



Australian Government

Approach to Market

Reference ID: 2000011152

This Approach to Market (ATM) is for the provision of: Expert Advice to Support Non-Detriment Finding Requirements for CITES Listed Species Harvested in Australian Export Fisheries

The Commonwealth as represented by Department of Agriculture, Water and the Environment (the Customer) is seeking submissions for the provision of the consultancy services (the Requirement) as described in this *Commonwealth Approach to Market*.

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> (**Note:** you do not need a CCS user account to view the terms).

Mandatory Conditions for Participation

Respondents must meet the following essential requirements:

1. Tertiary qualifications in Marine Biology or Ecology or another relevant field that can demonstrate proficiency to supply expert advice on a national policy for coral Non-Detriment Finding including, expert advice on appropriate coral harvest levels and suitable fisheries management arrangements,

OR

Suitable work history in lieu of tertiary qualifications that meets the requirement above. Evidence and examples of previous work will be considered in support of this.

Statement of Requirement

A.A.1 Key Dates and Times

| Event | Details |
|-----------------------------------|---|
| Industry Briefing#: | Unless otherwise notified by an addendum, there are no industry briefing sessions for this ATM. |
| Site Inspection*: | Unless otherwise notified by an addendum, there are no site inspections for this ATM. |
| ATM Closing Date: | Thursday, 15 April 2021 |
| ATM Closing Time: | 15:00 ACT local time |
| Question Closing Date and Time: | Questions will be permitted up until 5pm Wednesday, 14 April 2021. |
| Expected Contract Execution Date: | Thursday, 15 April 2021 |
| Expected Contract End Date: | The Contract will terminate on Monday, 8 November 2021. |
| Contract Extension Option: | The Contract Term will not be extended. |

A.A.2 The Requirement

Background:

The Australian Government Department of Agriculture, Water and the Environment (the department) develops and implements national policy, programs and legislation to protect and conserve Australia's environment.

This includes meeting Australia's obligations as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Wildlife Trade Assessments Section of the Wildlife Trade Office in the department performs the functions of the Australian CITES Scientific Authority. In order to permit the export of species listed in Appendix II of the Convention, Australia's Scientific Authority must first determine that the export will not be detrimental to the survival of the species. This assessment is known as a 'non-detriment finding' (NDF). Guidance for Parties' Scientific Authorities in assessing relevant information fields to determining whether a NDF can be made is available within [Resolution Conf. 16.7 Rev COP17](#).

The department's Wildlife Trade Section requires a consultant to review available data and literature and provide expert advice to inform the Australian CITES Scientific Authority's decision on whether and under what circumstances NDFs for CITES-listed coral species harvested in Australian export fisheries can be made.

Overview:

A number of Australian fisheries including the Queensland Coral Fishery, the Northern Territory Aquarium Fishery, the Western Australian Marine Aquarium Fish Managed Fishery, and the Coral Sea Fishery currently take CITES-listed hard-coral species for export. Australia's CITES Scientific Authority needs to determine whether and under what circumstances NDFs may be made for continued export of relevant coral species.

The NDFs must consider relevant information on species biology, population status and trends, and harvest and management practices in order to determine whether harvest and export in the context of all cumulative sources of removal and mortality would be detrimental to the survival of the species in the wild.

To inform these decisions, a consultant with expertise in coral species and fisheries management is required to gather and undertake a review of available information on Appendix II listed coral species and

their harvest in the four Australian coral fisheries. Based on this review expert advice in relation to the suitability of current harvesting practices and management arrangements for meeting CITES sustainability requirements is required, to inform Australia's CITES Scientific Authority's determination of NDFs.

