.

**“Requirement”** means the description of the Goods and/or Services in:

- a) for the purposes of the Commonwealth ATM Terms, the section of the Approach to Market with the heading ‘The Requirement’
- b) for the purposes of the Commonwealth Contract Terms, the section of the Contract with the heading ‘The Requirement’, or
- c) for the purposes of the Commonwealth Purchase Order Terms, the Customer’s purchase order or similar ordering document setting out the Goods and/or Services.

**“Response”** means information provided by a Potential Supplier or Supplier demonstrating their capacity and capability to:

- a) provide the Requirement under the ATM or Request for Quote, or
- b) meet a Required Capability under the DoSO ATM.

**“Satisfactory”** in relation to the Shadow Economy Policy only, means the Statement of Tax Record meets the conditions set out in Part 6.b of the Shadow Economy Policy or, if the circumstances in Part 6.c of the Shadow Economy Policy apply, the conditions set out in Part 8 of the Shadow Economy Policy.

**“Shadow Economy Policy”** means the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>.

**“Significant Event”** means:

- a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Supplier or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation, or
- b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Supplier or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth’s reputation.

**“Specified Personnel”** means personnel specified in the Contract, or who are accepted by the Customer in accordance with clause C.C.13 [Specified Personnel].

**“Standing Offer Arrangement”** means the DoSO arrangement, any Contract that is executed under the DoSO and any other document that applies to it.

**“Standing Offer Details”** means the section of the DoSO with the heading ‘Standing Offer Details’.

**“Statement of Requirement”** means the section of the Approach to Market with the heading ‘Statement of Requirement’.

**“Statement of Tax Record”** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at [https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting\\_an\\_STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR).

**“Statement of Work”** means the section or schedule of the Contract (as the case may be) with the heading ‘Statement of Work’.

**“Subcontractor”** means an entity contracted by the Supplier to supply some or all of the Goods and/or Services required under the Contract.

**“Supplier”** means a party specified in the Contract or the DoSO as the Supplier.

**“Valid”** in relation to the Shadow Economy Policy only, means the Statement of Tax Record is valid in accordance with Part 7.e of the Shadow Economy Policy.

## Commonwealth Contracting Suite Glossary and Interpretation

### Interpretation

In the Commonwealth Contracting Suite, unless stated otherwise:

- a) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning
- b) words in the singular include the plural and words in the plural include the singular
- c) the words 'including', 'such as', 'particularly' and similar expressions are not used as and are not intended to be interpreted as words of limitation
- d) a reference to dollars is a reference to Australian dollars
- e) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision
- f) clause headings are for reference only and have no effect in limiting or extending the language of the terms to which they refer, and
- g) the following clause references used in Commonwealth Contracting Suite documents refer to that section or part of the relevant CCS document listed in the table below:

Clause Reference	Section / Part	CCS Document
A.A.[x]	Statement of Requirement	CCS Approach to Market (ATM)
A.B.[x]	Commonwealth Approach to Market (ATM) Terms	
A.C.[x]	Additional Contract Terms	
C.A.[x]	Statement of Work	Commonwealth Contract
C.B.[x]	Additional Contract Terms	
C.C.[x]	Commonwealth Contract Terms	
P.C.[x]	Commonwealth Purchase Order Terms	Commonwealth Purchase Order Terms
D.A.[x]	CCS DoSO ATM	CCS Deed of Standing Offer (DoSO)
D.B.[x]	Commonwealth DoSO ATM Terms	
D.C.[x]	DoSO ATM Response Form	
D.D.[x]	CCS DoSO	
D.D.3(x)	Additional DoSO Terms	
D.E.[x]	Commonwealth DoSO Terms	
R.A.[x]	Schedule 1 - Statement of Work	
R.B.[x]	Schedule 2 - Additional Contract Terms	
R.C.[x]	Schedule 3 - Supplier's Response Form	
R.D.[x]	Contract Details Schedule	

**From:** s22(1)(a)(ii)  
**Sent:** Wednesday, 24 April 2024 4:07 PM  
**To:** Help Procurement  
**Cc:** s22(1)(a)(ii)  
**Subject:** RE: Funding to South Australian Government for review of the APY Art Centre Collective [SEC=OFFICIAL:Sensitive]

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

OFFICIAL:Sensitive

Hi s22(1)(a)(ii)

Thanks for your prompt response. We will update the brief to ensure that information is corrected.

Thanks again

s22(1)(a)(ii)

OFFICIAL:Sensitive

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**From:** Help Procurement <Help.Procurement@infrastructure.gov.au>  
**Sent:** Wednesday, 24 April 2024 4:02 PM  
**To:** s22(1)(a)(ii) @ARTS.gov.au>; Help Procurement <Help.Procurement@infrastructure.gov.au>  
**Cc:** s22(1)(a)(ii) @arts.gov.au>  
**Subject:** RE: Funding to South Australian Government for review of the APY Art Centre Collective [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi s22(1)(a)(ii)

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Thanks for your email.

I have no concerns with this being put to the Delegate as a procurement based on your rationale however there is part of this brief which should be removed as it is incorrect:

s42 [Redacted]

A Procurement or Grant is determined by the characteristics mentioned in the artefacts above and as detailed in your minute. A Departmental Delegate is not able to determine whether something is or isn't a Procurement or a Grant where it would not align, conflict with or meet those characteristics.

In terms of a resource or contact in the team, happy for you or your team to contact one of my Senior Advisers, s22(1)(a)(ii) for any assistance throughout your process.

Kind regards,

s22(1)(a)(ii)

Assistant Director • Financial Governance and Procurement • Financial Management Branch

s22(1)(a) @infrastructure.gov.au

P +61 2 6274 s22(1)(a)

GPO Box 594 Canberra, ACT 2601

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

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\*\*Working Hours: Mon: 9.30am – 3.30pm | Tues – Thurs: 8am – 5.30pm | Friday: 9.30am – 3pm\*\*

[infrastructure.gov.au](http://infrastructure.gov.au)

*I would like to acknowledge the traditional custodians of this land on which we meet, work and live. I recognise and respect their continuing connection to the land, waters and communities. I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL:Sensitive

From: s22(1)(a)(ii) @ARTS.gov.au>

Sent: Wednesday, 24 April 2024 3:30 PM

To: Help Procurement <[Help.Procurement@infrastructure.gov.au](mailto:Help.Procurement@infrastructure.gov.au)>

Cc: s22(1)(a)(ii) [@arts.gov.au](mailto: @arts.gov.au)

Subject: Funding to South Australian Government for review of the APY Art Centre Collective [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi Procurement Team

Last year you provided some advice (see below) relating to a potential payment to the South Australian Government in the very early stages of a Review it was conducting of the APY Art Centre Collective.

I wanted to update you about this payment, since the assumption behind our initial request was that the Department would be involved with the Review. This did not occur, and South Australia is now seeking approximately \$300,000 from the Department to support its Review.

As outlined in the draft Minute, we are intending to progress a recommendation to our delegate (our FAS, Phil Smith) that the payment meets the requirements for a procurement, with the understanding the Government is acquiring a good or service for its own use, since:

- **the review is providing a service to the Government**, namely due diligence relating to possible future grants under the Indigenous Visual Arts Industry Support (IVAIS) program (noting the APY Art Centre Collective was *not* recommended for funding in 2023-24 because of the risks identified in funding given the seriousness of the concerns that had been raised in the public domain). The review will support a determination of risk ratings for future funding rounds of IVAIS.

AND

- **the Department will require the South Australian Government to provide a report:**
  - o **Summarising the review process and findings**
  - o **Providing a list of lessons learnt from the Review that may be of particular relevance to the Australian Government including its management and improvement of the IVAIS program.**

I would appreciate any comments on our approach and the draft Minute to our delegate **by COB Wednesday 1 May**. Once we have agreement to our approach from the delegate, I would also like a contact for someone in your team who can provide advice as our Procurement progresses.

s22(1)(a)(ii) in my team will be available next week to discuss this matter with you further, if required.

Kind regards

s22(1)(a)(ii)

Director • Visual Arts and Design • Office for the Arts



s22(1)(a)(ii) [@arts.gov.au](mailto:s22(1)(a)(ii)@arts.gov.au)  
 P +61 2 6271 s22(1)(a)  
 GPO Box 594 Canberra, ACT 2601

Please note that I work part-time, Mon-Thurs.

**Department of Infrastructure, Transport, Regional Development, Communications and the Arts**  
**CONNECTING AUSTRALIANS • ENRICHING COMMUNITIES • EMPOWERING REGIONS**

[arts.gov.au](http://arts.gov.au)



*I would like to acknowledge the traditional custodians of this land on which we meet, work and live.  
 I recognise and respect their continuing connection to the land, waters and communities.  
 I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL:Sensitive

**From:** s22(1)(a)(ii) [@communications.gov.au](mailto:s22(1)(a)(ii)@communications.gov.au)>  
**Sent:** Thursday, 7 September 2023 8:52 PM  
**To:** s22(1)(a)(ii) [@arts.gov.au](mailto:s22(1)(a)(ii)@arts.gov.au); s22(1)(a)(ii) [@arts.gov.au](mailto:s22(1)(a)(ii)@arts.gov.au)>  
**Cc:** s22(1)(a)(ii) [@infrastructure.gov.au](mailto:s22(1)(a)(ii)@infrastructure.gov.au); s22(1)(a)(ii) [@INFRASTRUCTURE.gov.au](mailto:s22(1)(a)(ii)@INFRASTRUCTURE.gov.au)>  
**Subject:** RE: APY Art Centre Collective funding issue - to SA Govt [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi s22(1)(a)(ii)

Sorry for the delay in getting back to you.

I have spoken to the Procurement team and they have confirmed this payment would be considered a grant and come under the authority of the CGRG's. Attached for reference is the Resource Management Guide No 411, which provides an outline of the definitions of a procurements, grants and other.

As this would be considered a grant a quote would need to be obtained from the Business Grants Hub and the Community Grants Hub, the Enterprise Grant Management Office (EGMO [egmo@infrastructure.gov.au](mailto:egmo@infrastructure.gov.au)) will be able to help facilitate this process and advise of other requirements under the CGRG's.

Ministerial approval is not required for departmental expenditure, unless of course there are sensitivities associated that you believe would warrant Ministerial approval. Departmental expenditure of this value can be approved by an SESB1 or above.

Happy to chat further if you have any issues.

Thanks

s22(1)  
(a)(ii)

OFFICIAL:Sensitive

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**From:** s22(1)(a)(ii) <[redacted]> @arts.gov.au>  
**Sent:** Wednesday, 23 August 2023 9:26 AM  
**To:** s22(1)(a)(ii) <[redacted]> @infrastructure.gov.au>; s22(1)(a)(ii) <[redacted]> @communications.gov.au>  
**Cc:** s22(1)(a)(ii) <[redacted]> @ARTS.gov.au>; s22(1)(a)(ii) <[redacted]> @arts.gov.au>  
**Subject:** APY Art Centre Collective funding issue - to SA Govt [SEC=OFFICIAL:Sensitive]

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Morning s22(1)(a)(ii) and s22(1)(a)(ii)

Funding SA Govt – re APY Art Centre Collective – SA-led review

Thank you for meeting with s22(1)(a)(ii) and I recently re avenues for supporting South Australia's review of the APY Art Centre Collective. s22(1)(a)(ii) has provided some background and key points below, thank you s22(1)(a)(ii), I'm passing along.

We'd be very grateful if you could discuss options with the Procurement team and others as to the best approach, and would appreciate your expert guidance on:

- 1) what is the best mechanism for payment (grant, procurement, MoU, other)?
- 2) what umbrella authority / requirements (FFRs or CGRGs or other?) does this fall under?
- 3) what do we need to do (e.g. canvas existing MoU or draft new MoU with the state, go to ExCo, formal written Ministerial agreement via Ministerial brief, etc.) in order to effect the payment within the rules?

#### **Anangu Pitjantjatjara Yankunytjatjara (APY) Art Centre Collective (the Collective) – Review background**

In April 2023, the media published allegations regarding practices at the APY Art Centre Collective, including interference with artists' creative control. This led to a tri-governmental meeting between the Arts Ministers from the Australian Government, South Australia and the Northern Territory on 15 May 2023, in which they agreed to

co-operate on a probe of the allegations made against the Collective, with the South Australian Government leading a formal review into practices at the APY Art Centre Collective as South Australia is the Collective's principal funder.

### Funding

Minister Burke has publicly committed to providing funding towards the review. He committed to no specific amount, s47B(a), s47C [Please note, there are no formal briefings on this].

We understand the South Australian Government has already provided some initial funds, and that funds will be used for activities including the following:

- the procurement of the three reviewers (two First Nations expert members and one barrister)
- secretariat support (we understand the panel will recruit their own secretariat)
- travel, including to remote locations in the APY lands
- specialist translation services.

Other key points:

- Our preference would be to provide South Australia a lump sum (or most likely two) and it would be for them to manage and monitor the funding.
- There is no deadline for the completion of the Review, although the South Australian Minister has noted she would like it completed by the end of 2023.
- No requests for funding have yet been made by South Australia.
- We put in a pressure bid for funding but this was not successful. We are assuming that the funding would come from **departmental** funds, but there's nothing committing us to that.
- The Australian Government continues to fund individual art centres involved in the APY Art Centre Collective under the Indigenous Visual Art Industry Support (IVAIS) Program, but is not currently providing any funding to the APY Art Centre Collective (although it has previously done so; we can discuss this aspect more if desired).

Many thanks

s22(1)(a) and s22(1)(a)(ii)

s22(1)(a)(ii)

Assistant Director • Visual Arts and Design / Creative Industries • **Office for the Arts**

s22(1)(a)(ii) @arts.gov.au

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GPO Box 594 Canberra, ACT 2601

**Please note:** s22(1)(a)(ii)

Department of Infrastructure, Transport, Regional Development, Communications and the Arts  
CONNECTING AUSTRALIANS • ENRICHING COMMUNITIES • EMPOWERING REGIONS



*I would like to acknowledge the traditional custodians of this land on which we meet, work and live.  
I recognise and respect their continuing connection to the land, waters and communities.  
I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

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# Delegate's Checklist

A Procurement Approval Request (PAR) (otherwise known as an “approval to approach the market” or a “procurement plan”) is required for all departmental procurements, regardless of value. **The format and content should be commensurate to the scale, value and risk of the procurement being undertaken.** At minimum, a PAR should include **sufficient information** for a delegate to make an **informed decision** about whether a procurement would be **value for money**, such as:

- outline how the outcome(s) of the procurement will support the department's objective(s)
- provide an estimated whole of life costs and confirm funds availability
- detail the availability of the required goods and/or services through market research and align this with the proposed type of market approach
- consider competition and the market's capacity and capability to provide the services
- detail the consultation with other stakeholders and include touch-points and impacts, where relevant
- consider the evaluation criteria and methodology for the procurement
- set out the management of the outcome (contract) within the department
- consider relevant procurement connected policies and legislation
- outline any risks or probity concerns

Things to ask yourself	Yes	No
<b>Approving an Approach to Market (Procurement Step 3)</b>		
Does the PAR include sufficient information to convince me that the department needs to procure these goods/services?	<input type="checkbox"/>	<input type="checkbox"/>
Do I have appropriate delegation to approve this Approach to Market?	<input type="checkbox"/>	<input type="checkbox"/>
Am I satisfied that this procurement represents value for money? Commensurate to the scale, risk and value, does the PAR outline: <ul style="list-style-type: none"> <li>- what the outcome of the procurement is</li> <li>- why this outcome is required</li> <li>- whether alternative outcomes or methods to achieve this outcome have been considered (and if not, why)</li> <li>- have all relevant stakeholders been consulted</li> <li>- has sufficient time been allowed to conduct the procurement</li> <li>- have whole-of-life costs been documented</li> <li>- are additional resources required to support the procurement</li> <li>- have business specifications been documented</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
Do I consider this procurement to represents a proper use of relevant monies, in accordance with the purposes of the PGPA Act?		

