



Australian Government

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



FINANCE

Date:	12 July 2023	Ref No:	10027428
Procurement Title:	Independent Review of the National Partnership Agreement (NPA) on Land Transport Infrastructure Projects		

Purpose:

The Commonwealth, as represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), is seeking to undertake an Approach to Market (ATM) process to procure the services of a First Nations Advisor to provide cultural support for the required review of the NPA. This approach is required because of the complexity of the requirement and the time available to deliver the outcome, and the unique skills and experience required of a First Nations Advisor.

Procurement Outcome: Step 1_Identify the Requirement

The Department intends to engage the successful Service Provider, being an expert and neutral person, to provide cultural support to the independent review of the NPA in accordance with the attached terms of reference (noting these have been endorsed by the Infrastructure and Transport Senior Officials' Committee).

Is this procurement a consultancy? Yes Independent research or assessment
 No

Is this a High Risk, High Value procurement?
(HRHV procurements will require Ops Committee endorsement prior to exercising s23.3 approval)
 Yes
 No

Market Research: Step 1_Identify the Requirement

An independent review of the National Partnership Agreement on Land Transport Infrastructure Projects (NPA) is required (clause 72 of the NPA) to be completed approximately 12 months prior to the expiry of the NPA on 30 June 2024. This review is intended to consider how effective the NPA has been in achieving its objectives and those of the National Land Transport Act 2014, identifying what has and has not been successful in the implementation of the NPA. The report produced by the report will inform opportunities which may be pursued in the negotiation of the new Federation Funding Agreement (FFA) Schedule which will replace the NPA. The review will also consider the effectiveness to date of the Indigenous Employment and Supplier-Use Infrastructure Framework (the Framework), which has been part of the NPA since 1 July 2019, and how governments can accelerate economic outcomes for First Nations peoples through their joint investments in infrastructure.

The Supplier will assist the Lead Reviewer to ensure the review appropriately considers First Nations outcomes by advising on engagement with key First Nations stakeholders, offering views on the effectiveness of the Framework to date in improving social and economic outcomes for First Nations peoples and communities;

- offering views on opportunities that may be pursued in negotiating a replacement agreement to accelerate social and economic outcomes for First Nations peoples and communities; and
- advising on and ensuring cultural safety and sensitivity throughout the review.

The Supplier will assist the Lead Reviewer to provide a report of high-level findings and key themes. This report will be provided to the Infrastructure and Transport Ministers' Meeting in October 2023 for noting.

The Department has been unable to attract a First Nations Advisor for this role due to the offered daily rate (equivalent to the highest rate for part-time professional officers under the Remuneration Tribunal) not matching prospective providers' commercial daily rates and thus not reflecting their unique experience and skills. On that basis, it has been decided to approach Ms Crawford to undertake this role.

Existing Arrangements: Step 2_Selecting a Market Approach

Are there existing arrangements in place with a supplier? Yes No
 If yes, what are those arrangements (eg. piggyback arrangement): N/A

Funding Appropriation: Step 2_Selecting a Market Approach

Appropriation Available Pretender estimate value is **\$49,280** GST incl.
 (do you have budget?)

- There is available funding for this engagement and, if approved, the funding will be sourced from a cost centre to be established specifically for the Review
- There is no available funding for this engagement.

Has the funding availability & cost centre been confirmed? Yes No Funds available to Branch/Division for allocation to CC

Procurement Approach: Step 2_Selecting a Market Approach

Methodology	<input type="checkbox"/> Open tender <input checked="" type="checkbox"/> Limited tender <input type="checkbox"/> Mandatory Panel <input type="checkbox"/> Other Panel	<p>Exemptions: Procurement not above \$80,000 threshold. The Commonwealth Procurement Rules Appendix A: Exemptions, item (16) "goods and services from an SME with at least 50 per cent Indigenous ownership" Condition: 10.3.d.iii Can only be procured by specific supplier/s with specific technical capabilities Select Panel: N/A</p>
--------------------	--	---

Explanation of selected Methodology

An exemption from complying with the Commonwealth Procurement Rules (CPR) conditions of a limited tender is granted because the nature of Services being sought align with CPR Appendix A: Exemptions at item (16) "procurement of goods and services from an SME with at least 50 per cent Indigenous ownership", and because the Services can only be provided by suppliers with specific skills, and the procurement involves the engagement of an Indigenous-owned business. The prospective supplier is Supply Nation certified.