The consultant is required to produce two formal reports:

1. An overarching report 'Advice on a national policy for coral NDFs', which should identify:
 - Key structural elements and minimum requirements integral to a robust system for demonstrably sustainable management of CITES-listed coral species. The identification of these key elements is intended to provide a framework to assist fisheries managers in efforts to harmonise management nationally in meeting CITES requirements, noting full harmonisation will necessarily be constrained somewhat by geographical and practical differences between jurisdictions.
 - Management elements may include:
 - Harvest reporting requirements feasible for consistent national application, such as for of measurement used (e.g. number of pieces and or weight of individual pieces), spatial scale, species identification;
 - Measures designed to prevent serial or localized depletion; and
 - A consistent means of determining species-specific sustainable harvest limits, or responsive adaptive management frameworks to appropriately constrain harvest. This might include a framework for conducting nationally consistent ERAs and managing identified risks as well as the bulk of the lower-risk species harvested.
 - Identify information needed to support NDF requirements and outline availability and gaps in this information including, but not limited to, population status, range, density, harvest and susceptibility to environmental matters such as climate events. Based on these information requirements, propose a cost methodology for data collection and assessment to support future reviews (or ongoing validity) of the NDF.
 - This aspect of the project will develop a plan for the assessment and review of the NDFs (if and as required) for coral species in Australia, including suggested conditions to be placed on the NDF if recommended, to improve the information underpinning NDFS. As a basis for this, the framework developed by the German government (Attachment 1) will be used to help clarify the information needs and the processes undertaken (periodically or as required to ensure NDF currency) in making an NDF determination.
2. The consultant will produce a report in four parts analysing available information on each of the four Australian coral fisheries to inform Australia's Scientific Authority in determining NDFs. Information fields relevant to this analysis for each fishery include:
 - scientific literature on species biology and life-history characteristics;
 - species range (historical and current);
 - harvested species population structure, status and trends (in the harvested area, nationally and internationally);
 - threats;
 - any ecological risk assessments conducted;
 - historical and current species-specific levels and patterns of harvest and mortality from all sources combined;
 - harvest methodologies employed (such as whether whole colonies are harvested or only fragments, or selectivity in colour varieties harvested);

- management measures currently in place and proposed, including spatial and temporal measures, adaptive management strategies, total allowable catches, with consideration of levels of compliance;
- Protection afforded by areas closed to harvest;
- scientific surveys conducted at harvest locations and at sites protected from harvest and other impacts;
- population monitoring;
- consultations with local, regional and international experts and relevant knowledge and expertise of local and indigenous communities; and
- CITES trade data.

For each of the four fisheries, the consultant will report on species' harvest levels and trends, advise on recommended sustainable harvest limits, and the adequacy of current management arrangements to constrain harvest of individual species/species groups to non-detrimental levels. This should be in the context of all cumulative sources of mortality. Specifically, the consultant will:

- Detail species that are considered at higher risk of localised or serial depletion due to their biology, range, patterns of harvest, disturbances in the region, international demand and any other factors determined relevant;
- Identify strengths and inadequacies in the current suite of management arrangements for the fishery; and
- Propose options for management arrangements that will ensure the sustainable harvest of all species in the fishery and appropriate sustainable limits on harvest for individual species or species-groups and/or adaptive management options. Options proposed should draw upon the recommendations made in the report 'Advice on a national policy for coral NDFs'.

This advice will inform the Australian CITES Scientific Authority's determination of whether, and under what circumstances, positive NDFs can be made for the export of the species harvested in each of the four Australian coral fisheries.