Has market research been undertaken/documented? Am I satisfied that this level of market research is commensurate to the procurement risk and value?	<input type="checkbox"/>	<input type="checkbox"/>
Is there available funding for the procurement to proceed? Has this funding been confirmed with: <ul style="list-style-type: none"> <li>- Finance Business Partner for departmental funds</li> <li>- Divisional Support/Program Manager for administered funds</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
Does the estimated value consider: <ul style="list-style-type: none"> <li>- whole of life costs (ie. inclusion of options, extensions, expected variations, support and maintenance, renewals)?</li> <li>- has GST been included in the calculations (if applicable)?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
Am I satisfied with the estimated value? Has sufficient justification and calculations been included in the PAR to confirm this value is accurate? **Remember: the CPRs require that if we cannot demonstrate that the services will be below a procurement threshold, then we must treat them as being above the threshold.	<input type="checkbox"/>	<input type="checkbox"/>
Am I satisfied the correct procurement method has been selected, with sufficient justification documented? <ul style="list-style-type: none"> <li>- is a competitive procurement being used and if not, why?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
Should this procurement be using a Whole of Government Mandatory Panel? A list of all Mandatory Panels is provided <a href="#">here</a> .	<input type="checkbox"/>	<input type="checkbox"/>
If the procurement is proposing a non-mandatory panel arrangement, has sufficient justification has been included to inform me that: <ul style="list-style-type: none"> <li>- the panel scope aligns to the works/services being procured?</li> <li>- the procurement is for 'routine' goods and services (ie. suitable for a panel arrangement)?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
If the procurement is over \$80,000 (GST incl.) and under \$200,000 (GST incl.), has consideration of the Indigenous Procurement Policy's (IPP) Mandatory Set Aside (MSA) been undertaken? <ul style="list-style-type: none"> <li>- has a check of Supply Nation been conducted?</li> <li>- is an Indigenous Supplier being approached (in the first instance) for this procurement (using CPRs Exemption 16)? If not, why?</li> <li>- if suppliers were identified, what is the justification for not approaching them?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
If the procurement is over \$80,000 (GST incl.) and under \$200,000 (GST incl.), has consideration of Small and Medium Enterprises (SMEs) been undertaken? <ul style="list-style-type: none"> <li>- has a check of the IPP's Supply Nation occurred, and no suitable suppliers identified (this must occur before the SME exemption can be used)?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

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<ul style="list-style-type: none"> <li>- is there an available SME that could be approached for this procurement (using CPRs Exemption 17)? If not, has this been considered?</li> </ul>		
<p>If the procurement is over \$80,000 (GST incl.), and proposing a limited tender methodology:</p> <ul style="list-style-type: none"> <li>- has a limited tender condition been selected (CPRs cl. 10.3 or Appendix A)?</li> <li>- has sufficient justification has been included to satisfy me that this limited tender condition is appropriate for this procurement?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p>If limited tender or panel arrangement (mandatory or non-mandatory), does the PAR propose 3 or more suppliers to approach to bid?</p> <ul style="list-style-type: none"> <li>- Am I satisfied that the selected suppliers are suitable?</li> <li>- If less than 3 suppliers, has justification been included to advise why and am I satisfied this reasoning is sound?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p>If the procurement is an Open Tender, has Corporate Procurement and Legal Services been consulted? If not, why?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>If the procurement is an Open Tender, has it been included in the Annual Procurement Plan? The Annual Procurement Plan is available <a href="#">here</a>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Does the PAR include notification if the procurement is or is not a consultancy? Do I agree with this selection?</p> <p>A consultancy can be characterised by the following factors:</p> <ul style="list-style-type: none"> <li>- output largely reflects the independent views of consultant</li> <li>- performance largely at discretion and expertise of consultant</li> <li>- services generally involve a one-off or discrete set of tasks</li> <li>- payment is usually milestone or deliverable based</li> <li>- services generally require technical expertise not found in APS</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Am I satisfied that all applicable Procurement Connected Policies have been considered? Information on these policies is located <a href="#">here</a>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Does the PAR contain a suitable evaluation methodology or has an Evaluation Plan been developed? Do I agree with the proposed:</p> <ul style="list-style-type: none"> <li>- evaluation method?</li> <li>- evaluation criteria? Are weightings included?</li> <li>- composition of the Evaluation Panel?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Am I satisfied that risk (potential and actual) has been sufficiently considered and documented?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Is this procurement over \$1.0 million? Is the procurement considered high risk? If so, has a separate Risk Assessment been completed?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Am I satisfied that probity (perceived and actual) has been sufficiently considered and documented?</p>	<input type="checkbox"/>	<input type="checkbox"/>

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<p>Is this procurement over \$5 million or high/severe risk (ie. HRHV)? If so:</p> <ul style="list-style-type: none"> <li>- Has Corporate Procurement been consulted about the HRHV processes?</li> <li>- Has an External Probitry Advisor been engaged (or has a submission to seek approval to engage been received)?</li> <li>- Has a separate Probitry Plan been drafted/completed?</li> <li>- Have sufficient timeframes been allowed for the procurement to go through the Operations Committee (prior to agreeing s23.3)?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
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# Australian Government

## Approach to Market (ATM)

### To establish the Contract for the Procurement of a Visual Arts Report

**Reference ID: 0010029412**

This Approach to Market (ATM) is for the provision of:

The Commonwealth of Australia as represented by Department of Infrastructure, Transport, Regional Development and Communications and the Arts (the Customer) is seeking submissions for the provision of the services (the Requirement) as described in this ATM comprising:

- this CCS ATM, including the Statement of Requirement
- the CCS ATM Response Form
- the Commonwealth ATM Terms
- the Commonwealth Contract Terms
- the Commonwealth Contracting Suite Glossary and Interpretation.

In submitting a response, Potential Suppliers are required to comply with all requirements set out in the Commonwealth Approach to Market Terms (a copy of which is included in this document), and if successful, agree to enter into a contract which incorporates the Commonwealth Contract Terms available at

<https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs#ccs-terms>.

## Statement of Requirement

### A.A.1 Key Information and Dates

#### Approach to Market

Event	Details
ATM Closing Date	17 June 2024 or before

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ATM Closing Time	12:00 midday ACT local time
Question Closing Date and Time	Questions will be permitted up until 11:00 am Friday, 14 June 2024, ACT local time.
Minimum Content and Format Requirements	For a Potential Supplier's Response to be eligible for consideration the Potential Supplier's Response must comply with the matters addressed in A.B.4.2 of the Commonwealth ATM Terms.
Conditions for Participation	The Customer will exclude from participation any Potential Supplier that does not demonstrate compliance with the condition that: <ul style="list-style-type: none"> <li>- the Customer must be the South Australian Department of Premier and Cabinet.</li> </ul>

### **Proposed Contract**

<b>Event</b>	<b>Details</b>
Proposed Start Date:	On or before 18 June 2024
Proposed End Date:	The Contract will terminate on Sunday 30 June 2024, with the services to be provided by this date or a contract extension agreed.
Contract Extension Option	The Contract Term may be extended on the discretion of the Delegate, the Assistant Secretary Creative Industries Branch.

### **A.A.2 The Requirement**

The South Australian Government will provide a report:

- Summarising the background and objectives of its Review into the APY Art Centre Collective.
- Summarising the review process (including the appointment of the Review panel and their background, providing the Terms of reference, and other relevant process-related documentation.
- Outlining high-level findings that are able to be shared.\*
- Providing lessons learnt from the Review, including:
  - o any changes that South Australia is considering making to its policies, programs, and/or practices as a result of the Review, that may assist the Australian Government in improving its ongoing management and continual improvement of the Indigenous Visual Arts and Industry Support (IVAIS) program.
  - o any other lessons learnt that may be relevant to the management of the IVAIS program or Australian Government First Nations Visual Arts policy.

\*Given the sensitivities involved in the Review and the need to ensure that confidentiality and privacy are maintained, we seek only high-level information that is general in nature. If you do provide confidential and/or sensitive material, please label this clearly and identify the rationale for providing it.

#### **A.A.2(a) Standards**

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Potential Suppliers must ensure that any goods and services proposed are capable of complying with all applicable Australian standards and any Australian and international standards specified in this Statement of Requirement. Potential Suppliers should note that they may be required to enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with those standards.

### Web Content Accessibility

The Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the *Web Content Accessibility Guidelines* available at: <https://www.w3.org/WAI/intro/wcag>.

### A.A.2(b) Security Requirements

None Specified

### A.A.2(c) Work Health and Safety

Prior to commencement of the Contract, the Customer's Contract Manager and the Supplier's Contract Manager will identify any potential work health and safety (WHS) issues anticipated to arise during the term of the contract and assign management of each issue identified to the party best able to manage it. For all issues assigned to the Supplier, the Supplier will provide the Customer with a WHS plan for approval and no work will commence until the plan is approved unless agreed in writing by the Customer.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any WHS issues that arise.

### A.A.2(d) Delivery and Acceptance

Milestone Description	Delivery Location	Due Date
Contract signed	Via email	On or before 18 June
Draft Report delivered	Via email	On or before 24 June
Any requested additions/clarifications provided	Via email	On or before 26 June
Final Report accepted by Department Payment will occur following written acceptance of the report by the Department. At that point, we will request South Australia to provide a correctly rendered tax invoice for the total amount.	Via email	By 28 June 2024
Contract end date		30 June 2024

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**A.A.2(e) Meetings**

The Supplier is not required to attend meetings.

**A.A.2(f) Facilities and Assistance Offered by the Customer**

The Customer will not make any facilities or assistance available to the Supplier.

**A.A.2(g) Customer Material**

The Customer will not provide any material.

**A.A.3 ATM Distribution****Email Distribution**

Updates to this ATM will be distributed via email.

**A.A.4 Lodgement of Responses**

Responses must be lodged via email quoting reference number PROC01 by the Closing Time specified in A.A.1 [Key Information and Dates].

Please provide these to:

- [ivais@arts.gov.au](mailto:ivais@arts.gov.au)
- Cc: s22(1)(a)(ii) [@arts.gov.au](mailto:s22(1)(a)(ii)@arts.gov.au)

**Response File Format, Naming Convention and Size**

The Customer will accept Responses lodged in the following formats:

- Microsoft Word (.docx)
- Microsoft Excel (.xlsx)
- PDF (.pdf)

The Response file name/s should:

- a) incorporate the Potential Supplier's full legal organisation name; and

Responses must be completely self-contained.

**A.A.5 Customer's Contact Officers****A.A.5(a) ATM Contact Officer**

For all matters relating to this ATM, the Contact Officer is:

Name/Position: s22(1)(a)(ii) / EL1 Visual Arts Policy

Email Address: s22(1)(a)(ii) [@arts.gov.au/](mailto:s22(1)(a)(ii)@arts.gov.au)

Telephone: P +61 (2) 6136 s22(1)(a)(ii)

**A.A.5(b) Complaints Handling**

Complaints relating to this ATM should be directed to:

Name/Position:	Director, Governance Section
Email Address:	<a href="http://www.infrastructure.gov.au/contact-us/online-enquiries">www.infrastructure.gov.au/contact-us/online-enquiries</a>

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Information relating to the handling of complaints is available on the Customer's website at: [www.infrastructure.gov.au/department/tenders/procurement-complaints](http://www.infrastructure.gov.au/department/tenders/procurement-complaints).

If your issue is not resolved refer <https://www.finance.gov.au/business/procurement/complaints-handling-charter-complaints> for more information relating to complaints.

## Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

### A.C.1 Intellectual Property

The Supplier owns the Intellectual Property Rights in the Material created under the Contract.

The Supplier grants to the Customer:

a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence to exercise the Intellectual Property Rights in the Material provided under the Contract for any purpose; and a right to sub-licence the rights in (a) above to third parties, including to the public under an open access or Creative Commons 'BY' licence.

The licence excludes the right of commercial exploitation by the Customer.

The Supplier warrants that it is entitled to grant this licence to the Customer; and that the provision of the Goods and/or Services and any Material by the Supplier under the Contract, and its use by the Customer, in accordance with the Contract, will not infringe any third party's Intellectual Property Rights and Moral Rights.

Intellectual Property Rights in Goods provided under this Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of the Contract.

### A.C.2 Payment Terms

Where the Customer and the Supplier both have the capability to deliver and receive eInvoices through the Peppol framework and have agreed to use eInvoicing, following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

In all other circumstances following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

Where the Customer fails to make a payment to the Supplier by the Business Day it is due, the Customer will pay the unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate as published on the Australian Taxation Office website

[https://www.ato.gov.au/Rates/General-interest-charge-\(GIC\)-rates/](https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/).

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## Commonwealth Approach to Market (ATM) Terms

### A.B.1 Background

- 1.1 Some terms in this document have been given a special meaning. The meanings are set out either in the Commonwealth Contracting Suite Glossary and Interpretation, the CCS ATM or the draft Commonwealth Contract.
- 1.2 Any queries or complaints regarding this ATM must be directed to the Customer's relevant contact officer listed in the Statement of Requirement.
- 1.3 The Customer may:
- a) amend or clarify any aspect of this ATM, prior to the Closing Time, or
  - b) suspend the ATM process or issue a Public Interest Certificate prior to Contract execution,
- by issuing an addendum to the ATM in the same manner as the original ATM was distributed or, where this is not possible, issuing a notice to all Potential Suppliers.
- 1.4 No contract will exist until the Contract is executed by the Customer. The Customer, acting in good faith, may discontinue this ATM; decline to accept any Response to this ATM or issue any contract; or satisfy its requirements separately from this ATM process.
- 1.5 Participation in this process is at the Potential Supplier's risk and cost.

### A.B.2 Precedence of Documents

- 2.1 If there is inconsistency between any of the parts of this ATM, the following order of precedence will apply:
- a) CCS ATM – Statement of Requirement
  - b) CCS ATM Response Form
  - c) CCS ATM Annexes (if any)
  - d) Commonwealth ATM Terms
  - e) Additional Contract Terms (if any)
  - f) Commonwealth Contract Terms
  - g) draft Commonwealth Contract (if any), and
  - h) CCS Glossary and Interpretation,
- so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

### A.B.3 Referenced Material

- 3.1 The Customer will make available the Customer's Material (if any) referenced in this ATM. Potential Suppliers are responsible for obtaining all other Referenced Material (if any).
- 3.2 Potential Suppliers are responsible for considering Referenced Material in framing their Response.

### A.B.4 Lodging a Response

- 4.1 By lodging a Response, Potential Suppliers agree:
- a) that their Response is subject to these Commonwealth ATM Terms
  - b) that the Response will remain open for acceptance for ninety (90) calendar days from the ATM Closing Time, and
  - c) if successful, to sign a Contract which incorporates the Commonwealth Contract Terms.

- 4.2 When lodging a Response, Potential Suppliers must:
- a) lodge their Response as specified in the Statement of Requirement using the CCS ATM Response Form provided (if any) without changing the structure or formatting of the response form
  - b) comply with any conditions for participation and ensure their Response complies with any minimum content and format requirements set out in the Statement of Requirement
  - c) ensure the Response is in English, and
  - d) ensure that prices quoted:
    - i. are in Australian currency
    - ii. show the GST exclusive price, the GST component (if any) and the GST inclusive price
    - iii. are inclusive of GST and all other taxes, duties (including any customs duties) and any government charges imposed or levied in Australia or overseas, and
    - iv. unless identified in the Potential Supplier's Response, include any and all other charges and costs and be the maximum payable by the Customer under the Contract.
- 4.3 The Customer may decline to consider a Response that is unable to be read or contains alterations, erasures, illegibility, ambiguity or incomplete details.
- 4.4 Potential Suppliers may submit Responses for alternative methods of addressing the Customer's Requirement described in this ATM, where the option to do so was stated in the ATM or agreed in writing with the Customer prior to the Closing Time. Potential Suppliers are responsible for providing a sufficient level of detail about the alternative solution to enable its evaluation.
- 4.5 Potential Suppliers and their officers, employees, agents, advisors and proposed subcontractors must not engage in any collusive, anti-competitive or any other similar conduct with any other Potential Supplier or person, or offer any unlawful inducements in relation to their Response or this ATM process.
- 4.6 The Customer will only extend the Closing Time in exceptional circumstances and, if extended, the extension will apply equally to all Potential Suppliers. The Customer will not consider any Responses received after the Closing Time specified in this ATM unless the Response is late as a consequence of the Customer's mishandling.
- 4.7 Prior to execution of a contract, the Customer may seek clarification or additional information from, and enter into discussions and negotiations with, any or all Potential Suppliers in relation to their Response. In doing so, the Customer will treat all Potential Suppliers equitably and not allow any Potential Supplier to substantially alter their Response.
- 4.8 If any Conflicts of Interest arise during the evaluation period, Potential Suppliers must notify

## Commonwealth Approach to Market (ATM) Terms

the Customer immediately and comply with any reasonable directions issued by the Customer. All communications must be confirmed in writing.