The procurement is also exempt as it is not above the \$80,000 threshold.

Suppliers Proposed (if Limited Tender or Panel)**Supplier Name**

Ms Dixie Crawford (Source Nation Pty Ltd t/a Nganya)

Reason for Approaching

First Nations Australians with in-depth knowledge of cultural sensitivities and Indigenous supply landscape.

Applicable Procurement Policies: Procurement Connected Policies/Legislation

- | | |
|---|--|
| <input checked="" 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"/> Shadow Economy |
| <input type="checkbox"/> Sustainable Procurement | <input type="checkbox"/> Australian Industry Participation |

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)

An independent review of the NPA is required according to clause 72 of the NPA. Given the need for the review to be independent, it cannot be conducted in-house. The decision as to who should be appointed as First Nations Advisor has been taken by the Minister in response to advice from the Department. The daily rate for the appointee is to be decided through this ATM. Ms Crawford is uniquely positioned to provide these services as a First Nations person who is a professional facilitator and has in depth knowledge of both cultural sensitivity and safety as well as the Indigenous supply landscape – this combination is not readily available in the market. Ms Crawford has previously indicated her availability and willingness to undertake this project.

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

- Perception of independence: appointments decided by Minister from Department's advice, and review process heavily reliant on consultation with jurisdictions and other stakeholders
- Value-for-money: Rates to be negotiated as appropriate to ensure the Review is conducted in accordance with the VFM principles of the CPR.

Probity Advisor Engaged

(an External Advisor is required for all HRHV procurements)

Yes External Probity Advisor _____

No Internal Probity Advisor _____

N/A

(for non-HRHV procurements, delegates can nominate internal or external probity advisors at their discretion)

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)

Yes

No _____

N/A (probity considerations must be noted above)

Risk Assessment Completed and Risk Plan in Place Yes
 (a separate Risk Plan is required for all procurements valued over \$1 million and all HRHV procurements. All other procurements must identify risks below) No _____ if no, why

Areas of risk identified: See attached risk assessment

Final Risk Rating (post controls) Severe Medium
 (risk ratings need to be added into myWorkplace) High Low

Conflicts of Interest Conflict of Interest Declarations (will be) obtained for involved staff
 Conflict of Interest Declarations (will be) obtained for proposed supplier(s)
 Proposed suppliers have not yet been approached. Where applicable, Conflict of Interest Declarations will be obtained from supplier(s) who are willing and available to participate in the Review.

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: 13-Jul-23 End: 29-Sep-23

Proposed Options to Extend Up to 4 weeks by agreement

Procurement Timeframe MinSub approved by Minister: 6 April 2023
 Approach to selected suppliers: Week of 10 July 2023
 Responses from selected suppliers: Week of 10 July 2023

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 Budgets and FBP Team Other _____

Approval to Approach Market

s22(1)(a)(ii)

Delegate Name	Anita Langford	
Position	Assistant Secretary, Program, Policy and Budget Branch (SES B1)	Date 12-7-23
Approval	Agreed / Not Agreed	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	The Delegate approves an allocation of up to \$49,280 GST inclusive to this procurement, for the period from 13 July to 29 September 2023

	Agreed / Not Agreed	The Delegate is satisfied the proposed procurement represents value for money.
	Agreed / Not Agreed	The Delegate agrees that the post controls non-financial risk rating for this procurement is assessed as LOW
	Agreed / Not Agreed	The Delegate approves releasing the procurement to market in accordance with this proposal.
	Noted	The Delegate notes that, following endorsement, approval will also be required via myWorkplace (SAP)
Contact:	Name: s22(1)(a)(ii) Position: Assistant Director, NLT NPA Review Phone: 02 6274 s22(1)(a)(ii) Email: s22(1)(a)(ii)@infrastructure.gov.au	



Australian Government

Commonwealth Contract – Services

Reference ID: 10027428

Customer

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

Supplier

Full Name of the Legal Entity: Source Nation Pty Ltd t/a Nganya
Supplier's ABN: 57 625 733 511
Address: Level 1, 11/17 Swanson Ct
Belconnen ACT 2617

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

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:

- a) it is terminated earlier or
- b) the Customer exercises the Contract Extension Option, in which case this Contract will continue until the end of the extended time (unless it is terminated earlier).