A.A.2(a) Standards

The Supplier must ensure that any goods and services proposed comply with all applicable Australian standards (or in its absence an international standard) including any requirements or 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 all applicable Australian or international 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 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. The Supplier will provide the Customer with a plan for approval.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any Work Health and Safety 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 |
|--|---|------------|
| Project start-up phase | | 15/04/2021 |
| Report writing (drafts produced): <ul style="list-style-type: none"> • Draft Report 1 - 'Advice on a national policy for coral NDFs'. • Draft Report 2, Part A - 'Advice to inform Non-Detriment Findings for the Queensland Coral Fishery' | Reports to be delivered to Wildlife Trade Assessments inbox wta@awe.gov.au | 17/05/2021 |
| Report writing (drafts produced): <ul style="list-style-type: none"> • Draft Report 2, Part B - 'Advice to inform Non-Detriment Findings for the Western Australian Marine Aquarium Fish Managed Fishery'. • Draft Report 2, Part C - 'Advice to inform Non-Detriment Findings for the Northern Territory Aquarium Fishery'. • Draft Report 2, Part D - 'Advice to inform Non-Detriment Findings for the Coral Sea Fishery' - draft chapter - milestone | See above | 16/08/2021 |
| Final Reports: <ul style="list-style-type: none"> • Report 1: 'Advice on a national policy for coral NDFs'. • Report 2: 'Advice to inform CITES Non-Detriment Findings for Australian Coral fisheries' | See above | 8/11/2021 |

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.2(h) Public Interest Disclosure

Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to information available at:

<https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure/information-for-disclosers>.

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

| | |
|----------------|-----------------------------|
| Name/Position: | s. 22(1)(a)(ii) |
| Email Address: | s. 22(1)(a)(ii) @awe.gov.au |
| Telephone: | s. 22(1)(a)(ii) |

A.A.2(i) Complaints Handling

In the first instance, complaints relating to this ATM should be directed to the Customer’s Contact Officer or:

| | |
|----------------|-----------------------------|
| Name/Position: | s. 22(1)(a)(ii) |
| Email Address: | s. 22(1)(a)(ii) @awe.gov.au |
| Telephone: | s. 22(1)(a)(ii) |

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

A.A.3 ATM Distribution

Email Distribution

Any questions relating to this ATM must be directed to the *Customer Contact Officer* at A.A.5. Updates to this ATM will be distributed via email.

A.A.4 Lodgement Method

Email

Responses should be lodged via email to s. 22(1)(a)(ii) @awe.gov.au quoting reference number 2000011152 by the closing time specified above.

Response File Format, Naming Convention and Size

The Customer will accept Responses lodged in the following formats:

- Word Doc (.docx)
- PDF (.pdf)

The Response file name/s should:

- a) incorporate the Potential Supplier's full legal organisation name; and
- b) reflect the various parts of the bid they represent (where the Response comprises multiple files).

Response files must not exceed a combined file size of megabytes per email.

Responses must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

A.A.5 Customer's Contact Officer

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

Name/Position: s. 22(1)(a)(ii)

Email Address: s. 22(1)(a)(ii) @awe.gov.au

Telephone: s. 22(1)(a)(ii)

Note: Question Closing Date and Time is set out at item A.A.1 [Key Dates and Times].

Additional Contract Terms

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

A.C.1 Intellectual Property

For the purposes of this clause, “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, database, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

The Customer owns the Intellectual Property Rights in the Material created under the 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 the 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 the Contract Term to exercise the Intellectual Property Rights in the Material for the sole purpose of fulfilling its obligations under the 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 the 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 Interest on Late Payments

Where the Customer and the Supplier both have the capability to deliver and receive e-Invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing), 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, 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.

If the total initial value of the Contract (excluding any options, extensions, renewals or other mechanisms that may be executed over the life of the contract) is less than A\$1 million (GST inclusive) and 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 available on the Australian Taxation Office website as it applies on the day the amount was due and payable expressed as a daily rate.

Commonwealth Approach to Market (ATM) Terms

A.B.1 Background

Some terms in this document have been given a special meaning. The meanings are set out either in the Commonwealth Contracting Suite Glossary, the ATM or the Contract.

Any queries regarding this ATM should be directed as set out in Clause A.A.5 [Customer's Contact Officer].

At any time prior to the Closing Time, the Customer may amend or clarify any aspect of this ATM, by issuing a formal amendment to the ATM in the same manner as the original ATM was distributed.

At any time prior to contract execution, the Customer may suspend the ATM process or issue a Public Interest Certificate by issuing an addendum to the ATM in the same manner as the original ATM was distributed.