### A.B.5 Evaluation

- 5.1 The Customer will evaluate Responses in accordance with the ATM and consistent with the *Commonwealth Procurement Rules* to determine the best value for money outcome for the Customer.
- 5.2 The Customer will exclude from consideration any Response that does not meet the minimum content and format requirements and the conditions for participation (if any) as set out in the Statement of Requirement.
- 5.3 The criteria for evaluation are the:
  - a) extent to which the Potential Supplier's Response meets the Customer's Requirement set out in this ATM
  - b) extent to which the Potential Supplier demonstrates its capability and capacity to provide the Requirement, and
  - c) whole of life costs to be incurred by the Customer. Evaluation will take account of the quoted price and any costs that the Customer will incur as a result of accepting the Potential Supplier's Response.
- 5.4 Unless stated otherwise in the Approach to Market documentation, the above three (3) criteria for evaluation will be of equal importance.
- 5.5 The Customer may at any time exclude a Response from consideration if the Customer considers that the Response is clearly not competitive.
- 5.6 Potential Suppliers should note that the Commonwealth's *Indigenous Procurement Policy* (IPP) will apply to the Customer in respect of this procurement. During evaluation, the Customer may favourably consider the Potential Supplier's ability to assist the Customer to meet its IPP obligations. More information is available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
- 5.7 If requested by the Customer, the Potential Supplier must be able to demonstrate its ability to remain viable for the duration of the Contract and must promptly provide the Customer with such information or documentation as the Customer reasonably requires.
- 5.8 The Customer reserves the right to contact the Potential Supplier's referees, or any other person, directly and without notifying the Potential Supplier.
- 5.9 The Customer will notify all Potential Suppliers of the final decision and, if requested, will debrief Potential Suppliers following award of the Contract.

### A.B.6 Reporting Requirements

- 6.1 Potential Suppliers acknowledge that the Customer is subject to legislative and administrative accountability and transparency requirements including disclosure to Parliament and its Committees.

- 6.2 Without limiting the Customer's right to disclose other information, for any contracts awarded, the Customer may publicly disclose the Supplier's name, postal address and other details about the Contract, including contract value.
- 6.3 Potential Suppliers acknowledge that the Customer may disclose the names of any Subcontractors engaged in respect of the Contract. Potential Suppliers should also note the requirements of the *Freedom of Information Act 1982* (Cth).

### A.B.7 Confidentiality of Potential Supplier's Information

- 7.1 Potential Suppliers should note that, if successful, parts of their Response may be included in a subsequent Contract. Potential Suppliers must identify and justify any aspects of their Response or the proposed Contract that they consider should be kept confidential.
- 7.2 Potential Suppliers should note that the Customer will only agree to treat information as confidential in cases that it considers consistent with Australian Government legislation and policies. In the absence of such an agreement, Potential Suppliers acknowledge that the Customer has the right to publicly disclose the information.

### A.B.8 Criminal Code

- 8.1 Potential Suppliers acknowledge that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).
- 8.2 Potential Suppliers must ensure that any intended Subcontractors participating in the Potential Supplier's Response are aware of the information in this clause.

### A.B.9 Personal Information

- 9.1 Potential Suppliers agree to provide the Customer, or its nominee, relevant Personal Information relating to the Potential Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security breach relating to this ATM. When providing Personal Information to the Customer, the Potential Supplier warrants that they will have obtained consent or provided reasonable notification in accordance with the *Privacy Act 1988* (Cth).



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## Commonwealth Contracting Suite Glossary and Interpretation

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### Glossary

In the Commonwealth Contracting Suite (CCS):

**“Additional Contract Terms”** means the terms and conditions set out in the section of the Approach to Market, RFQ or the Contract as relevant with the heading ‘Additional Contract Terms’.

**“Additional DoSO Terms”** means the terms and conditions set out in the section of the DoSO with the heading ‘Additional DoSO Terms’.

**“Approach to Market”** or **“ATM”** means the notice inviting Potential Suppliers to participate in the relevant procurement.

**“Business Days”** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned, as defined by the *Corporations Act 2001* (Cth), and also excludes the period between Christmas Day and New Year’s Day.

**“Closing Time”** means the closing time and date as specified in the Approach to Market.

**“Commonwealth Contracting Suite”** or **“CCS”** means the suite of proprietary documents developed for Commonwealth procurements.

**“Commonwealth Procurement Rules”** means the legislative instrument issued by the Finance Minister under section 105B of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which establishes the framework under which entities govern and undertake their own procurement.

**“Confidential Information”** means any information that any Party does not wish to be shared outside those involved in the Contract or Standing Offer Arrangement. It can include anything that has been acquired, developed or made available to any of the Parties in the course of the relationship between the Parties. It includes, but is not limited to, information:

- a) specifically identified as confidential in the Contract or DoSO
- b) where disclosure would cause unreasonable detriment to the owner of the information or another party, or
- c) where the information was provided under an understanding that it would remain confidential.

**“Conflicts of Interest”** means any real or apparent situation where the personal interests of the Supplier, its officers, employees, agents or Subcontractors could improperly influence the Supplier’s performance of the Contract or DoSO as relevant.

**“Contract”** means the documents (specified in the Commonwealth Contract Terms or the Commonwealth Purchase Order Terms as relevant) as executed or amended from time to time by agreement in writing between the Supplier and the Customer.

**“Contract Details Schedule”** means the section in a Contract issued under the DoSO with the heading ‘Contract Details Schedule’.

**“Contract Manager”** means the ‘Contract Manager’ for the Customer or Supplier representative (as relevant) specified in the Contract.

**“Contract Price”** means the maximum contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

**“Correctly Rendered Invoice”** means an invoice that:

- a) is correctly addressed and includes any purchase order number or other Customer reference advised by the Customer’s Contract Manager and the name and specified contact details of the Customer’s Contract Manager
- b) relates only to the Goods and/or Services that have been accepted by the Customer in accordance with the Contract or a payment or milestone schedule identified in the Contract
- c) is correctly calculated and charged in accordance with the Contract
- d) is for an amount which, together with previously Correctly Rendered Invoices, does not exceed the Contract Price, and
- e) is a valid tax invoice in accordance with the GST Act.

**“Customer”** means the party specified in the Contract as the Customer.

**“Deed of Standing Offer”** or **“DoSO”** means the documents (specified in the Commonwealth DoSO Terms) as executed or amended by agreement in writing between the Lead Customer and the Supplier.

**“Delivery and Acceptance”** means the process by which Goods and/or Services are delivered to the Customer and accepted by the Customer as meeting the terms specified in the Contract.



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## Commonwealth Contracting Suite Glossary and Interpretation

**"DoSO Manager"** means the 'DoSO Manager' for the Lead Customer or Supplier representative (as relevant) specified in the DoSO.

**"Electronic Invoicing"** or **"eInvoicing"** means the automated exchange of invoices directly between the Customer and Supplier's software or financial systems via the Peppol network, as long as both Parties are Peppol eInvoicing enabled.

**"Eligible Data Breach"** means an 'Eligible Data Breach' as defined in the *Privacy Act 1988* (Cth).

**"End Date"** means the date specified in the Contract or DoSO (as relevant) on which the agreement ceases.

**"Fraud"** means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means and includes alleged, attempted, suspected or detected fraud.

**"General Interest Charge Rate"** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

**"Goods and/or Services"** means:

- a) the Goods and/or Services and any Material, and
- b) all such incidental Goods and/or Services that are reasonably required to achieve the Requirement of the Customer,

as specified in the Contract and, where relevant, offered under a Standing Offer Arrangement.

**"GST"** means a Commonwealth goods and services tax imposed by the GST Act.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Indigenous Procurement Policy"** means the procurement connected policy as described at the National Indigenous Australians Agency website <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>.

**"Intellectual Property Rights"** means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are current or future or registered or capable of being registered, including without limitation in relation to, copyright, designs, trade marks (including unregistered marks), business and company names, domain names, databases, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

**"Lead Customer"** means the party specified in the DoSO as the Lead Customer.

**"Material"** means any material used or brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

**"Moral Rights"** means the rights in Part IX of the *Copyright Act 1968* (Cth), including the right of attribution, the right against false attribution and the right of integrity.

**"Notice"** means an official notice or communication under the Contract or DoSO (as relevant) in writing, from one Contract or DoSO Manager to the other Contract or DoSO Manager (as the case may be), at the postal address, or email address, or facsimile number set out in the Contract or DoSO or as notified by the relevant Party.

**"Peppol"** means the Pan-European Public Procurement On-Line framework as described at the Australian Taxation Office website <https://www.ato.gov.au/Business/eInvoicing/Peppol/>.

**"Party"** or **"Parties"** means (as relevant) the Customer and Supplier specified in the Contract or the Lead Customer and Supplier specified in the DoSO.

**"Personal Information"** means information relating to a natural person as defined in the *Privacy Act 1988* (Cth).

**"Potential Customer"** means an Australian Government entity that is identified within the DoSO as being able to use the Standing Offer Arrangement.

**"Potential Supplier"** means any entity who is eligible to respond to an ATM.

**"Pricing Schedule"** means a schedule of maximum pricing rates that a Supplier can offer in an RFQ for Goods and/or Services as set out in the DoSO.

**"Public Interest Certificate"** means a certificate issued under section 22 of the *Government Procurement (Judicial Review) Act 2018* (Cth).

**"Referenced Material"** means any materials referenced in the ATM, including but not limited to, reports, plans, drawings or samples.

**"Request for Quote"** or **"RFQ"** means any notice inviting quotations to provide specific Goods and/or Services under the DoSO.

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## Commonwealth Contracting Suite Glossary and Interpretation

**“Required Capabilities”** means:

- a) in the DoSO ATM, the description of the Lead Customer’s required Goods and/or Services. These may be categorised into several descriptions of Required Capabilities.
- b) in the DoSO, the description of the Goods and/or Services that a Supplier is approved to offer.

**“Requirement”** means the description of the Goods and/or Services in:

- a) for the purposes of the Commonwealth ATM Terms, the section of the Approach to Market with the heading ‘The Requirement’
- b) for the purposes of the Commonwealth Contract Terms, the section of the Contract with the heading ‘The Requirement’, or
- c) for the purposes of the Commonwealth Purchase Order Terms, the Customer’s purchase order or similar ordering document setting out the Goods and/or Services.

**“Response”** means information provided by a Potential Supplier or Supplier demonstrating their capacity and capability to:

- a) provide the Requirement under the ATM or Request for Quote, or
- b) meet a Required Capability under the DoSO ATM.

**“Satisfactory”** in relation to the Shadow Economy Policy only, means the Statement of Tax Record meets the conditions set out in Part 6.b of the Shadow Economy Policy or, if the circumstances in Part 6.c of the Shadow Economy Policy apply, the conditions set out in Part 8 of the Shadow Economy Policy.

**“Shadow Economy Policy”** means the *Shadow economy - increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>.

**“Significant Event”** means:

- a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Supplier or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation, or
- b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Supplier or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth’s reputation.

**“Specified Personnel”** means personnel specified in the Contract, or who are accepted by the Customer in accordance with clause C.C.13 [Specified Personnel].

**“Standing Offer Arrangement”** means the DoSO arrangement, any Contract that is executed under the DoSO and any other document that applies to it.

**“Standing Offer Details”** means the section of the DoSO with the heading ‘Standing Offer Details’.

**“Statement of Requirement”** means the section of the Approach to Market with the heading ‘Statement of Requirement’.

**“Statement of Tax Record”** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at [https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting\\_an\\_STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR).

**“Statement of Work”** means the section or schedule of the Contract (as the case may be) with the heading ‘Statement of Work’.

**“Subcontractor”** means an entity contracted by the Supplier to supply some or all of the Goods and/or Services required under the Contract.

**“Supplier”** means a party specified in the Contract or the DoSO as the Supplier.

**“Valid”** in relation to the Shadow Economy Policy only, means the Statement of Tax Record is valid in accordance with Part 7.e of the Shadow Economy Policy.

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## Commonwealth Contracting Suite Glossary and Interpretation

### Interpretation

In the Commonwealth Contracting Suite, unless stated otherwise:

- a) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning
- b) words in the singular include the plural and words in the plural include the singular
- c) the words 'including', 'such as', 'particularly' and similar expressions are not used as and are not intended to be interpreted as words of limitation
- d) a reference to dollars is a reference to Australian dollars
- e) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision
- f) clause headings are for reference only and have no effect in limiting or extending the language of the terms to which they refer, and
- g) the following clause references used in Commonwealth Contracting Suite documents refer to that section or part of the relevant CCS document listed in the table below:

Clause Reference	Section / Part	CCS Document
A.A.[x]	Statement of Requirement	CCS Approach to Market (ATM)
A.B.[x]	Commonwealth Approach to Market (ATM) Terms	
A.C.[x]	Additional Contract Terms	Commonwealth Contract
C.A.[x]	Statement of Work	
C.B.[x]	Additional Contract Terms	
C.C.[x]	Commonwealth Contract Terms	
P.C.[x]	Commonwealth Purchase Order Terms	Commonwealth Purchase Order Terms
D.A.[x]	CCS DoSO ATM	CCS Deed of Standing Offer (DoSO)
D.B.[x]	Commonwealth DoSO ATM Terms	
D.C.[x]	DoSO ATM Response Form	
D.D.[x]	CCS DoSO	
D.D.3(x)	Additional DoSO Terms	
D.E.[x]	Commonwealth DoSO Terms	
R.A.[x]	Schedule 1 - Statement of Work	
R.B.[x]	Schedule 2 - Additional Contract Terms	
R.C.[x]	Schedule 3 - Supplier's Response Form	
R.D.[x]	Contract Details Schedule	

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# INSTRUCTIONS FOR POTENTIAL SUPPLIER

## 1. Before you start

- a) This Response is not an offer for work.
- b) Do not proceed further if:
  - i. your organisation cannot agree to the Commonwealth Contract Terms, available at <https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>. These terms are non-negotiable and will form part of the Contract if you are successful in this ATM process.
  - ii. your organisation does not meet and/or agree to the Minimum Content and Format Requirements and the Conditions for Participation (if any), set out at item A.A.1 [Key Information and Dates], as failure to do so will mean your response cannot be considered.

## 2. Format Requirements

- a) You **MUST** use this form (CCS ATM Response Form) to submit your Response, which **MUST** comply with the Commonwealth ATM Terms, available at: <https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>.

## 3. Guidance for completing your Response

- a) **Specific questions** about this ATM **must** be directed to the ATM Contact Officer set out at Item A.A.5(a) [ATM Contact Officer].
- b) Do not include pricing in any other part of your response except in the relevant Pricing Schedule.
- c) **Submit** the form as required by Item A.A.4 [Lodgement of Responses].

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**Response to Approach to Market**  
to establish  
**Contract for Procurement of South Australian Government –  
Visual Arts Report**  
ATM Reference ID: 0010029412

This Response will be prepared and lodged in accordance with the Minimum Content and Format requirements as set out in A.A.1 [Key Information and Dates].	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No:</b> Do not proceed as your Response will not be eligible for further consideration
This Response will demonstrate our ability to meet the Conditions for Participation as set out in A.A.1 [Key Information and Dates].	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No:</b> Do not proceed as your organisation will not have the ability to fulfil the requirements of the procurement.