Event	Details
Contract Start Date:	Thursday 13 July 2023
Contract Term:	This Contract will terminate on Friday 29 September 2023.
Contract Extension Option:	This Contract includes the following extension option(s): a period of up to four (4) weeks, exercisable by agreement between the parties.

C.A.2 The Requirement

An independent review of the National Partnership Agreement on Land Transport Infrastructure Projects (NPA) is required (clause 72 of the NPA) to be undertaken approximately 12 months prior to the expiry of the NPA on 30 June 2024. This review is intended to consider how effective the NPA has been in achieving its objectives and those of the National Land Transport Act 2014, identifying what has and has not been successful in the implementation of the NPA, and identifying opportunities which may be pursued in the negotiation of the new Federation Funding Agreement (FFA) Schedule which will replace the NPA. The review will also consider the effectiveness to date of the Indigenous Employment and Supplier-Use Infrastructure Framework (the Framework), which has formed part of the NPA since 1 July 2019, and how governments can accelerate economic outcomes for First Nations peoples through their joint investments in infrastructure.

The Supplier will undertake the following roles to assist the Lead Reviewer to ensure the review appropriately considers First Nations outcomes:

- advise on engagement with key First Nations stakeholders, including stakeholder identification, introduction and facilitation of stakeholder engagement sessions;
- offering views on the:
 - effectiveness of the Framework to date in improving social and economic outcomes for First Nations peoples and communities;
 - opportunities that may be pursued in negotiating a replacement agreement to accelerate social and economic outcomes for First Nations peoples and communities
- advise on and ensure cultural safety and sensitivity throughout the review.

The Supplier will also assist the Lead Reviewer to provide an interim and final report of high-level findings and key themes from engagement with First Nations stakeholders. The final report will be provided to the Infrastructure and Transport Ministers' Meeting out of session for noting.

The Customer will provide the Supplier with secretariat and other appropriate support for the review.

Terms of Reference

The Supplier will support the Lead Reviewer in accordance with the Terms of Reference at [Appendix A](#), which has been approved by the Prime Minister and Infrastructure and Transport Senior Officials.

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/wcag>.

C.A.2(b) Security Requirements

Supplier personnel will be required to be cleared to a minimum level of Baseline.

The cost of obtaining each security clearance will be borne by the Supplier. The Supplier must ensure that its Specified Personnel promptly provide to the Customer relevant details to assist with the security clearance process, and the Supplier must notify the Customer promptly in writing of any change in circumstances which is likely to affect the Customer’s assessment of the Specified Personnel’s entitlement to hold a security clearance.

Current ASGVA Vetting Fees and Charges can be found at: <https://www1.defence.gov.au/security/clearances/about/security-clearance-fees>.

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*].

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

Milestone Description	Contact for Delivery	Delivery Location/Email	Due Date (week of)
-----------------------	----------------------	-------------------------	--------------------

Completion of First Nations stakeholder engagement planning and arrangements	s22(1)(a)(ii)	s22(1)(a)(ii) @infrastructure.gov.au	24/07/2023
Completion of Facilitation of First Nations stakeholder engagement sessions	s22(1)(a)(ii)	s22(1)(a)(ii) @infrastructure.gov.au	14/08/2023
Submission of interim observations from First Nations stakeholder engagement for inclusion in draft report	s22(1)(a)(ii)	s22(1)(a)(ii) @infrastructure.gov.au	21/08/2023
Submission of final observations on First Nations policy for inclusion in final report	s22(1)(a)(ii)	s22(1)(a)(ii) @infrastructure.gov.au	28/08/2023