Where the ATM has been issued via AusTender, any amendments, clarifications, addenda or suspension notifications related to this ATM will be notified via AusTender.

Where the ATM was not issued via AusTender, any amendments, clarifications, addenda or suspension notifications will be issued simultaneously to all Potential Suppliers as far as practicable.

No Contract will be formed until executed by the Customer. The Customer, acting in good faith, may discontinue this ATM, decline to accept any response; decline to issue any contract; or satisfy its requirement separately from this ATM process.

Participation in any stage of the process is at the Potential Supplier's sole risk and cost.

A.B.2 Inconsistencies

If there is inconsistency between any of the parts of this ATM, the following order of precedence shall apply:

- (a) *ATM – Statement of Requirement*;
- (b) *Commonwealth ATM Terms*;
- (c) *Additional Contract Terms* (if any);
- (d) *Commonwealth Contract Terms*;
- (e) *Commonwealth Contract*; and
- (f) *Commonwealth Contracting Suite Glossary*,

so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

A.B.3 Customer and Reference Material

The Customer will make available the Customer's material (if any) specified in clause A.A.2(g) [*Customer Material*].

If this ATM references any other materials, including but not limited to, reports, plans, drawings, samples or other reference material, the Potential Supplier is responsible for obtaining the referenced material and considering it in framing their Response.

A.B.4 Lodging a Response

By lodging a Response, Potential Suppliers agree:

- (a) that the Response will remain open for acceptance for sixty (60) working days from the date set out at ATM Closing Time in clause A.A.1 [*Key Dates and Times*], and
- (b) to sign a Contract which incorporates the *Commonwealth Contract Terms*.

Responses are subject to these *Commonwealth ATM Terms*.

Potential Suppliers must submit Responses using the *Response to the ATM* form provided (with all details in English and prices quoted in Australian currency).

Prices quoted must show the GST exclusive price, the GST component, if any, and the GST inclusive price.

The Contract Price must be inclusive of GST and all other taxes, duties (including any customs duties) and any government charges imposed or levied in Australia or overseas.

The Contract Price, which will include any and all other charges and costs, will be the maximum price payable by the Customer under the Contract.

Potential Suppliers may submit Responses for alternative methods of addressing the Customer's *Statement of 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.

The Response must be lodged as set out in clause A.A.4 [*Lodgement Method*].

Potential Suppliers and their officers, employees, agents and advisors 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.

The Customer will only agree to extensions to the Closing Time in exceptional circumstances and, if approved, 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.

The Customer may decline to consider a Response in which there are alterations, erasures, illegibility, ambiguity or incomplete details.

The Customer may, at any time prior to execution of a contract, seek clarification or additional information from, and enter into discussions and negotiations with, any or all Potential Suppliers in relation to their Responses. In doing so, the Customer will not allow any Potential Supplier to substantially tailor or amend their Response.

Commonwealth Approach to Market (ATM) Terms

Potential Suppliers must notify the Customer immediately if any actual, potential or perceived conflict of interest arises (a perceived conflict of interest is one in which a reasonable person would think that the person's judgement and/or actions may be compromised) and comply with any reasonable directions given by the Customer. As soon as practicable, any verbal advice should be followed by written confirmation.

A.B.5 Evaluation

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.

The Customer will exclude from consideration any Response that does not meet the Mandatory Conditions for Participation, if any.

The criteria for evaluation will encompass the:

- (a) extent to which the potential Supplier's Response meets the Customer's Requirement set out in this ATM;
- (b) potential Supplier's demonstrated capability and capacity to provide the Requirement; and
- (c) whole of life costs to be incurred by the Customer. Considerations will include both the quoted price and any costs that the Customer will incur as a result of accepting the potential Supplier's Response.

The Customer may at any time exclude a Response from consideration if the Customer considers that the Response is clearly not competitive.