**Potential Supplier's Contact Officer**

For all matters relating to this Response, the Potential Supplier's Contact Officer is:

Potential Supplier Name:	Department of the Premier and Cabinet
Contact Name:	Alison Lloyd-Wright
Position:	Deputy Chief Executive
Telephone:	s22(1)(a)(ii)
Email Address:	s22(1)(a)(ii)@sa.gov.au
Postal Address:	200 Victoria Square ADELAIDE SA 5000

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## Part 1 – Potential Supplier’s Details

### 1.1 Potential Supplier’s Details

Organisation’s Full Legal Name:	Department of the Premier and Cabinet
Legal Entity Type:	<input checked="" type="checkbox"/> Other (please state): State Government Entity
Potential Supplier Entity’s Country of Tax Residency:	Australia
Potential Supplier’s Ultimate Parent Entity’s Country of Tax Residency:	N/A
Australian Business Number (ABN):	94 500 415 644
Australian Company Number (ACN):	N/A
Australian Registered Body Number (ARBN):	N/A
Registered Address:	GPO Box 2343 Adelaide SA 5001

### 1.2 Previous Judicial Decisions

Has your organisation, or where relevant any of its directors, ever had a judicial decision against them (not including decisions under appeal) relating to employee entitlements or engaged in practices that have been found to be dishonest, unethical or unsafe?	<input type="checkbox"/> <input checked="" type="checkbox"/> No
<b>If yes</b> , what was the date of discharge?  <i>The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the Criminal Code Act 1995 (Cth).</i>	(DD/MM/YYYY)  <i>Note: The Customer cannot enter a contract with a supplier who has an undischarged judicial decision relating to employee entitlements.</i>

### 1.3 1.5 Potential Supplier’s Contract Manager

For matters relating to the proposed Contract, the Potential Supplier’s Contract Manager will be:

Name:	Wayne Hunter
Position Title:	Chief Operating Officer
Telephone:	-
Mobile:	s22(1)(a)(ii)
Email Address:	s22(1)(a)(ii) @sa.gov.au
Postal Address:	Level 3, 200 Victoria Square, ADELAIDE SA 5000

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## 1.6 Potential Supplier's Address for Notices (if different from the Contract Manager)

Name:	AS ABOVE
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## Part 2 – Executive Summary

### 2.1 Executive Summary of Potential Supplier's Proposal

On 9 April 2023, the Weekend Australian newspaper released a substantial investigative article outlining allegations about inappropriate levels of “white involvement in bringing APY Lands’ prized art to gallery walls”. The article focussed on the practices of the Adelaide studio of the APY Art Centre Collective and had a particular focus on one Art Centre Collective member organisation.

Numerous subsequent articles have been published including those relating to the planned National Gallery of Australia exhibition - *Ngura Pulka – Epic Country* - comprising 28 works from artists associated with the APY Art Centre Collective.

The National Gallery of Australia conducted a review to clarify whether the APY artists attributed as the creators of the paintings in the planned exhibition exercised creative control over the creation of the paintings, and so can be properly described as the artists responsible for those works consistent with the National Gallery’s provenance policy. It found that the paintings complied with the Provenance Standards of the National Gallery.

The APY Art Centre Collective is an Indigenous Corporation under the Office of the Registrar of Aboriginal Corporations or ORIC. It operates the APY Gallery Sydney, the APY Gallery Melbourne and the APY Gallery and Studio Adelaide.

In July 2023, the South Australian Government announced an independent review into the APY Art Centre Collective.

### 2.2 Conditions for Participation

The potential supplier is the South Australian Government.

## Part 3 – Ability to Meet the Requirement

### 3.1 Detailed Proposal to Meet the Customer’s Requirement

The purpose of the review was to consider:

- recent and historical allegations that APY Art Centre Collective staff intervened in the artwork of Aboriginal artists connected to the APY Art Centre Collective,
- that efforts were made to conceal this activity,
- that APY Art Centre Collective was not supporting culturally safe work practices,
- as well as assessing management practices and terms of engagement for artists.

The Review’s Terms of Reference (copy attached) were developed in consultation with the federal and Northern Territory governments and the panel members. The Terms of Reference directed the Panel to review the allegations and operations of the APYACC and determine whether any matters should be the subject of investigation or referral for action by another body.

### 3.2 Standards - Not applicable

## Part 4 – Potential Supplier’s Demonstrated Capability and Capacity

### 4.1 Statement of Skills and Experience

The Review Panel consisted of Megan Krakouer, Anne Sibree and Cameron Costello.

Ms Sibree, from Selbey Street Chambers, has over a decade of experience practicing in a range of areas, initially as a Senior Associate at Johnston Withers Barristers and Solicitors, and then as Senior Solicitor in In House Counsel in the Aboriginal Legal Rights Movement Inc.

Ms Krakouer is a Menang woman and Director of the National Suicide Prevention and Trauma Recover Project and holds a Bachelor of Laws from Deakin University. She has extensive experience in working alongside vulnerable people, collecting hundreds of testimonies on a range legal issue for the National Justice Project, Levitt Robinson Lawyers, and knowmore.

Mr Costello is a Quandamooka man and the Deputy Chair of the Queensland Tourism Industry Council and the Interim Chair of the Queensland First Nations Tourism Council. He is a member of the UQ Law Advisory Board and was recently appointed to the Queensland Government’s First Nations Consultative Committee to establish a Voice model to the Queensland Parliament. Mr Costello previously spent four years working with the Queensland Government as the Program Manager for Backing Indigenous Art, an \$11.2 million initiative for developing a sustainable Indigenous arts industry in Queensland.



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**4.2 Specified Personnel - Not applicable****4.3 Subcontractors - Not applicable****4.4 Conflicts of Interest**

Nil

**4.5 Referees – Not Applicable****4.6 Pre-existing Intellectual Property of Potential Supplier**

NA

**4.7 Confidentiality of Potential Supplier's Information**

Cultural safety respects the authenticity of First Nations protocols and privacies, and their ability as is common sensical to all people that certain conversations are shared in confidentiality at all levels and that it is never compromised under any circumstances without cultural permissions.

Cultural permission comes only from the person providing the information and the statesperson of that particular cultural homeland. Each community homeland has different protocols as to how cultural permissions are granted and cultural safety is described. Cultural integrity is defined as a promise to never be broken, protocols to be always preserved, respect goes both ways to the incumbent residents and to the visitors such as ourselves.

Cultural integrity is about authenticity to oneself and to the other, it is never to be eroded or put at risk.

If you say your contribution, or parts of it, is confidential, the Panel will use its best endeavours to maintain the confidentiality of that information and/or preserve the anonymity of the person who has provided it.

However, it is important to understand that there are certain circumstances in which a person's contribution may not be able to be kept confidential, and the information they provide may be disclosed. These include disclosure:

- that is required by law;
- to a third-party authority, of South Australia, the Commonwealth, or some other State or Territory, for the purposes of a referral by the Panel to that authority for investigatory or regulatory action, or in response to a request for information from such a body
- that may be necessary for the purposes of providing a meaningful report to the Minister, acknowledging that the report itself may be released by the Minister;
- to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee
- for the purposes of prosecuting or defending any legal proceedings.

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The Potential Supplier has assessed that the commercial information in the table below meets the requirements available at <https://www.finance.gov.au/government/procurement/buying-australian-government/additional-reporting-confidentiality> and is seeking that information be kept confidential.

Information to be kept Confidential	Reasons for Confidentiality Request
NA	
NA	

#### 4.8 Proven Ability to Meet Regulatory Considerations

NA

#### 4.9 Sustainability Considerations

NA

#### 4.10 Additional Information

NA

### Part 5 – Total Costs to be incurred by the Customer

The total cost of the review (\$606,136 (GST exclusive)) reflects:

- Payments to panellists \$505,803 (GST exclusive)
- Temporary engagement of an ASO6 Officer to perform Secretariat functions for the panel at a total of \$62,148 (GST exclusive)
- Travel expenses \$27,118 (GST exclusive)
- Other operational expenses (eg equipment, interpreting fees) of \$11,067 (GST exclusive)

There is limited capacity to meet the full costs of the review from within the Arts portfolio budget of the South Australian government.

Verbal agreement between State and Federal Ministers that half the costs of the review would be met by the Commonwealth government.

#### 5.1 Pricing

##### Fixed Price (including all expenses)

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The total amount sought by the South Australian Government is **\$303,068 (GST exclusive)** which is half of the total cost.

NA to table below as this is a retrospective payment.

Due Date	Milestone Description	Total Price GST Exclusive	GST Component	Total Price GST Inclusive
<b>Total Fixed Price for Services</b>				

## 5.2 Proposed Payment Schedule

NA

Due Date	Milestone Description	Total Price (GST Exclusive)	GST Component	Total Price (GST Inclusive)
<b>Total Milestone Payments</b>				

## 5.3 Additional Facilities and Assistance - Not Applicable

## 5.4 Non-Compliance

### Drafting Note:

If your response is successful, you will be offered a Contract which incorporates the *Commonwealth Contract Terms* available at

<https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>. The Terms have been designed to enable Commonwealth officials to comply with their legislated responsibilities and are therefore **NOT** negotiable.

If you have reasons why any of the Additional Contract Terms should be changed, complete the following table, as these additional terms may be negotiable.

Any costs the Customer would incur in obtaining legal advice (including in-house legal advice) or negotiating the Customer's Additional Contract Terms will be included in the Customer's total costs assessment.

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Clause	Reason for Non-Compliance	Proposed New Wording

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# Request for Quote (short form) Evaluation Report

To: s22(1)(a)(ii)

Contact Officer: s22(1)(a)(ii)

Date: 18 June 2024

Registration ID: 0010029412

## Request for Quotation 0010029412 for South Australian Government – Visual Arts Report

### Purpose

To seek your approval to engage the South Australian Government for the period of June 2024 as the supplier to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department), for the procurement of a Visual Arts Report. This report pertains to the 2023 South Australian Government-led Review of the APY Art Centre Collective. Approval to exercise any contract extension or variation will be sought prior to extending/varying the arrangement.

Approval to conduct the procurement, including to allocate funding for the procurement, was provided by Dr Stephen Arnott, Deputy Secretary, Creative Economy and the Arts, on 14 June 2024.

### Requirements

A short report on the 2023 South Australian Government-led Review of the APY Art Centre Collective.

### Background

The department issued an Approach to the Market via Limited Tender. The Request for Quote (RFQ) and related documentation were released to the following suppliers on 14 June:

Name of Supplier/s	
South Australian Government	ABN 94 500 415 644

### Evaluation Process and Methodology

The closing date and time for receipt of quotes was on or before midday June 17, 2024. South Australia did not meet this deadline, but contacted the Department early on June 17 seeking to provide the ATM documentation on the morning of 18 June. We verbally accepted this request.

The evaluation committee met on 18 June, consisting of:

- s22(1)(a)(ii) (Chair); and
- s22(1)(a)(ii) (Committee member).

Following the technical evaluation, the supplier was assessed as suitable. Details of the quote including scoring by the Evaluation Committee, are at **Attachment A**. The Capability Score Matrix and Risk Matrix are at **Attachment B**, for information.

### Evaluation Process Summary

The Evaluation Committee confirms the supplier has been assessed for suitability against the requirements in the Request For Quote (RFQ), rated by value for money associated with the delivery

of the services. The supplier has been treated fairly and equitably throughout the process. The successful supplier meets all eligibility criteria for engagement with the department. The criteria used for the evaluation of this procurement process are those outlined in the RFQ and were drawn from operational and departmental requirements.

The Evaluation Committee reviewed the quote received, and independently evaluated the quote before discussing it.

The members of the Evaluation Committee confirm that the Commonwealth Procurement Rules, PGPA Act 2013 and Accountable Authority Instructions have been fully complied with during the conduct of this procurement process and each member has signed a Conflict of Interest Declaration. Referee checks were not conducted by the Evaluation Committee.

### Recommendation

**After completion of evaluation, the Evaluation Committee recommends that the Department engage the South Australian Government, ABN 94 500 415 644.**

The proposed arrangement will commence on 18 June until 30 June for a total value of **\$333,374.80 (inclusive of GST)**.

This contract includes the following extension options:

- the option for a single extension at your discretion as the delegate.

**The South Australian Government** represents the best value for money for Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

#### RECOMMENDATIONS

That you:

1. **AGREE / NOT AGREE** to the recommendation above.
2. **APPROVE / NOT APPROVE** entering into an arrangement under section 23(1) with **The South Australian Government (ABN: 945000415644)** to deliver the **Visual Arts Report** and provide the commitment of relevant money under section 23(3) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) valued at **\$333,374.80 (inclusive of GST)**.
3. **AGREE / NOT AGREE** to sending the South Australia Government the Contract at **Attachment C** for signature (you will be requested to countersign to initiate the contract).

Signature:.. §22(1)(a)(ii)

§22(1)(a)(ii)  
A/g Assistant Secretary  
Creative Industries Branch

Date: 18-6-2024

## Attachments

Attachment A: Summary of Supplier Assessment

Attachment B: Capability Score Matrix and Risk Matrix

Attachment C: Contract – PROC Visual Arts Report

### Attachment A – Summary of Supplier Assessment

Selection criteria: Provision of a Visual Arts Report	A South Australian Government
1. Extent to which the Potential Supplier's Response meets the Customer's Requirement	6.5/10
2. Extent to which the Potential Supplier demonstrates its capability and capacity to provide the Requirement	8.5/10
<b>TOTAL SCORE</b>	15/20
<b>OUTCOME OF ASSESSMENT</b>	<b>Preferred</b>

## Attachment A: Quote/Assessment Score Card

Selection criteria	Score (out of 10)	Comments
Extent to which the Potential Supplier's Response meets the Customer's Requirements	6.5	<p>In relation to the Report component of the Procurement, this is a satisfactory (though somewhat piecemeal) response. However, it is sufficient to allow us to believe the final Report will provide the information we are seeking.</p> <p>In their response, they have addressed the background of the APY Art Centre Collective matter which led to the SA Government-led review. They note the development of Terms of Reference with the Northern Territory and Australian Governments, which provided the scope for the Review. They also acknowledge cultural safety requirements, and how this relates to keeping material as confidential as possible, without being able to promise that confidentiality will be kept.</p> <p>Although this is not included in the response, by conducting the Review, SA has already provided due diligence which may inform the department's Indigenous Visual Arts Industry Support (IVAIS) grant program.</p>
Extent to which the Potential Supplier demonstrates its capability and capacity to provide the Requirement	8.5	<p>Strong claims and strengths in that the SA Government is the only organisation able to provide what we are seeking. Their response demonstrates they have the skills and understanding of the complex and sensitive subject matter.</p> <p>The response also demonstrates the capability and capacity of the people the South Australian Arts Minister appointed to lead the Review.</p>
Total	15/20	



Evaluation report

Risk	Comments and rating (see page 8)
South Australia provides sensitive, in-confidence materials that may identify individuals or communities which provided information to the Review panel, or which was inappropriately shared.	Risk – very low: our ATM documents and Contract will make it clear that in-confidence material is not to be provided.
Timing of procurement does not meet 2023-24 Financial Year thresholds.	Risk - low: Requires ongoing management with South Australia and internal departmental coordination.
<b>Overall risk:</b>	Low

Cost of quotation (include breakdown of costs)	Comments
<p>South Australia is seeking almost 50% of the costs of their Review.</p> <p>The total cost of the review (\$606,136 (GST exclusive)) reflects:</p> <ul style="list-style-type: none"> <li>• Payments to panellists \$505,803 (GST exclusive)</li> <li>• Temporary engagement of an ASO6 Officer to perform Secretariat functions for the panel at a total of \$62,148 (GST exclusive)</li> <li>• Travel expenses \$27,118 (GST exclusive)</li> <li>• Other operational expenses (e.g. equipment, interpreting fees) of \$11,067 (GST exclusive)</li> </ul>	All costs are reasonable. Total requested amount is \$303,068 (GST exclusive).