C.A.2(e) Meetings

The Supplier is required to attend meetings as follows:

Meeting Type	Position Required	Frequency	Mode	Location
Induction briefing	Lead Reviewer First Nations Advisor	Once only, on or before the commencement date	On-site	Canberra or online
Pre-engagement Briefing	Lead Reviewer First Nations Advisor	Once only, following acceptance of stakeholder engagement plan	Teleconference	Canberra or online
Engagement workshops	Lead Reviewer First Nations Advisor	As determined in the accepted stakeholder engagement plan	On-site	Various, TBD
Provision of draft report	Lead Reviewer First Nations Advisor	Once only, on handover of draft report	On-site	Canberra

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

The Customer will provide the Supplier with secretariat support, as needed, and limited to:

- I. arranging any required engagement and consultation meetings with stakeholders;
- II. arranging venues and invitations for those engagement and consultation meetings with stakeholders, if applicable;
- III. providing administrative support, including assistance with recording meeting outcomes of engagement and consultation meetings with stakeholders;
- IV. arranging Supplier's travel and accommodation reasonably required in connection with the Services; and
- V. assisting the Supplier with the research, presentation, and preparation of the Final Report.

The secretariat support or any other assistance provided by the Customer will not in any way relieve the Supplier of its obligations under this Contract.

When required, travel will be arranged for the Supplier in accordance with the Customer's Accountable Authority Instruction (AAI) for official travel.

C.A.2(g) Customer Material

The Customer may at its absolute discretion provide copies of relevant information, data, submissions, documentation or other relevant contextual material to the Supplier for the Supplier's use in conducting the review.

In accordance with clause C.C.22c [*Confidential Information*], the Supplier agrees that any confidential information pertaining to the Customer will not be disclosed, unless disclosure is required by law or a stock exchange.

C.A.2(h) Conflicts of Interest

The Supplier has declared that it has Conflicts of Interest(COI) relevant to the performance of its obligations under this Contract. During the Contract Term the Supplier agrees to implement any COI management strategies specified in **Annex 1 - Conflicts of Interest Management Plan** and keep the Customer informed of all relevant details relating to COI specified below:

NIL.

In addition to the Supplier's obligations under clause C.C.3 [*Conflict of Interest*], the Supplier also agrees to comply with any additional requirements notified by the Customer from time to time in relation to the management of this conflict.

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>.

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

Name/Position:	An Authorised Officer
Email Address:	PID@infrastructure.gov.au
Telephone:	1800 075 001

C.A.2(j) Complaints Handling

Any complaints relating to this procurement should be referred to:

Name/Position:	Anita Langford
Email Address:	Assistant Secretary, Program, Policy and Budget Branch
Telephone:	02 6274 s22(1)(a)(ii)

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

C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$49,280.00** as set out below.

Fee Rates

Due Date (week of)	Milestone/Deliverable Description	Maximum Allowable Days	Daily Fee (GST Inclusive)	Total Fee (GST Inclusive)
24/07/2023	Completion of First Nations stakeholder engagement planning and arrangements	s47G(1)(a)		
28/08/2023	Completion of facilitation of First Nations stakeholder engagement sessions			
04/09/2023	Submission of interim observations from First Nations stakeholder engagement for inclusion in draft report			
11/09/2023	Submission of final observations on First Nations policy for inclusion in final report			
Totals:				

Total Fees \$49,280.00 GST Inclusive

The Supplier must only charge Fees for the time actually expended in performing the Services.

The Daily Fee specified in the tables above is intended to represent the maximum amount the Supplier is entitled to charge in circumstances where the Supplier provides Services for eight (8) hours or more on any given day.

For the avoidance of doubt, where the Supplier provides Services for less than eight (8) hours on any given day, the Supplier will be entitled to charge for that time at the rate of \$385.00 (GST inclusive) per hour.

Adjustment to Fixed Pricing for Contract Variation/Extension

Not Applicable

Released under the Freedom of Information Act 1992 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Expenses

The Supplier may only claim reimbursement for expenses when the expense is nominated in the table below.