Unless stated otherwise in the Approach to Market documentation, the above three (3) criteria for evaluation will be of equal importance.

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>.

If requested by the Customer, the Potential Supplier must be able to demonstrate its ability to remain viable over the Contract Term and must promptly provide the Customer with such information or documentation as the Customer reasonably requires.

The Customer reserves the right to contact the Potential Supplier's referees, or any other person, directly and without notifying the Potential Supplier.

The Customer will notify all Potential Suppliers of the final decision and, if requested, will provide a debrief following award of the contract.

A.B.6 Reporting Requirements

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

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.

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

Potential Suppliers should note that if successful, parts of their Response may be included in a subsequent Contract. Potential Suppliers must identify any aspects of their Response or the proposed Contract that they consider should be kept confidential, including reasons.

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

Potential Suppliers should be aware 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).

The Potential Supplier must ensure that any intended subcontractors participating in the Potential Supplier's Response are aware of the information in this clause.



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Commonwealth Contracting Suite (CCS) Glossary

In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**;
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms** or the **Commonwealth Purchase Order Terms**, as the case may be.

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

“Approach to Market or ATM” means the notice inviting potential suppliers to participate in the procurement.

“Closing Time” means the closing time specified in clause A.A.1 [*Key Events and Dates*].

“Contract” means the documentation specified in clause C.C.4 [*Precedence of Documents*].

“Contract Extension Option” means an option of a Customer to extend the term of a Contract for one or more additional time periods.

“Contract Manager” means the contract manager for the Customer and/or Supplier (as relevant) specified in the Contract.

“Contract Price” means the total 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 calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer’s Contract Manager;
- d) is for an amount which, together with all 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 a party specified in a Contract as a Customer.

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

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

“Goods and/or Services” means:

- a) the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

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

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

“Intellectual Property Rights” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

Commonwealth Contracting Suite (CCS) Glossary

“Material” means any material 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 in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Contract or as notified from time to time.

“Requirement” means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading ‘Requirement’;
- b) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading ‘Requirement’;
- c) for the purposes of the Commonwealth Purchase Order Terms the document setting out the Goods and/or Services.

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

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

“Statement of Work” means the section of the Contract, as the case may be, with the heading ‘Statement of Work’.

“Supplier” means a party specified in a Contract as a Supplier.

RESPONSE

Remember to **remove** all drafting note guidance **before** you finalise and submit your Response.

Specific questions about this ATM should be directed to the *Customer's Contact Officer* [Item A.A.5].

If successful your organisation will be offered a contract which includes the *Commonwealth Contract Terms*, available at: <https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>. These terms are not negotiable. **Do not submit a response if you cannot agree to these terms as you cannot be awarded the Contract.**

Submit the form as required in *Lodgement Method* [Item A.A.4].

You **MUST** use this 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>. The form is set out to facilitate evaluation of responses.

Participation in this ATM is at your sole risk and cost. This is a competitive process, and you should note that your organisation may incur costs in responding, if you are unsuccessful you will be unable to recoup these costs.

Be as **concise** as possible while including all information that your organisation wants the evaluation team to consider. Do not assume that the evaluation team has any knowledge of your organisation's abilities or personnel.

Before completing your Response read the Customer's Approach to Market (ATM) distributed with this Response form and decide whether your organisation has the **necessary skills and experience** to meet the Customer's requirement.

You must clearly demonstrate that your organisation meets the **Mandatory Conditions for Participation** (if any), as failure to do so **will** mean your response cannot be considered and you cannot be awarded the Contract.

If you are an **Individual** without an ABN and you do not meet the Australian Taxation Office's (ATO) definition of an independent contractor, you may be offered a different form of contract OR we may not be able to contract with you. Before completing this Response Form notify the Customer's Contact Officer to enable them to seek advice. For further information, refer to the ATO website at: <https://www.ato.gov.au/business/employee-or-contractor/how-to-work-it-out--employee-or-contractor/>.