**Attachment B: Capability Score Matrix**

Score	Adjective	Description
10	Excellent	<ul style="list-style-type: none"> <li>Meets the requirements and comprehensively offers a substantially increased range and levels of service to those detailed in the SOR and which would be of significant benefit to the Department. Response demonstrates excellent understanding of requirements and approach that significantly exceeds performance or capability standards. Has exceptional strengths that will significantly benefit the department.</li> <li>Exceptionally well developed response and capabilities in relation to the evaluation criteria. Only to be used where it has been clearly demonstrated that the tenderer can perform significantly above the requirements of the department.</li> </ul>
7 to 9	Fully Capable	<ul style="list-style-type: none"> <li>Meets the requirements of the RFQ and SOR. Proposal demonstrates good understanding of requirements and approach that exceeds performance or capability standards. Has one or more strengths that will benefit the department.</li> <li>Highly developed response demonstrating relevant capabilities that shows an ability to consistently perform above the required level.</li> </ul>
5 to 6	Capable	<ul style="list-style-type: none"> <li>Meets the requirements as stated in the RFQ and SOR.</li> <li>Issues in relation to non-key points resulted from evaluation, minor strategies required to manage issues.</li> <li>Proposal demonstrates acceptable understanding of requirements and approach that meets performance or capability standards. Acceptable solution with few or no strengths.</li> <li>Response demonstrates relevant capabilities and ability to perform at the required level.</li> </ul>
2 to 4	Requires Development	<ul style="list-style-type: none"> <li>Does not meet all the requirements as stated in the RFQ and SOR.</li> <li>Proposal demonstrates shallow understanding of requirements and approach that only marginally meets performance or capability standards necessary for minimal but acceptable contract performance.</li> <li>Response demonstrates only some ability to perform at the required level against the relevant criteria.</li> </ul>
1	Unsatisfactory	<ul style="list-style-type: none"> <li>Does not meet the requirement as stated in the RFQ and SOR.</li> <li>Fails to meet performance or capability standards. Requirements can only be met with major changes to the proposal.</li> <li>Response does not demonstrate that tenderer has the relevant capability against the criteria to perform at the required level.</li> </ul>
0	Not Addressed	<ul style="list-style-type: none"> <li>Did not address the criteria</li> </ul>

## Attachment B: Risk Matrix

Adjective	Description
None	<ul style="list-style-type: none"> <li>No identifiable risks involved.</li> <li>No non-compliance exists</li> </ul>
Low	<ul style="list-style-type: none"> <li>A non-compliance exists</li> <li>Any proposal risks have little potential to cause disruption of schedule, minor increase in cost, or minor degradation of performance. Average contractor effort and average the department monitoring will probably minimise any difficulties.</li> <li>Minor effort required to negotiate.</li> </ul>
Medium	<ul style="list-style-type: none"> <li>A non-compliance exists</li> <li>Issues in relation to non-key points resulted from evaluation, minor strategies required to manage issues.</li> <li>Approach has weaknesses that can potentially cause some disruption of schedule, increase in cost, or degradation of performance. Significant contractor effort and close the department monitoring will probably minimise difficulties.</li> <li>Some effort required to negotiate.</li> </ul>
High	<ul style="list-style-type: none"> <li>A non-compliance exists</li> <li>Approach has weaknesses that have the potential to cause serious disruption of schedule, major increase in cost, or major degradation of performance even with special contractor attention and closely scrutinised monitoring by the department.</li> <li>Concentrated effort required to negotiate.</li> </ul>
Extreme	<ul style="list-style-type: none"> <li>A non-compliance exists</li> <li>Approach has weakness that could potentially cause complete disruption to schedule (with the possibility to not be able to complete), excessive increase in cost (so as to be outside of budget availability), or excessive degradation of performance. It is unlikely that any efforts by the contractor or the department will minimise the risks.</li> <li>Excessive effort required to negotiate.</li> </ul>
Beyond threshold	<ul style="list-style-type: none"> <li>A non-compliance exists.</li> <li>The non-compliance is against policy and/or legislation</li> <li>The associated risks would make the procurement impossible to undertake. There is no effort by the contractor or the department that could mitigate the risk. That is, the risk has been deemed as a being below the department's bottom line.</li> <li>No negotiation. Tender must comply.</li> </ul>



# Australian Government

## Commonwealth Contract

Reference ID: 0010029412

### Customer

Customer Name: Department of Infrastructure, Transport, Regional  
Development and Communications and the Arts  
Customer ABN: 86 267 354 017  
Address: GPO Box 594  
Canberra ACT 2601

### Supplier

Full Name of the Legal Entity: Department of Premier and Cabinet  
Supplier ABN: 94 500 415 644  
Address: GPO Box 2343  
Adelaide SA 5001

## Statement of Work

### C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date or the date this Contract is executed, whichever is the latter, and continues for the Contract Term unless it is terminated earlier.

Event	Details
Contract Start Date:	18 June 2024
Deliverable:	Final Visual Arts Report accepted by Department (see C.A.2) Following written acceptance of the report by the Department, we request the Department of Premier and Cabinet to provide a correctly rendered tax invoice.
Contract Term:	The Contract will terminate on Sunday 30 June 2024.
Contract Extension Option:	The Contract Term may be extended on the discretion of the Delegate, the Assistant Secretary Creative Industries Branch, Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

### C.A.2 The Requirement

The South Australian Government will provide a report about its 2023 Review of the APY Art Centre Collective:

- Summarising the background and objectives of the review,
- Summarising the review process (information including the appointment of the Review panel and their background, the Terms of reference, etc),
- Outlining high-level findings that are able to be shared, and
- Providing lessons learnt from the Review, including:
  - any changes that South Australia is considering making to its policies, programs, and/or practices as a result of the Review, that may assist the Australian Government in improving its ongoing management and continual improvement of the Indigenous Visual Arts and Industry Support (IVAIS) program.
  - any other lessons learnt that may be relevant to the management of the IVAIS program or Australian Government First Nations Visual Arts policy.

#### C.A.2(a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards and any Australian and international standards specified in this Statement of Work. The Supplier must ensure that it obtains copies of all relevant certifications and maintains records evidencing its compliance with those standards. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with those standards.

#### Web Content Accessibility

As applicable, the Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the Web Content Accessibility Guidelines available at:

<https://www.w3.org/WAI/intro/wcaq>.

#### C.A.2(b) Security Requirements

None Specified

#### C.A.2(c) Work Health and Safety

Prior to commencement of this Contract, the Customer’s Contract Manager and the Supplier’s Contract Manager will identify any potential work health and safety (WHS) issues anticipated to arise during the term of this contract and assign management of each issue identified to the party best able to manage it. For all issues assigned to the Supplier, the Supplier will provide the Customer with a WHS plan for approval and no work will commence until the plan is approved unless agreed in writing by the Customer.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any WHS issues that arise.

**C.A.2(d) Delivery and Acceptance**

Where the Customer rejects any deliverables under Clause C.C.11 [*Delivery and Acceptance*] the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier’s cost, so that the deliverables meet the requirements of this Contract. The Supplier must comply with any such requirement. Rectified deliverables are subject to acceptance under Clause C.C.11 [*Delivery and Acceptance*]. The Supplier will refund all payments related to the rejected deliverables unless the relevant deliverables are rectified and accepted by the Customer. If the Supplier is unable to meet the Customer’s timeframe, the Customer may terminate this Contract in accordance with Clause C.C.16 [*Termination for Cause*].

Item/Description	Delivered To	Delivery Address – via email	Contact Phone	Delivery Date
Draft Report	s22(1)(a)(ii)	<a href="mailto:ivais@arts.gov.au">ivais@arts.gov.au</a> CC: s22(1)(a)(ii) @arts.gov.au	s22(1)(a)(ii)	On or before 24/06/2024
Final Report (if changes are requested)	s22(1)(a)(ii)	<a href="mailto:ivais@arts.gov.au">ivais@arts.gov.au</a> s22(1)(a)(ii) @arts.gov.au	s22(1)(a)(ii)	On or before 26/06/2024

**C.A.2(e) Meetings**

The Supplier is not required to attend meetings.

**C.A.2(f) Facilities and Assistance Offered by the Customer**

The Customer will not make any facilities or assistance available to the Supplier.

**C.A.2(g) Customer Material**

The Customer will not provide any material.

**C.A.2(h) Conflicts of Interest**

The Supplier has declared that it has no Conflicts of Interest relevant to the performance of its obligations under this Contract.

**C.A.2(i) Public Interest Disclosure**

For information about how to make a Public Interest Disclosure, please refer to the information provided on the Customer’s website: <https://www.infrastructure.gov.au/contact-us/public-interest-disclosures#:~:text=Overview,accordance%20with%20the%20PID%20Act>

All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	To the Authorised Officer
Email Address:	<a href="mailto:PID@infrastructure.gov.au">PID@infrastructure.gov.au</a>
Telephone:	1800 075 001

**C.A.2(j) Complaints Handling**

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

For information about how to make a complaint, please refer to the information provided on the Customer's website: <https://www.infrastructure.gov.au/contact-us/online-enquiries>.

Any complaints relating to this procurement should be referred to:

Name/Position:	Director, Governance Section
Email Address:	<a href="mailto:governancesection@infrastructure.gov.au">governancesection@infrastructure.gov.au</a>

If your issue is not resolved refer <https://www.finance.gov.au/business/procurement/complaints-handling-charter-complaints> for more information relating to complaints.

**C.A.3 Contract Price**

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$333,374.80** as set out below.

**Fixed Price (including all expenses)**

Due Date	Item Description	Quantity	Unit Price GST Exclusive	Total Price GST Exclusive	GST Component	Total Price GST Inclusive
24/06/2024	Report	1	\$303,068.00	\$303,068.00	\$30,306.80	\$333,374.80

**Total Fixed Price for Goods \$333,374.80 GST Inclusive**

**C.A.3(a) Payment Schedule**

The Total Fixed Fees and Charges will be made as a single payment on completion of contracted deliverables.

**C.A.4 Contract Managers and Addresses for Notices**

Contract Managers are responsible for issuing or accepting any written Notices under this Contract and are the contact points for general liaison.

**C.A.4(a) Customer’s Contract Manager:**

The person occupying the position of: EL 1  
 Currently: s22(1)(a)(ii)  
 Telephone: P +61 (2) 6136 s22(1)(a)(ii)  
 Mobile: s22(1)(a)(ii)  
 Email Address: s22(1)(a)(ii) @arts.gov.au  
 Postal Address: GPO Box 594  
 Canberra ACT 2601

**C.A.4(b) Customer’s Address for Invoices:**

Addressee Name/Position Title: s22(1)(a)(ii)  
 Telephone: P +61 (2) 6136 s22(1)(a)(ii)  
 Email Address: ivais@arts.gov.au, cc s22(1)(a)(ii) @arts.gov.au  
 Postal Address: GPO Box 594  
 Canberra ACT 2601

*The Customer’s preferred method of invoicing is by email.*

**C.A.4(c) Supplier’s Contract Manager:**

Name: Wayne Hunter  
 Position Title: Chief Operating Officer  
 Mobile: s22(1)(a)(ii)  
 Email Address: s22(1)(a)(ii) @sa.gov.au  
 Postal Address: Level 3, 200 Victoria Square, ADELAIDE SA 5000

**C.A.4(d) Supplier’s Address for Notices**

As above

**C.A.5 Specified Personnel**

Not Applicable

**C.A.6 Subcontractors**

None Specified



## Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

### C.B.1 Intellectual Property

The Customer owns the Intellectual Property Rights in the Material created under this Contract.

To the extent the Supplier or a third party holds any Intellectual Property Rights in any existing Material, the Supplier hereby agrees to licence the Customer to enable the Customer to exercise full rights and interests in the Intellectual Property Rights in any Material provided under this Contract. The Supplier agrees to create, execute or sign any documents and perform all acts which may be necessary to allow the use of those rights by the Customer for any purpose.

The Customer grants to the Supplier a non-exclusive, non-transferable, irrevocable, royalty-free licence for this Contract Term to exercise the Intellectual Property Rights in the Material for the sole purpose of fulfilling its obligations under this Contract. The licence in this clause is subject to any conditions or limitations of third parties that the Customer notifies to the Supplier.

Intellectual Property Rights in Goods provided under this Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of this Contract.

### Pre-Existing Intellectual Property of the Supplier

Not Applicable.

### C.B.2 Confidential Information of the Supplier

Not Applicable. Please do not provide confidential information.

### C.B.3 Payment Terms

Where the Customer and the Supplier both have the capability to deliver and receive eInvoices through the Peppol framework and have agreed to use eInvoicing, following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

In all other circumstances following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

Where the Customer fails to make a payment to the Supplier by the Business Day it is due, the Customer will pay the unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate as published on the Australian Taxation Office website [https://www.ato.gov.au/Rates/General-interest-charge-\(GIC\)-rates/](https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/).

<b>Commonwealth Contract Terms</b>
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**C.C.1 Background**

- 1.1 The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Requirement.
- 1.2 Some terms used in these Commonwealth Contract Terms have been given a special meaning. Their meanings are set out in the Commonwealth Contracting Suite (CCS) Glossary and Interpretation or in the Contract.

**C.C.2 Relationship of the Parties**

- 2.1 By virtue of this Contract, neither Party is the employee, agent, officer or partner of the other Party nor authorised to bind or represent the other Party.
- 2.2 Each Party must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the other Party.
- 2.3 In all dealings related to the Contract, the Parties agree to:
  - a) communicate openly with each other and cooperate in achieving the contractual objectives
  - b) act honestly and ethically
  - c) comply with reasonable commercial standards of fair conduct
  - d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces, and
  - e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

**C.C.3 Conflicts of Interest**

- 3.1 The Supplier warrants that, other than as previously declared in writing to the Customer at the commencement of the Contract, no Conflicts of Interest exist, relevant to the performance by the Supplier of its obligations under the Contract.
- 3.2 At any time during the term of the Contract, the Customer may require the Supplier to execute a Conflicts of Interest declaration in the form specified by the Customer.
- 3.3 As soon as the Supplier becomes aware that a Conflict of Interest has arisen, or is likely to arise during the term of the Contract, the Supplier will:
  - a) immediately report it to the Customer
  - b) provide the Customer with a written report setting out all relevant information within three (3) Business Days, and
  - c) comply with any reasonable requirements notified by the Customer relating to the Conflict of Interest.
- 3.4 If the Supplier fails to notify the Customer as set out in this clause or does not comply with the

Customer's reasonable requirements to resolve or manage Conflicts of Interest, the Customer may terminate or reduce the scope of the Contract in accordance with C.C.16 [Termination for Cause].

**C.C.4 Precedence of Documents**

- 4.1 The Contract is comprised of:
  - a) Additional Contract Terms (if any)
  - b) if the Contract is issued under a DoSO, the Contract Details Schedule
  - c) Statement of Work
  - d) Commonwealth Contract Terms
  - e) CCS Glossary and Interpretation, and
  - f) additional Contract annexes (if any), unless otherwise agreed in writing between the Parties.
- 4.2 If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.
- 4.3 The Contract may be signed and dated by the Parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

**C.C.5 Governing Law**

- 5.1 The laws of the Australian Capital Territory apply to the Contract.

**C.C.6 Entire Agreement**

- 6.1 The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was executed.
- 6.2 Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM or the RFQ as relevant remain correct.
- 6.3 Any agreement or understanding to vary or extend the Contract will not be legally binding upon either Party unless in writing and agreed by both Parties.
- 6.4 If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

**C.C.7 Survival**

- 7.1 All Additional Contract Terms (if any), plus clauses: C.C.14 [Liability of the Supplier] C.C.17 [Supplier Payments] C.C.20 [Transition Out], and C.C.21 [Compliance with Law and Policy], survive termination or expiry of the Contract.

**C.C.8 Notices**

- 8.1 A Notice is deemed to be delivered:
  - a) if delivered by hand - on delivery to the relevant address
  - b) if sent by registered post - on delivery to the relevant address, or
  - c) if transmitted by email or other electronic means when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.
- 8.2 A Notice received after 5:00 pm, or on a day that is not a working day in the place of receipt, is

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deemed to be delivered on the next working day in that place.