Additionally:

- a) all domestic air travel and accommodation will be booked and paid directly by the Customer on behalf of the Supplier,
- b) amounts claimed for other travel-related expenses must not exceed the total amount specified in **Table 2** of **TD 2022/10** or the applicable financial year’s Taxation Determination issued by the Australian Taxation Office, and
- c) a claim for reimbursement is submitted supported by a copy of the paid Tax Invoice.

Description/Comments	Cost GST Exclusive	GST Component	Total Cost GST Inclusive
Travel-related expenses	See (b) above		

C.A.3(a) Payment Schedule

If the Supplier incurs any reimbursable expenses, the Customer will reimburse the Supplier at cost (exclusive of GST) on submission of a claim for reimbursement supported by a copy of the paid Tax Invoice.

Payment of the Fees (inclusive of any GST and all taxes and charges) will be made in accordance with clause C.A.3 upon receipt of a Correctly Rendered Invoice after completion of each Milestone/Deliverable by the relevant dates set out in clause C.A.2(d).

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

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: Assistant Director, Implementation Policy Section
 Currently: s22(1)(a)(ii)
 Telephone: 02 6274 s22(1)(a)(ii)
 Mobile:
 Email Address: s22(1)(a)(ii)@infrastructure.gov.au
 Postal Address: GPO Box 594
 CANBERRA ACT 2601

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

Addressee Name/Position Title: Invoices/Procurement
 Telephone: 02 6274 7111
 Peppol ID:
 Email Address: invoices@infrastructure.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: Ms Dixie Crawford
 Position Title:
 Telephone: s47F
 Mobile:
 Email Address: s47F@nganya.com.au
 Postal Address: Level 1/11-17 Swanson Ct, Belconnen ACT 2617

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

Name: Nganya
 Position Title:
 Email Address: hello@nganya.com.au
 Postal Address: Level 1/11-17 Swanson Ct, Belconnen ACT 2617

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 Confidential Information of the Supplier

Not Applicable

C.B.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/).

Contract Annex 1 – Conflicts of Interest Management Plan

Contract Annex 2 – Supplementary Information

Terms of Reference to be attached as Appendix A.

Commonwealth Contract Terms

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

Commonwealth Contract Terms

- 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 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

Commonwealth Contract Terms

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 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.

Commonwealth Contract Terms

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.
- 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.

21.A 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

Commonwealth Contract Terms

- 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 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:
- a) immediately report it to the Customer and provide a written report within three (3) Business Days, and
 - b) 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:
- a) 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
 - b) take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth), and
 - c) 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:
- a) the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation), or
 - b) 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.

Commonwealth Contract Terms

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.

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.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>.



The Commonwealth Contract Terms are licensed under the Creative Commons [Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/) (CC BY NC ND 4.0 INT).

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.

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

“**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

“**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://softwaredevelopers.ato.gov.au/eInvoicing>.

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

“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>.

“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 Black Economy Policy only, means the Statement of Tax Record is valid in accordance with Part 7.e of the Black 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	<i>NOTE: Where relevant, this also forms part of a Contract formed under a DoSO.</i>
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	

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

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Services, 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 – Conflict of Interest Management Plan
- f) Contract Annex 2 – 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, Communications and the Arts
ABN 86 267 354 017 by its duly authorised delegate in the presence of

Signature of witness

s22(1)(a)(ii)

[Redacted signature]

Signature of delegate

s22(1)(a)(ii)

[Redacted signature]

Name of witness (*print*)

s22(1)(a)(ii)

[Redacted name]

Name of delegate (*print*)

ANITA LANGFORD

Position of delegate (*print*)

ASSISTANT SECRETARY PPS

Date:

13. 7. 2023

Executed by in the presence of:

Signature of witness

s47F

[Redacted signature]

Signature of supplier

s47F

[Redacted signature]

Name of witness (*print*)

s47F

[Redacted name]

Name of supplier (*print*)

s47F

[Redacted name]

Date:

14/7/23

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

From: s22(1)(a)(ii)
To: [Redacted]
Subject: FW: s23.3 Approval to Commit Funds/Offer a Contract (low risk/low value) [SEC=OFFICIAL]
Date: Tuesday, 10 September 2024 2:20:59 PM
Attachments: [image001.png](#)

OFFICIAL

OFFICIAL

From: Langford, Anita <Anita.Langford@infrastructure.gov.au>
Sent: Wednesday, 16 August 2023 16:10
To: s22(1)(a)(ii)@infrastructure.gov.au
Cc: s22(1)(a)(ii)@infrastructure.gov.au
Subject: RE: s23.3 Approval to Commit Funds/Offer a Contract (low risk/low value) [SEC=OFFICIAL]

OFFICIAL

Approved.

Anita Langford

Assistant Secretary • Program, Policy and Budget • Land Transport Infrastructure Division
anita.langford@infrastructure.gov.au
P +61 2 6274 s22(1)(a)(ii) • M s22(1)(a)(ii)
GPO Box 594 Canberra, ACT 2601

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

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

From: s22(1)(a)(ii)@infrastructure.gov.au
Sent: Wednesday, 16 August 2023 2:58 PM
To: Langford, Anita <Anita.Langford@infrastructure.gov.au>
Cc: s22(1)(a)(ii)@infrastructure.gov.au
Subject: s23.3 Approval to Commit Funds/Offer a Contract (low risk/low value) [SEC=OFFICIAL]

OFFICIAL

Hi Anita

For the record, can I ask that you please confirm your approval of:

s22(1)(a)(ii)

- the commitment of up to \$49,280 (GST incl.) for the procurement of the *First Nations Advisor for the Independent Review of the National Partnership Agreement on Land Transport Infrastructure Projects* under s23.3 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), covering the period 13 July 2023 to 29 September 2023; and

s22(1)(a)(ii)

Please note, under the HRHV policy, procurements require endorsement from the department's Operations Committee where the procurement is considered to have a value at or exceeding \$5 million (GST incl.) or to have a non-financial risk rating (post controls) of high or severe. The requested approval of financial commitment for all three of the procurements listed above is a combined \$287,280 (GST incl.) and the post controls non-financial risk rating has been assessed at low. This procurement is therefore not considered to be HRHV and does not require endorsement from the Department's Operations Committee prior to the exercise of your authority to approve as delegate.

Decisions to commit relevant money and to enter into arrangements are subject to the requirements of the PGPA Act. If you approve these recommendations, this email will represent the written record of your approval of:

- a. the commitment of relevant money; and
- b. the entering into an arrangement in this matter,

for the purposes of section 23 of the PGPA Act and rule 18 of the PGPA Rule.

A commitment should only be approved if the approver is satisfied (amongst other things) that the proposed commitment represents value for money and the arrangement promotes the proper use and management of public resources (which includes relevant money). Following your approval, an online approval will be sent to you via myWorkplace (SAP).

Background

As you are aware, the procurements listed above have been made in support of the Independent Review of the National Partnership Agreement on Land Transport Infrastructure Projects. In accordance with Commonwealth best practice, the Department approached the market using via direct source s22(1)(a)(ii) First Nations Advisor s22(1)(a)(ii)

s22(1)(a)(ii)

You have previously provided approvals for all three of these procurements via email, however a more explicit approval under section 23(3) of the PGPA Act is required to complete contract registrations. Your previous approvals can be provided to you for reference on request.

Value for Money

Having regard to all relevant factors, the Department determined that the engagement of the suppliers represents best value for money to the Commonwealth and a proper use of relevant money, in accordance with the purposes of the PGPA Act, due to their relevant skills and experience, and their availability to undertake the required work in the necessary timeframes. 'Proper' is defined as efficient, effective, economical and ethical.

Funding and budget issues

s22(1)(a)(ii) all expenditure will be incurred in the 2023-24 financial year. Funds have been made available and a new departmental cost centre s22(1)(a)(iii) has been established for this purpose.