If you are a **Trust** where the Trustee is **not** empowered to sign contracts on behalf of the Trust, we may **not** be able to contract with you. Before completing this Response Form notify the Customer's Contact Officer to enable them to seek advice.

The Customer will evaluate all valid Responses received by the Closing Time [Item A.A.1] which meet the Mandatory Conditions for Participation (if any), to determine which Potential Supplier has proposed the best value for money outcome for the Customer.

In making this decision, the Customer will consider the criteria set out at Clause A.B.5 [*Evaluation*].

In preparation of this Response you should note the Commonwealth Indigenous Procurement Policy (IPP) available at: <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp> may apply to the Customer in respect of this procurement. During evaluation of responses, the Customer may consider the Supplier's ability to assist the Customer to meet its IPP obligations.

The successful Supplier will have demonstrated its ability to provide the best value for the Customer. This will not necessarily be the lowest price.

If your organisation is **unsuccessful** with this submission, request a debrief to assist with future submissions. The Customer's Contact Officer [Item A.A.5] can arrange this for you.

Part 1 – Potential Supplier’s Details

DRAFTING NOTE:

The following details will appear in the Contract should your Response be successful. The details you provide should be for the legal organisation that would be the Supplier under the Contract.

| | |
|---|---|
| Full Legal Organisation Name: | |
| Legal Status: | <input type="checkbox"/> Individual/Sole Trader <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Sole Director Company <input type="checkbox"/> Trust (see note below) <input type="checkbox"/> Educational Institution (see note below) <input type="checkbox"/> Other (please state): |
| <p>NOTE FOR TRUSTS: If the Potential Supplier is trading as a trust, please provide details of the relevant trust (and trustee) including a copy of the relevant trust deed (including any variations to that deed) as an attachment to this Response.</p> | |
| <p>NOTE FOR EDUCATIONAL INSTITUTIONS: If your Response is successful, prior to Contract you will be required to provide details of any enabling legislation as well as details of any delegations or other authorisations that are relevant to the execution of a contract.</p> | |
| Australian Business Number (ABN): | |
| Australian Company Number (ACN): | |
| Australian Registered Body Number (ARBN): | |
| Registered Address: | |
| Web address: | |
| Is your organisation classified as a ‘relevant employer’ under the Workplace Gender Equality Act 2012 (the WGE Act)? | <input type="checkbox"/> Yes, I am a relevant employer <input type="checkbox"/> No, I am not a relevant employer |
| If yes , you are required to provide a current letter of compliance with the WGE Act prior to contract. Have you provided a letter of compliance with this Response? | <input type="checkbox"/> Yes <input type="checkbox"/> No, I will provide a current letter of compliance prior to contract |
| <p>NOTE: Where the Supplier is a relevant employer, the Supplier must provide evidence that it complies with its obligations under the WGE Act before commencement of any Contract and annually thereafter for the duration of the Contract. If the Supplier becomes non-compliant with the WGE Act during the course of the contract, the Supplier must notify the Customer’s Contact Officer. Compliance with the WGE Act does not relieve the Supplier from its responsibilities to comply with its obligations under the Contract.</p> | |
| Is your organisation 50% or more Indigenous owned? | <input type="checkbox"/> Yes, see below . <input type="checkbox"/> No |
| If your organisation is 50% or more Indigenous owned , is your organisation registered on Supply Nation? | <input type="checkbox"/> Yes <input type="checkbox"/> No – see note below <input type="checkbox"/> Not Applicable |

| | |
|---|--|
| Please provide a certificate or letter from a recognised Indigenous organisation such as Land Council, Indigenous Chamber of Commerce or Office of the Registrar of Indigenous Corporations verifying Indigenous ownership. | |
| Has your organisation ever had a judicial decision about employee entitlements or engaged in practices that have been found to be dishonest, unethical or unsafe? | <input type="checkbox"/> Yes, see below. <input type="checkbox"/> No |
| If yes , what was the date of discharge? | (dd-mm-yyyy) |
| <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> | <i>Note: The Customer cannot enter a contract with a supplier who has an undischarged judicial decision relating to employee entitlements.</i> |