**C.C.9 Assignment**

- 9.1 The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.
- 9.2 To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty (20) Business Days, or such other time as agreed between the Parties, of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

**C.C.10 Subcontracting**

- 10.1 Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.
- 10.2 The Supplier must ensure that Subcontractors specified in the Contract (if any) perform that part of the Services specified in the Contract. The Supplier must not subcontract any part of its obligations under the Contract, or replace approved Subcontractors, without prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.
- 10.3 At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.
- 10.4 The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.
- 10.5 The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

**C.C.11 Delivery and Acceptance**

- 11.1 The Supplier must provide the Goods and/or Services as specified in the Contract and meet any requirements and standard specified in the Contract.
- 11.2 The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the Contract and advise the Customer when it will be able to do so.
- 11.3 Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar

services and any standard specified in the Contract.

- 11.4 The Customer may reject the Goods and/or Services within ten (10) Business Days after delivery or such longer period specified in the Contract ("Acceptance Period"), if the Goods and/or Services do not comply with the requirements of the Contract.
- 11.5 If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).
- 11.6 If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.
- 11.7 If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

**C.C.12 Licences Approvals and Warranties**

- 12.1 At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.
- 12.2 The Supplier must provide the Customer with all relevant third party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.
- 12.3 To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.

**C.C.13 Specified Personnel**

- 13.1 The Supplier must ensure that the Specified Personnel set out in the Contract (if any) perform the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.
- 13.2 At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace

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any Specified Personnel that the Customer reasonably considers:

- a) is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer
- b) is not a fit and proper person, or
- c) is not suitably qualified to perform the Services.

13.3 Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.

#### C.C.14 Liability of the Supplier

14.1 The Supplier will indemnify the Customer for any damage claim, cost or loss resulting from any negligent or wilful breach of its obligations or representations under the Contract by the Supplier or its officers, employees, agents or Subcontractors.

14.2 The Supplier's obligation to indemnify the Customer will reduce proportionally to the extent that the Customer has contributed to the claim, cost or loss.

14.3 Where the Supplier is a member of a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002 (ACT)*, or any corresponding Commonwealth, State, Territory or legislation that limits civil liability arising from the performance of their professional services, and where that scheme applies to the Goods and/or Services delivered under the Contract, the Supplier's liability under this clause shall not exceed the maximum amount specified by that scheme or legislation.

14.4 The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

#### C.C.15 Termination or Reduction for Convenience

15.1 In addition to any other rights either Party has under the Contract,

- a) the Customer acting in good faith, may at any time, or
- b) the Supplier, acting in good faith, may notify that it wishes to,

terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

15.2 If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

15.3 If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

15.4 In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with C.C.11 [Delivery and

Acceptance] and the Contract before the effective date of termination or reduction.

15.5 If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

15.6 Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

#### C.C.16 Termination for Cause

16.1 The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:

- a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract
- b) the Customer rejects the Goods and/or Services in accordance with C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection
- c) the Supplier breaches a material term of the Contract and the breach is not capable of remedy
- d) the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier, or
- e) subject to the Customer complying with any requirements in the *Corporations Act 2001 (Cth)*, the Supplier:
  - i. is unable to pay all its debts when they become due
  - ii. if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001 (Cth)*, or
  - iii. if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966 (Cth)*.

16.2 Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

#### C.C.17 Supplier Payments

17.1 If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

17.2 The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

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- 17.3 Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.
- 17.4 If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.
- C.C.18 Dispute Resolution**
- 18.1 For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (e) of this clause sequentially:
- a) both Contract Managers will try to settle the dispute by direct negotiation
  - b) if unresolved within five (5) Business Days, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution. The date the dispute Notice is issued will be the date of the Notice ("Notice Date")
  - c) if the proposed solution is not accepted by the other Contract Manager within five (5) Business Days of the Notice Date, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation
  - d) failing settlement within twenty (20) Business Days of the Notice Date, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within thirty (30) Business Days of the Notice Date or such other period as agreed by the Parties, and
  - e) If the dispute is not resolved within sixty (60) Business Days of the Notice Date, either the Supplier or the Customer may commence legal proceedings or, by agreement, continue the mediation process for a period agreed by the Parties.
- 18.2 Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant Party and act in good faith to genuinely attempt to resolve the dispute.
- 18.3 The Supplier and the Customer will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.
- 18.4 Despite the existence of a dispute, the Supplier will continue their performance under the Contract unless requested in writing by the Customer not to do so.
- 18.5 This procedure for dispute resolution does not apply to action relating to C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

**C.C.19 Transition In**

- 19.1 The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

**C.C.20 Transition Out**

- 20.1 If the Contract expires or is terminated under C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

**C.C.21 Compliance with Law and Policy**

- 21.1 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with all laws applicable to the performance of this Contract and warrants that it will not cause the Customer to breach any laws.
- 21.2 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with any Commonwealth policies relevant to the Goods and/or Services.
- 21.3 The Supplier agrees to provide such reports and other information regarding compliance with applicable law and Commonwealth policy as reasonably requested by the Customer or as otherwise required by applicable law or policy.
- 21.4 If the Supplier becomes aware of any actual or suspected breach of the requirements set out in 21.A to 21.J below, or any other applicable law or Commonwealth policy, it must:
- a) immediately report it to the Customer and provide a written report on the matter within three (3) Business Days unless otherwise set out in these Terms, and
  - b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

**21A Access to Supplier's Premises and Records**

- A.1 The Supplier must maintain and ensure its Subcontractors maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.
- A.2 The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's or its Subcontractor's premises, personnel, computer systems, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including in connection with a request made under the *Freedom of Information Act 1982 (Cth)* or an audit or review by the Australian National Audit Office.
- A.3 Unless the access is required for an urgent purpose, the Customer will provide reasonable prior notice to the Supplier.
- A.4 If requested by the Supplier, the Customer will reimburse the Supplier's substantiated reasonable

Commonwealth Contract Terms	
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- cost for complying with the Customer's request, unless the access is required for the purpose of a criminal investigation into the Supplier, its officers, employees, agents or Subcontractors.
- A.5 The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.
- 21.B Privacy Act 1988 (Cth) Requirements**
- B.1 In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and Subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.
- 21.C Notifiable Data Breaches**
- C.1 If the Supplier suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract, the Supplier must:
- immediately report it to the Customer and provide a written report within three (3) Business Days, and
  - carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- C.2 Where the Supplier is aware that there has been an Eligible Data Breach in relation to the Contract, the Supplier must:
- take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates
  - take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth), and
  - take any other action as reasonably directed by the Customer.
- 21.D Personal Information**
- D.1 The Supplier agrees to provide the Customer, or its nominee, relevant information (including personal information) relating to the Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security incident relating to a Contract.
- D.2 When providing personal information of a natural person under this clause, the Supplier warrants it will have obtained the consent of or provided reasonable notification to the person in accordance with the *Privacy Act 1988* (Cth).
- D.3 Nothing in these clauses limits or derogates from the Supplier's obligations under the *Privacy Act 1988* (Cth).
- 21.E Confidential Information**
- E.1 The Supplier agrees not to disclose to any person, other than the Customer, any Confidential Information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer.
- E.2 This obligation will not be breached where:
- the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation), or
  - the Supplier is required by law, an order of the court or a stock exchange to disclose the relevant information, but any such request must be reported by Notice to the Customer without delay and the text of the disclosure provided in writing to the Customer as soon as practicable.
- E.3 The Customer may at any time require the Supplier to arrange for its officers, employees, agents or Subcontractors to give a written undertaking relating to nondisclosure of the Customer's Confidential Information in a form acceptable to the Customer.
- E.4 The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential.
- E.5 The Customer will not be in breach of any confidentiality agreement if the Customer discloses the information for the purposes of managing the Contract or if it is required to disclose the information by law, a Minister or a House or Committee of Parliament, or for accountability or reporting purposes.
- 21.F Security and Safety**
- F.1 When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and Subcontractors are aware of, and comply with, such security and safety requirements.
- F.2 If directed by the Customer, the Supplier and its officers, employees, agents and Subcontractors are required to undertake a security briefing prior to being able to work inside a Commonwealth office, area or facility.
- F.3 The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.
- F.4 The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

## Commonwealth Contract Terms

**21.G Criminal Code**

G.1 The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).

G.2 The Supplier must ensure that its officers, employees, agents and Subcontractors engaged in connection with the Contract are aware of the information contained in this clause.

**21.H Fraud**

H.1 The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.

H.2 If an investigation finds that the Supplier or its officers, employees, agents or Subcontractors have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud, the Supplier must reimburse or compensate the Customer in full.

**21.I Taxation**

I.1 The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

**21.J Public Interest Disclosure**

J.1 The Supplier must familiarise itself with the *Public Interest Disclosure Act 2013* (Cth) and acknowledges that public officials, including service providers and their Subcontractors under a Commonwealth contract, who suspect wrongdoing within the Commonwealth public sector may raise their concerns under the *Public Interest Disclosure Act 2013* (Cth).

J.2 Information for disclosers is available at <https://www.omhudsman.gov.au/Cour-responsibilities/making-a-disclosure>.

**21.K National Anti-Corruption Commission Act 2022 (Cth) Requirements**

K.1 The Supplier acknowledges that in providing the Goods and/or Services to the Customer under the Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act).

K.2 The Supplier must comply with any reasonable request, policy or direction issued by the Customer and otherwise cooperate with the Customer in relation to any action taken by the Customer required or authorised by the NACC Act.

**C.C.22 Notification of Significant Events**

22.1 The Supplier must immediately issue the Customer a Notice on becoming aware of a Significant Event.

22.2 The Notice issued under clause 22.1 must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the Goods and/or Services were involved.

22.3 The Customer may notify the Supplier in writing that an event is to be considered a Significant Event for the purposes of this clause, and where

this occurs the Supplier must issue a Notice under clause 22.1 in relation to the event within three (3) Business Days of being notified by the Customer.

22.4 Where reasonably requested by the Customer, the Supplier must provide the Customer with any additional information regarding the Significant Event within three (3) Business Days of the request.

22.5 If requested by the Customer, the Supplier must prepare a draft remediation plan and submit that draft plan to the Customer's Contract Manager for approval within ten (10) Business Days of the request.

22.6 A draft remediation plan prepared by the Supplier under clause 22.5 must include the following information:

- how the Supplier will address the Significant Event in the context of the Goods and/or Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Goods and/or Services or compliance by the Supplier with its other obligations under the Contract, and
- how the Supplier will ensure events similar to the Significant Event do not occur again, and
- any other matter reasonably requested by the Customer.

22.7 The Customer will review the draft remediation plan and either approve the draft remediation plan or provide the Supplier with the details of any changes that are required. The Supplier must make any changes to the draft remediation plan reasonably requested by the Customer and resubmit the draft remediation plan to the Customer for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by the Customer. This clause 22.7 will apply to any resubmitted draft remediation plan.

22.8 Without limiting its other obligations under the Contract, the Supplier must comply with the remediation plan as approved by the Customer. The Supplier agrees to provide reports and other information about the Supplier's progress in implementing the remediation plan as reasonably requested by the Customer.

22.9 A failure by the Supplier to comply with its obligations under this clause C.C.22 will be a material breach of the Contract. The Customer's rights under this clause C.C.22 are in addition to and do not otherwise limit any other rights the Customer may have under the Contract. The performance by the Supplier of its obligations under this clause C.C.22 will be at no additional cost to the Customer.



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## Commonwealth Contracting Suite Glossary and Interpretation

### Glossary

In the Commonwealth Contracting Suite (CCS):

“**Additional Contract Terms**” means the terms and conditions set out in the section of the Approach to Market, RFQ or the Contract as relevant with the heading ‘Additional Contract Terms’.

“**Additional DoSO Terms**” means the terms and conditions set out in the section of the DoSO with the heading ‘Additional DoSO Terms’.

“**Approach to Market**” or “**ATM**” means the notice inviting Potential Suppliers to participate in the relevant procurement.

“**Business Days**” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned, as defined by the *Corporations Act 2001* (Cth), and also excludes the period between Christmas Day and New Year’s Day.

“**Closing Time**” means the closing time and date as specified in the Approach to Market.

“**Commonwealth Contracting Suite**” or “**CCS**” means the suite of proprietary documents developed for Commonwealth procurements.

“**Commonwealth Procurement Rules**” means the legislative instrument issued by the Finance Minister under section 105B of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which establishes the framework under which entities govern and undertake their own procurement.

“**Confidential Information**” means any information that any Party does not wish to be shared outside those involved in the Contract or Standing Offer Arrangement. It can include anything that has been acquired, developed or made available to any of the Parties in the course of the relationship between the Parties. It includes, but is not limited to, information:

- a) specifically identified as confidential in the Contract or DoSO
- b) where disclosure would cause unreasonable detriment to the owner of the information or another party, or
- c) where the information was provided under an understanding that it would remain confidential.

“**Conflicts of Interest**” means any real or apparent situation where the personal interests of the Supplier, its officers, employees, agents or Subcontractors could improperly influence the Supplier’s performance of the Contract or DoSO as relevant.

“**Contract**” means the documents (specified in the Commonwealth Contract Terms or the Commonwealth Purchase Order Terms as relevant) as executed or amended from time to time by agreement in writing between the Supplier and the Customer.

“**Contract Details Schedule**” means the section in a Contract issued under the DoSO with the heading ‘Contract Details Schedule’.

“**Contract Manager**” means the ‘Contract Manager’ for the Customer or Supplier representative (as relevant) specified in the Contract.

“**Contract Price**” means the maximum contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

“**Correctly Rendered Invoice**” means an invoice that:

- a) is correctly addressed and includes any purchase order number or other Customer reference advised by the Customer’s Contract Manager and the name and specified contact details of the Customer’s Contract Manager
- b) relates only to the Goods and/or Services that have been accepted by the Customer in accordance with the Contract or a payment or milestone schedule identified in the Contract
- c) is correctly calculated and charged in accordance with the Contract
- d) is for an amount which, together with previously Correctly Rendered Invoices, does not exceed the Contract Price, and
- e) is a valid tax invoice in accordance with the GST Act.

“**Customer**” means the party specified in the Contract as the Customer.

“**Deed of Standing Offer**” or “**DoSO**” means the documents (specified in the Commonwealth DoSO Terms) as executed or amended by agreement in writing between the Lead Customer and the Supplier.

“**Delivery and Acceptance**” means the process by which Goods and/or Services are delivered to the Customer and accepted by the Customer as meeting the terms specified in the Contract.



## Commonwealth Contracting Suite Glossary and Interpretation

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**"DoSO Manager"** means the 'DoSO Manager' for the Lead Customer or Supplier representative (as relevant) specified in the DoSO.

**"Electronic invoicing"** or **"eInvoicing"** means the automated exchange of invoices directly between the Customer and Supplier's software or financial systems via the Peppol network, as long as both Parties are Peppol eInvoicing enabled.

**"Eligible Data Breach"** means an 'Eligible Data Breach' as defined in the *Privacy Act 1988* (Cth).

**"End Date"** means the date specified in the Contract or DoSO (as relevant) on which the agreement ceases.

**"Fraud"** means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means and includes alleged, attempted, suspected or detected fraud.

**"General Interest Charge Rate"** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

**"Goods and/or Services"** means:

- a) the Goods and/or Services and any Material, and
- b) all such incidental Goods and/or Services that are reasonably required to achieve the Requirement of the Customer,

as specified in the Contract and, where relevant, offered under a Standing Offer Arrangement.

**"GST"** means a Commonwealth goods and services tax imposed by the GST Act.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Indigenous Procurement Policy"** means the procurement connected policy as described at the National Indigenous Australians Agency website <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>.

**"Intellectual Property Rights"** means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are current or future or registered or capable of being registered, including without limitation in relation to, copyright, designs, trade marks (including unregistered marks), business and company names, domain names, databases, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

**"Lead Customer"** means the party specified in the DoSO as the Lead Customer.

**"Material"** means any material used or brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

**"Moral Rights"** means the rights in Part IX of the *Copyright Act 1968* (Cth), including the right of attribution, the right against false attribution and the right of integrity.