Probity and Risk

The primary risks and probity considerations raised during the assessment process can be summarised as inability to deliver within agreed timeframes and/or budgets, lack of quality in finished products, potential reputational risk, and potential conflicts of interest on the part of the suppliers.

This procurement assessment is deemed to be low risk.

Reporting

The proposed services are equal or greater than \$10,000 (GST incl.). Accordingly, the contracts and work order will be reported on AusTender in accordance with mandatory reporting obligations.

The titles for these procurements to be reported on AusTender will be:

- s22(1)(a)(ii)
- First Nations Advisor: NLT NPA Review
- s22(1)(a)(ii)

In approving these commitments, you agree that this title is appropriate for public reporting.

Many thanks

s22(1)(a)(ii)

s22(1)(a)(ii)

Assistant Director • NLT NPA Review

Land Transport Infrastructure Division

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

P +61 2 6274 s22(1)(a) • M s22(1)(a)(ii)

GPO Box 594 Canberra, ACT 2601

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

CONNECTING AUSTRALIANS • ENRICHING COMMUNITIES • EMPOWERING REGIONS

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.



PGPA Section 23 Approval Form

Purpose

To seek your approval to vary the contract with **Source Nation Pty Ltd t/a Nganya ABN 57 625 733 511** for the provision of Advisory Services for the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department)

Requirements

The Department entered into a contract for services with **Source Nation Pty Ltd t/a Nganya ABN 57 625 733 511** for the provision of advisory services for the period Thursday 13 July 2023 to Friday 29 September 2023.

Due to a Department oversight in the contract management phase, the contract continued with services being delivered beyond the originally agreed capped maximum value. This resulted in the Department exercising a Section 23(1) Delegation to vary an arrangement without the required section 23(3) approval for the commitment of relevant funds. This approval form seeks to remedy the non-compliance that has occurred as a result of this oversight.

Supporting Documents

s22(1)(a)(ii)



Recommendation/s

1. That the Department of Infrastructure, Transport, Regional Development, Communications and the Arts vary the contract with **Source Nation Pty Ltd t/a Nganya ABN 57 625 733 511** for the provision of advisory services as per the requirements detailed above.
2. Vary the contract to increase the total value by **\$7,315 (GST inclusive)** for a total value of **\$56,595 GST inclusive**).

RECOMMENDATIONS

That you:

1. **AGREE / NOT AGREE** to the recommendation/s above.
3. **APPROVE / NOT APPROVE** varying the arrangement under section 23(1) with **Source Nation Pty Ltd t/a Nganya ABN 57 625 733 511** and provide the commitment of relevant money under section 23(3) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) increasing the contract value by **\$7,315 (GST inclusive)** from **\$49,280 (GST inclusive)** to **\$56,595 (inclusive of GST)** for the additional costs incurred in the provision of these services.

s22(1)(a)(ii)

Signature: 

Anita Langford
 Assistant Secretary, Land Transport Infrastructure Division

Date: 25 September 2023

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



TAX INVOICE

Department of Infrastructure, Transport, Regional
Development, Communications and the Arts
GPO BOX 594
CANBERRA ACT 2601
AUSTRALIA
ABN: 86 267 354 017

Invoice Date
25 Sep 2023

Invoice Number
INV-211

Reference
PO45146392

ABN
57 625 733 511

Nganya
Source Nation Pty Ltd
Level 1-11/17 Swanson Ct
Belconnen ACT 2617
Australia

Description	Quantity	Unit Price	GST	Amount AUD
NPA First Nations Review	147.00	350.00	10%	51,450.00
			Subtotal	51,450.00
			TOTAL GST 10%	5,145.00
			TOTAL AUD	56,595.00

Due Date: 2 Oct 2023

Thankyou for your business!

Please arrange for transfer of funds to:

s47G(1)(a)



[View and pay online now](#)

PAYMENT ADVICE

To: Nganya
Source Nation Pty Ltd
Level 1-11/17 Swanson Ct
Belconnen ACT 2617
Australia

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

Invoice Number INV-211

Amount Due **56,595.00**

Due Date 2 Oct 2023

Amount Enclosed

Enter the amount you are paying above