**"Notice"** means an official notice or communication under the Contract or DoSO (as relevant) in writing, from one Contract or DoSO Manager to the other Contract or DoSO Manager (as the case may be), at the postal address, or email address, or facsimile number set out in the Contract or DoSO or as notified by the relevant Party.

**"Peppol"** means the Pan-European Public Procurement On-Line framework as described at the Australian Taxation Office website <https://www.ato.gov.au/Business/eInvoicing/Peppol/>.

**"Party"** or **"Parties"** means (as relevant) the Customer and Supplier specified in the Contract or the Lead Customer and Supplier specified in the DoSO.

**"Personal Information"** means information relating to a natural person as defined in the *Privacy Act 1988* (Cth).

**"Potential Customer"** means an Australian Government entity that is identified within the DoSO as being able to use the Standing Offer Arrangement.

**"Potential Supplier"** means any entity who is eligible to respond to an ATM.

**"Pricing Schedule"** means a schedule of maximum pricing rates that a Supplier can offer in an RFQ for Goods and/or Services as set out in the DoSO.

**"Public Interest Certificate"** means a certificate issued under section 22 of the *Government Procurement (Judicial Review) Act 2018* (Cth).

**"Referenced Material"** means any materials referenced in the ATM, including but not limited to, reports, plans, drawings or samples.

**"Request for Quote"** or **"RFQ"** means any notice inviting quotations to provide specific Goods and/or Services under the DoSO.

## Commonwealth Contracting Suite Glossary and Interpretation

**"Required Capabilities"** means:

- a) in the DoSO ATM, the description of the Lead Customer's required Goods and/or Services. These may be categorised into several descriptions of Required Capabilities.
- b) in the DoSO, the description of the Goods and/or Services that a Supplier is approved to offer.

**"Requirement"** means the description of the Goods and/or Services in:

- a) for the purposes of the Commonwealth ATM Terms, the section of the Approach to Market with the heading 'The Requirement'
- b) for the purposes of the Commonwealth Contract Terms, the section of the Contract with the heading 'The Requirement', or
- c) for the purposes of the Commonwealth Purchase Order Terms, the Customer's purchase order or similar ordering document setting out the Goods and/or Services.

**"Response"** means information provided by a Potential Supplier or Supplier demonstrating their capacity and capability to:

- a) provide the Requirement under the ATM or Request for Quote, or
- b) meet a Required Capability under the DoSO ATM.

**"Satisfactory"** in relation to the Shadow Economy Policy only, means the Statement of Tax Record meets the conditions set out in Part 6.b of the Shadow Economy Policy or, if the circumstances in Part 6.c of the Shadow Economy Policy apply, the conditions set out in Part 8 of the Shadow Economy Policy.

**"Shadow Economy Policy"** means the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>.

**"Significant Event"** means:

- a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Supplier or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation, or
- b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Supplier or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

**"Specified Personnel"** means personnel specified in the Contract, or who are accepted by the Customer in accordance with clause C.C.13 [Specified Personnel].

**"Standing Offer Arrangement"** means the DoSO arrangement, any Contract that is executed under the DoSO and any other document that applies to it.

**"Standing Offer Details"** means the section of the DoSO with the heading 'Standing Offer Details'.

**"Statement of Requirement"** means the section of the Approach to Market with the heading 'Statement of Requirement'.

**"Statement of Tax Record"** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at [https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting\\_an\\_STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR).

**"Statement of Work"** means the section or schedule of the Contract (as the case may be) with the heading 'Statement of Work'.

**"Subcontractor"** means an entity contracted by the Supplier to supply some or all of the Goods and/or Services required under the Contract.

**"Supplier"** means a party specified in the Contract or the DoSO as the Supplier.

**"Valid"** in relation to the Shadow Economy Policy only, means the Statement of Tax Record is valid in accordance with Part 7.e of the Shadow Economy Policy.

Commonwealth Contracting Suite Glossary and Interpretation

**Interpretation**

In the Commonwealth Contracting Suite, unless stated otherwise:

- a) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning
- b) words in the singular include the plural and words in the plural include the singular
- c) the words 'including', 'such as', 'particularly' and similar expressions are not used as and are not intended to be interpreted as words of limitation
- d) a reference to dollars is a reference to Australian dollars
- e) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision
- f) clause headings are for reference only and have no effect in limiting or extending the language of the terms to which they refer, and
- g) the following clause references used in Commonwealth Contracting Suite documents refer to that section or part of the relevant CCS document listed in the table below:

Clause Reference	Section / Part	CCS Document
A.A.[x]	Statement of Requirement	CCS Approach to Market (ATM)
A.B.[x]	Commonwealth Approach to Market (ATM) Terms	
A.C.[x]	Additional Contract Terms	
C.A.[x]	Statement of Work	Commonwealth Contract
C.B.[x]	Additional Contract Terms	
C.C.[x]	Commonwealth Contract Terms	
P.C.[x]	Commonwealth Purchase Order Terms	Commonwealth Purchase Order Terms
D.A.[x]	CCS DoSO ATM	CCS Deed of Standing Offer (DoSO)
D.B.[x]	Commonwealth DoSO ATM Terms	
D.C.[x]	DoSO ATM Response Form	
D.D.[x]	CCS DoSO	
D.D.3(x)	Additional DoSO Terms	
D.E.[x]	Commonwealth DoSO Terms	
R.A.[x]	Schedule 1 - Statement of Work	CCS DoSO RFQ and Contract
R.B.[x]	Schedule 2 - Additional Contract Terms	
R.C.[x]	Schedule 3 - Supplier's Response Form	
R.D.[x]	Contract Details Schedule	

# Commonwealth Contract

## Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Goods, they enter into a Contract comprising:

- a) Additional Contract Terms (if any)
- b) Statement of Work
- c) Commonwealth Contract Terms
- d) Commonwealth Contracting Suite Glossary and Interpretation
- e) Contract Annex 1 – Supplementary Information (if any).

**EXECUTED** as an Agreement

**Signed** for and on behalf of the **Commonwealth of Australia** as represented by Department of Infrastructure, Transport, Regional Development and Communications and the Arts

**ABN 86 267 354 017** by its duly authorised delegate in the presence of

Signature of witness

Signature of delegate

s22(1)(a)(ii)

s22(1)(a)(ii)

Name of witness (*print*)

Name of delegate – s22(1)(a)(ii)

s22(1)(a)(ii)

Position of delegate – Acting Assistant Secretary,  
Creative Industries Branch  
DITRDCA

Date:

18 June 2024

**EXECUTED** as an Agreement

**Signed** for and on behalf of the **Government of South Australia** as represented by the Department of Premier and Cabinet.

**ABN 94 500 415 644** by its duly authorised delegate in the presence of

Signature of witness

Signature of delegate

s22(1)(a)(ii)

s22(1)(a)(ii)

Name of witness (*print*)

Name of delegate (*print*)

s22(1)(a)(ii)

Alison Lloyd-Wright

Position of delegate (*print*)

Deputy Chief Executive

Date:

18 June 2024

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



Government of South Australia

Department of the Premier  
and Cabinet

## Final Visual Arts Report

### 2023 Review of the Anangu Pitjantjatjara Yankunytjatjara Art Centre Collective

Reference ID: 0010029412

Released under the Freedom of Information Act 1982 by the Department of  
Infrastructure, Transport, Regional Development, Communications and the Arts

## Background

The APY Art Centre Collective is an Indigenous Corporation under the Office of the Registrar of Aboriginal Corporations or ORIC. It operates the APY Gallery Sydney, the APY Gallery Melbourne and the APY Gallery and Studio Adelaide.

The APY Art Centre Collective is supported through income generated from sales of art, and Commonwealth and State Government grants, including from the South Australian Government, as well as philanthropic and corporate support.

On 9 April 2023, the Weekend Australian newspaper released a substantial investigative article outlining allegations about inappropriate levels of “white involvement in bringing APY Lands’ prized art to gallery walls”. The article focussed on the practices of the Adelaide studio of the APY Art Centre Collective and had a particular focus on one Art Centre Collective member organisation.

Numerous subsequent articles were published including those relating to the planned National Gallery of Australia exhibition - *Ngura Pulka – Epic Country* - comprising 28 works from artists associated with the APY Art Centre Collective.

The National Gallery of Australia conducted a review to clarify whether the APY artists attributed as the creators of the paintings in the planned exhibition exercised creative control over the creation of the paintings, and so can be properly described as the artists responsible for those works consistent with the National Gallery’s provenance policy. It found that the paintings complied with the Provenance Standards of the National Gallery.

The allegations made public by Indigenous artists and art centre workers, and reported in the media, included:

- that APY Art Centre Collective staff have intervened in the artwork of Indigenous artists working in or for the APY Art Centre Collective, including in the Tjala Centre on the APY lands and its Adelaide studio
- that APY Art Centre Collective staff have concealed interventions in the artwork of Indigenous artists working in or for the APY Art Centre Collective
- and that APYACC is not supporting a culturally safe, respectful, and appropriate workplace for artists working in its member art centres on the APY lands and in its Adelaide studio.

The APYACC publicly committed to fully cooperating with any review conducted into the allegations.

## Review objectives

In July 2023, the South Australian Government announced the appointment of an independent panel with the required expertise to consider the operations of the APY Art Centre Collective, including the governance, management and practices of its member art centres on the APY lands and its Adelaide studio. The panel also assessed allegations made against the APY Art Centre Collective in relation to these matters.

The Review's Terms of Reference (copy attached) were developed in consultation with the federal and Northern Territory governments and the panel members. The Terms of Reference directed the Panel to review the allegations and operations of the APYACC and determine whether any matters should be the subject of investigation or referral for action by another body.

## Review process

The Review was conducted by a panel appointed by the Minister for Arts. Panel members were appointed based on their relevant skills, experience and authority to conduct an independent consideration and assessment of the allegations and the operations of APY Art Centre Collective.

The panel consisted of Ms Anne Sibree, Ms Megan Krakouer, and Mr Cameron Costello.

Ms Sibree, from Selbey Street Chambers, has over a decade of experience practicing in a range of areas, initially as a Senior Associate at Johnston Withers Barristers and Solicitors, and then as Senior Solicitor in In House Counsel in the Aboriginal Legal Rights Movement Inc.

Ms Krakouer is a Menang woman and Director of the National Suicide Prevention and Trauma Recover Project and holds a Bachelor of Laws from Deakin University. She has extensive experience in working alongside vulnerable people, collecting hundreds of testimonies on a range of legal issues for the National Justice Project, Levitt Robinson Lawyers, and know more.

Mr Costello is a Quandamooka man and the Deputy Chair of the Queensland Tourism Industry Council and the Interim Chair of the Queensland First Nations Tourism Council. He is a member of the UQ Law Advisory Board and was recently appointed to the Queensland Government's First Nations Consultative Committee to establish a Voice model to the Queensland Parliament. Mr Costello previously spent four years working with the Queensland Government as the Program Manager for Backing Indigenous Art, an \$11.2 million initiative for developing a sustainable Indigenous arts industry in Queensland.

The review provided an opportunity for Anangu artists, members of the Anangu community and art centres in the APY lands or otherwise connected to the APYACC, and peak bodies to speak frankly to members of the panel in a safe environment, including in local languages.

The review included assessment of any documents requested by and/or provided to the panel, and consultation with key peak bodies and funding agencies, and First Nations experts in First Nations visual art.

Participation in the review was voluntary and conducted on the basis of informed consent and cultural safety. It provided an opportunity for any relevant persons to provide information which would provide a basis for assessing the allegations. A copy of the Participant Engagement and Confidentiality form is attached for reference.

If the panel identified a matter or matters that it considered ought to be the subject of investigation or regulatory action by another body, the panel:

- may, at any time during the review, refer that matter or those matters to an appropriate investigative and/or regulatory body for further action; and
- must, on the completion of the review, refer that matter or those matters to an appropriate investigative and/or regulatory body for further action, unless it has already done so during the course of the review

Before making any referral to an investigative or regulatory body for further action, the panel notified the South Australian Minister for Arts of the proposed referral.

If the panel was to refer a matter or matters to another body for investigatory or regulatory action during the review, the panel considered whether the review, or any aspect of it, ought to be suspended until that other body had completed its investigatory or regulatory action(s).

## Findings and lessons learnt from the Review

The Review Panel determined that the level of information received warranted referral to relevant agencies. Accordingly, the panel referred matters of governance and management practice to the Office of the Registrar of Indigenous Corporations (ORIC), and consumer protection and contracting matters to the Australian Competition and Consumer Commission (ACCC).

The investigations of the ACCC and ORIC are still active, and the Department of the Premier and Cabinet is assisting both agencies in their endeavours.

The Review Panel has also provided a report of its finding to The Hon Andrea Michaels MP, Minister for Arts for her consideration and further action as the Minister considers appropriate.

The panel also verbally briefing the Minister for Arts Hon Tony Burke MP about their observations.

s22(1)(a)(ii)

**Approved by:**

\_\_\_\_\_

**Alison Lloyd-Wright**  
Deputy Chief Executive

Community, Culture and Place | Department of the Premier and Cabinet

**Date:**

**19/06/2024**



## Review of the APY Art Centre Collective Aboriginal Corporation

### TERMS OF REFERENCE

#### Purpose

Art centres play an essential role in culturally supporting, developing and providing a platform for Aboriginal artists and communities to share and maintain their cultural and artistic practice.

The purpose of the review is to have an independent panel with required expertise consider the operations of the APY Art Centre Collective Aboriginal Corporation (APYACC), including the governance, management and practices of its member art centres on the Anangu Pitjantjatjara Yankunytjatjara (APY) lands and its Adelaide studio. The panel will also assess allegations made against the APYACC in relation to these matters.

#### Context

Established in 2017, the APYACC is an Aboriginal corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. It represents a number of Indigenous-owned and -governed enterprises, including four located on the APY lands in the north of South Australia, and it has galleries located in Melbourne, Sydney and Adelaide. It also operates an art-making studio in Adelaide.

The APYACC is supported through income generated from sales of art, Commonwealth and State Government grants, including from the South Australian Government, as well as philanthropic and corporate support.

Allegations have been made against, or in relation to, the APYACC. The allegations are both current and historical. Allegations have been made publicly by Indigenous artists and art centre workers and reported in the media.

The allegations include:

- that APYACC staff have intervened in the artwork of Indigenous artists working in or for the APYACC, including in the Tjala Centre on the APY lands and its Adelaide studio;
- that APYACC staff have concealed interventions in the artwork of Indigenous artists working in or for the APYACC; and
- that APYACC is not supporting a culturally safe, respectful and appropriate workplace for artists working in its member art centres on the APY lands and in its Adelaide studio.

The APYACC has publicly committed to fully cooperating with any review conducted into the allegations.

#### Panel

The review will be conducted by a panel appointed by the Minister with the skills, experience and authority to conduct an independent consideration and assessment

of the allegations and the operations of APYACC. The panel will be comprised of a legal member and two Indigenous members.

## Scope

The panel will undertake a review into the allegations and the operations of the APYACC.

The review will involve:

- gathering information relevant to the allegations and the operations of the APYACC;
- considering and assessing the allegations and the operations of the APYACC; and
- determining whether there is any matter or matters that ought to be the subject of investigation or regulatory action by another body;

including in relation to:

- allegations, both current and historical, that APYACC staff have intervened in the artwork of Indigenous artists working in or for the APYACC, including in its member centres on the APY lands and/or its Adelaide studio;
- allegations that efforts have been made by APYACC staff to conceal interventions in the artwork of Indigenous artists working in or for the APYACC;
- allegations that APYACC is not supporting a culturally safe, respectful and/or appropriate workplace for artists working in or for the APYACC, including in its member centres on the APY lands and/or its Adelaide studio;
- the management practices of APYACC and the management practices of its member centres on the APY lands and/or its Adelaide studio;
- the authenticity and accuracy of documentation submitted to the Commonwealth Government and/or the South Australian Government in support of APYACC's applications for grant funding from those governments;
- APYACC's compliance with its current business plan, strategic plan and any public statements made by the APYACC representing its operations;
- the terms of engagement for artists engaged by APYACC in its member centres on the APY lands and/or its Adelaide studio, including the payment or compensation arrangements in place between APYACC, its member art centres on the APY lands and/or its Adelaide studio, and the artists engaged;
- the nature, extent and circumstances of any contributions that third parties, including studio assistants and managers at the APYACC and/or its member centres, make to the creation of artworks produced in APYACC's member art centres on the APY lands and/or its Adelaide studio; and
- any other matter that the panel considers relevant to its consideration and assessment of the allegations and the operations of the APYACC.

## Method

The review will provide an opportunity for Anangu artists, members of the Anangu community and art centres in the APY lands or otherwise connected to the APYACC, and peak bodies to speak frankly to members of the panel in a safe environment, including in local languages.

The review will include assessment of any documents requested by and/or provided to the panel and consultation with key peak bodies and funding agencies, and First Nations experts in First Nations visual art.

Participation in the review is voluntary and conducted on the basis of informed consent and cultural safety. It will provide an opportunity for any relevant person to provide information which would provide a basis for assessing the allegations.

## Referrals

If the panel identifies a matter or matters that it considers ought to be the subject of investigation or regulatory action by another body, the panel:

- may, at any time during the review, refer that matter or those matters to an appropriate investigative and/or regulatory body for further action; and
- must, on the completion of the review, refer that matter or those matters to an appropriate investigative and/or regulatory body for further action, unless it has already done so during the course of the review

Before making any referral to an investigative or regulatory body for further action, the panel must notify the South Australian Minister for Arts of the proposed referral.

If the panel refers a matter or matters to another body for investigatory or regulatory action during the review, the panel must consider whether the review, or any aspect of it, ought to be suspended until that other body has completed its investigatory or regulatory action(s).

## Reporting

On the completion of the review, the panel must provide a report to the South Australian Minister for Arts, for the Minister's consideration and further action as the Minister considers appropriate. The report should record the results of the panel's inquiries, its conclusions, and any referrals that have been, or are proposed to be, made by the panel.

## Participant Engagement and Confidentiality

A review is being conducted into allegations that have been made against the APY Art Centre Collective Aboriginal Corporation (**APYACC**), and into the operations of the APYACC. The review is being conducted by a three member Panel (**the Panel**) in accordance with the attached Terms of Reference.

In accordance with those Terms of Reference, participation in the review is **voluntary** and being conducted on the basis of informed consent and cultural safety.

The Panel is inviting written contributions from any person who wishes to provide information to the Panel that is relevant to the review. The Panel will also receive oral contributions from those who wish to provide relevant information. The Panel intends to record oral contributions and the means for this will be discussed with participants before they begin any interview with the Panel.

All contributions to the Panel, whether given in writing or orally, are able to be provided to the Panel in the person's language of choice.

Participants in the review are encouraged to speak frankly to the Panel, and steps will be taken to ensure participation occurs in a safe environment for all participants. Participation remains voluntary at all times throughout the process, and participants are under no obligation to respond to any questions posed by the Panel or to provide information to the Panel.

### Cultural Safety, Integrity, and Permission

Cultural safety respects the authenticity of First Nations protocols and privacies, and their ability as is common sensical to all people that certain conversations are shared in confidentiality at all levels and that it is never compromised under any circumstances without cultural permissions.

Cultural permission comes only from the person providing the information and the statesperson of that particular cultural homeland. Each community homeland has different protocols as to how cultural permissions are granted and cultural safety is described. Cultural integrity is defined as a promise to never be broken, protocols to be always preserved, respect goes both ways to the incumbent residents and to the visitors such as ourselves.

Cultural integrity is about authenticity to oneself and to the other, it is never to be eroded or put at risk.

Participation remains voluntary at all times throughout the process, and participants are under no obligation to respond to any questions posed by the Panel or to provide information to the Panel.

### Confidentiality

The Panel understands that confidentiality and the use that may be made of information are important matters of concern to people who may wish to provide information to the review.

If you wish to participate in the review but consider that the information you intend to provide is confidential or sensitive, please indicate this to the Panel either in writing accompanying your written contribution, or at the outset of any oral interview. Please include the reasons why you say the information you are providing is confidential.

If you say your contribution, or parts of it, is confidential, the Panel will use its **best endeavours to maintain the confidentiality** of that information and/or preserve the anonymity of the person who has provided it.

#### Disclosures required by law

However, it is important to understand that there are certain circumstances in which a person's contribution may not be able to be kept confidential, and the information they provide may be disclosed. These include disclosure:

- that is required by law;
- to a third party authority, of South Australia, the Commonwealth, or some other State or Territory, for the purposes of a referral by the Panel to that authority for investigatory or regulatory action, or in response to a request for information from such a body;
- that may be necessary for the purposes of providing a meaningful report to the Minister, acknowledging that the report itself may be released by the Minister;
- to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;
- for the purposes of prosecuting or defending any legal proceedings.

#### Procedural Fairness

So that the Panel's review can be conducted fairly and as effectively as possible, the Panel may also need to put to other persons certain allegations or information that has been given to the Panel, so that those other persons have an opportunity to respond.

If the participant who has made the allegation, or provided the information, has said that their contribution is confidential, the Panel will use its best endeavours to maintain the participant's anonymity whilst ensuring fairness to the other person.

However, if a participant's contribution makes allegations against another person which cannot be put by the Panel to that other person for comment, this may prevent the Panel from being able to rely on the participant's contribution or find the allegation to be true.

#### What the Panel can promise participants in terms of confidentiality

Subject to the exceptions outlined above, the Panel will use its best endeavours to ensure that confidential information which you give to us will remain confidential. This means:

- We will communicate with you, before you give us information, about what aspects of your information you would like to keep confidential, and make sure that you have been provided with information about the limits of confidentiality so that you can decide whether you provide information and, if so, what information you provide; and
- We will ensure that any recording of your information is done with your informed consent.

#### Request for confidentiality

It is also important that the Panel receives contributions from participants independently from one another. For this reason, the Panel requests that participants do not discuss with others the information they have provided to the Panel for the purposes of the review.

## Visual Arts Report - Assessment

Requirement in Contract – Visual Arts Report	Comments on the Report
<ul style="list-style-type: none"> <li>- Summarising the background and objectives of the review,</li> </ul>	<p>Provided. Good level of detail.</p>
<ul style="list-style-type: none"> <li>- Summarising the review process (information including the appointment of the Review panel and their background, the Terms of reference, etc),</li> </ul>	<p>Provided. ToRs are provided as a separate document. The Report outlines the South Australian Department of Premier and Cabinet’s views of the skills, experience and authority of the Reviewers who were selected.</p>
<ul style="list-style-type: none"> <li>- Outlining high-level findings that are able to be shared, and</li> </ul>	<p>In relation to the Review’s findings, the Report noted why the Review panel (in accordance with the Terms of Reference) referred the APY Art Centre Collective:</p> <ul style="list-style-type: none"> <li>○ For matters relating to governance and management practice, to the Office of the Registrar of Indigenous Corporations (ORIC), and</li> <li>○ For matters relating to consumer protection and contracting to the Australian Competition and Consumer Commission (ACCC).</li> </ul>
<ul style="list-style-type: none"> <li>- Providing lessons learnt from the Review, including: <ul style="list-style-type: none"> <li>○ any changes that South Australia is considering making to its policies, programs, and/or practices as a result of the Review, that may assist the Australian Government in improving its ongoing management and continual improvement of the Indigenous Visual Arts and Industry Support (IVAIS) program.</li> <li>○ any other lessons learnt that may be relevant to the management of the IVAIS program or Australian Government First Nations Visual Arts policy.</li> </ul> </li> </ul>	<p>The Report <i>does not</i> provide any explicit lessons learnt from the Review, such as changes the South Australian Government has made or is considering to its policies, programs and/or practices. However, it notes the investigations from ORIC and ACCC are ongoing and active, and that the Department of Premier and Cabinet continues to provide assistance to them.</p> <p>We consider it unlikely that any changes to policies, programs and/or practices would occur before the conclusion of these investigations. We remain in periodic contact with the Department of Premier and Cabinet</p>

	<p>and Arts SA and can use our regular channels to discuss any lessons learnt in due course.</p>
<p>Given the sensitivities involved in the Review and the need to ensure that confidentiality and privacy are maintained, we requested this report to be high-level and general in nature.</p>	<p>Level of detail is sufficient. No in-confidence material provided. Useful information provided in relation to preserving confidentiality during the review.</p>
<p><b>Overarching comment:</b>                  The Visual Arts and Design Section is satisfied the Report meets our requirements, and provides the level of detail and quality required. Overall, the Report provides a useful case study that may support the ongoing management and continual improvement of the IVAIS program and our visual arts and design policy work. It also provides information that may be of use to the Visual Arts and Design Section, such as how the Reviewers approached matters relating to confidentiality and cultural safety.</p> <p><b>Recommendation: progress for approval by our delegate.</b></p>	

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

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**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

## Minute

Through s22(1)(a)(ii), Director – Visual Arts and Design Section

Acceptance of Visual Arts Report and approval of payment to the South Australian Department of Premier and Cabinet.

### Purpose

To seek your acceptance of a Visual Arts Report relating to the 2023 South Australian government-led Review of the APY Art Centre Collective, and your agreement to provide payment to the South Australian Department of Premier and Cabinet (contract ID: 0010029412).

### Recommendations

That you:

1. **Accept** on behalf of the Commonwealth of Australia the Visual Arts Report from the South Australian Department of Premier and Cabinet.

**Accepted** / ~~Not Accepted~~ – please discuss

2. **Approve** the first and final payment totalling **\$333,374.80 (GST inclusive)** to the South Australian Department of Premier and Cabinet (contract ID: 0010029412). We will also provide this to you for approval via the Department's SAP financial system.

**Approved** / ~~Not Approved~~

s22(1)(a)(ii)

Assistant Director  
Visual Arts and Design  
20/06/ 2024

s22(1)(a)(ii)

A/g Assistant Secretary  
Creative Industries



/ 06/ 2024

## Attachments:

**Attachment A** – Procurement Approval

**Attachment B** – Executed contract

**Attachment C** – Visual Arts Report

**Attachment C1** – Terms of Reference

**Attachment C2** – Participant Engagement and Confidentiality

## Background

On 15 May, Minister Burke and the Arts Ministers of South Australia and the Northern Territory agreed to initiate a government-led review (the Review) of the APY Art Centre Collective. On or around 15 May 2023, Minister Burke committed to providing payment to the South Australian Government to support its Review.

The Visual Arts and Design team consulted a range of advisors in the department, finally determining the most appropriate means of payment to fulfil Minister Burke's commitment was as a procurement.

Approval to commit funds was provided by Dr Stephen Arnott, Deputy Secretary, Creative Economy and the Arts, as the relevant departmental delegate, on 14 June 2023 (**Attachment A**).

Following a limited tender approach to market and evaluation process, you signed a contract with South Australian Department of Premier and Cabinet on 18 June 2023 (**Attachment B**).

To fully meet the requirements of this procurement, the Department required the South Australian Government to provide a short report (the Report):

- Summarising the background and objectives of the review,
- Summarising the review process (information including the appointment of the Review panel and their background, the Terms of reference, etc),
- Outlining high-level findings that are able to be shared, and
- Providing lessons learnt from the Review, including:
  - o any changes that South Australia is considering making to its policies, programs, and/or practices as a result of the Review, that may assist the Australian Government in improving its ongoing management and continual improvement of the Indigenous Visual Arts and Industry Support (IVAIS) program.
  - o any other lessons learnt that may be relevant to the management of the IVAIS program or Australian Government First Nations Visual Arts policy.

Given the sensitivities involved in the Review and the need to ensure that confidentiality and privacy are maintained, we requested this report to be high-level and general in nature.

The Department of Premier and Cabinet provided the Report on 19 June 2024, signed by the Deputy Chief Executive, People, Culture and Place (see **Attachments C, C1 and C2**).

The Visual Arts and Design Section is satisfied the Report meets our requirements. Key points:

- The Report summarises the background, objectives and process of the Review, and outlines the South Australian Department of Premier and Cabinet's views of the skills, experience and authority of the Reviewers who were selected.

- Overall, the Report provides a useful case study that may support the ongoing management and continual improvement of the IVAIS program and our visual arts and design policy work.
- It also provides information that may be of use to the Visual Arts and Design Section, such as how the Reviewers approached matters relating to confidentiality and cultural safety.
- In relation to the Review's findings, the Report noted why the Review panel (in accordance with the Terms of Reference) referred the APY Art Centre Collective:
  - o For matters relating to governance and management practice, to the Office of the Registrar of Indigenous Corporations (ORIC), and
  - o For matters relating to consumer protection and contracting to the Australian Competition and Consumer Commission (ACCC).
- The Report *does not* provide any explicit lessons learnt from the Review, such as changes the South Australian Government has made or is considering to its policies, programs and/or practices. However, it notes the investigations from ORIC and ACCC are ongoing and active, and that the Department of Premier and Cabinet continues to provide assistance to them. We consider it unlikely that any changes to policies, programs and/or practices would occur before the conclusion of these investigations. We remain in periodic contact with the Department of Premier and Cabinet and Arts SA and can use our regular channels to discuss any lessons learnt in due course.

In addition to the information provided in the Report, the Review and its findings have provided due diligence support to the Indigenous Visual Arts Industry Support (IVAIS) program, supporting our assessment of risk for the 2024-25 Open Competitive funding round of IVAIS, and also likely to inform an upcoming review of the IVAIS Grant Guidelines and grant-related processes and documentation.

## Compliance and delegations

**Commitment approval:** approval of the commitment of relevant money for this expenditure under section 23 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), was signed by the Deputy Secretary, Creative Economy and the Arts, on 14 June 2024.

**Arrangement approval:** Schedule 1 of the Department's Accountable Authority Delegations 2024 (No. 1) authorises you as the delegate at **SES Band 1** to administer (Arrangement approval – Make, vary and administer and arrangement approval limit) **to the limit of the Commitment approval provided**, and (Commitment approval limit - Departmental expenditure or Administered expenditure) **to the funds available to the delegate's branch**. Your authorisation of this payment is consistent with your duty to act honestly, in good faith and for a proper purpose as required under the PGPA Act (s26). "Proper purpose" is interpreted under the PGPA Act as the efficient, effective, economical and ethical use of public resources, not inconsistent with the policies of the Commonwealth (s8).



# Tax Invoice

DEPARTMENT OF INFRASTRUCTURE AND TRANSPORT  
GPO BOX 594  
CANBERRA ACT 2601 AUSTRALIA

Transaction ID: INV52379  
Customer ID: TRA0002  
Invoice Date: 25/06/2024  
Due Date: 25/07/2024

s22(1)(a)(ii)

Qty	Description of Supply	Unit Price	GST	Total Price
1.00	RECOVERY COST RECOVERY FOR APY ART CENTRE COLLECTIVE REVIEW - PROVISION OF VISUAL ARTS REPORT PO - 4514 9907  REFERENCE ID : 0010029412  FOR ENQUIRIES ABOUT THIS INVOICE'S DETAILS PLEASE CONTACT; E: s22(1)(a)@SA.GOV.AU T: 08 7133 s22(	303,068.00	30,306.80	333,374.80
Total Amount Payable (\$AUD)			\$30,306.80	\$333,374.80



s22(1)(a)(ii)

**Telephone & Internet Banking – BPAY®**  
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: [www.bpay.com.au](http://www.bpay.com.au)

### Pay Your Invoice Online

Customer ID:	TRA0002
Transaction ID:	182331523791
Amount:	\$333,374.80
Web:	<a href="http://www.dpc.sa.gov.au/contact">www.dpc.sa.gov.au/contact</a>

## Payment Slip

### EFT Payment

Account Name: s22(1)(a)(ii)  
Bank:  
BSB:  
Account No:  
Reference: INV52379  
Email: arreceipting@sharedservices.sa.gov.au

Transaction ID: INV52379  
Customer ID: TRA0002  
Amount: \$333,374.80  
Invoice Date: 25/06/2024  
Due Date: 25/07/2024

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