Contact Officer

For matters relating to this Response contact:

| | |
|-----------------|--|
| Name: | |
| Position Title: | |
| Telephone: | |
| Mobile: | |
| Email Address: | |
| Postal Address: | |

Address for Notices (if different from the Contact Officer)

| |
|---|
| DRAFTING NOTE: Complete with "AS ABOVE" if same as Contact Officer. |
|---|

| | |
|-----------------|--|
| Name: | |
| Position Title: | |
| Email Address: | |
| Postal Address: | |

Contract Manager (if different from the Contact Officer)

| |
|--|
| DRAFTING NOTE: Provide the requested details of the person you propose will be the Contact Manager if your Response is successful and a contract is awarded. Complete with "AS ABOVE" if same as Contact Officer. |
|--|

For matters of a general nature, including acceptance and issuance of written notices contact:

| | |
|-----------------|--|
| Name: | |
| Position Title: | |
| Telephone: | |
| Mobile: | |
| Email Address: | |
| Postal Address: | |

Part 2 – Executive Summary

DRAFTING NOTE:

You may find it useful to complete this section after you have completed your response.

Provide a brief (less than one page) summary of your Response highlighting its key features. The Executive Summary should not merely replicate information provided elsewhere in your Response. This section brings together all aspects of your proposal and is your opportunity to “sell” its unique features.

In support of the Indigenous Procurement Policy (<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>), highlight any Indigenous subcontractors you are proposing to use, or any Indigenous staff who will work on the project.

Part 3 – Ability to Meet the Requirement

Mandatory Conditions for Participation

IMPORTANT INFORMATION:

Respond to the *Mandatory Conditions for Participation* here.

Do not proceed further if you cannot meet the Mandatory Conditions for Participation. If you do not meet the Mandatory Conditions for Participation your Response cannot be considered.

If there was a mandatory industry briefing or mandatory site visit include name of the person(s) who attended.

If no *Mandatory Conditions for Participation* specified, include the words: No Mandatory Conditions for Participation specified.

Detailed Proposal to Meet the Customer's Requirement

DRAFTING NOTE:

Your response should address each aspect of the Statement of Requirement and explain/demonstrate how your response/solution meets the Requirement.

Provide a detailed description of your proposal to supply the Customer's requirement, including any delivery methodology. This is your opportunity to convince the evaluation team that your organisation understands the requirement and can deliver it to a high standard. Do not provide general marketing material.

Highlight your competitive advantage as well as special or unique features of your proposal. Depending on the requirement, your response may propose a detailed project plan including project milestones and completion dates, timeframes, quality standards or performance indicators. It may also detail critical issues or key delivery risks of which the Customer should be aware.

If meeting the Customer's requirement involves reporting, travel or attendance at meetings, you should clearly identify how you will meet these requirements, including details of personnel involved. Do not include any pricing or pricing information in Part 3. You should ensure that you clearly address any costs in your response to Part 5.

Do not rely on your organisation's reputation. The evaluation team can only consider information you provide in this submission.

Standards

DRAFTING NOTE:

Potential Suppliers must provide full details and evidence of compliance with all applicable Australian standards (or in its absence an international standard), and any standards and requirements specified in the Statement of Requirement. Where you do not propose to comply with a standard which has been included in the Statement of Requirement, propose an alternative standard and justify your reasons.

Where no standard has been specified, list any applicable standards with which you propose to comply.

Part 4 – Potential Supplier’s Demonstrated Capability and Capacity

Statement of Skills and Experience

DRAFTING NOTE:

The information you enter here will be used to evaluate your organisation’s proven capacity to meet the customer’s requirement.

Provide clear, concise details of your relevant abilities to deliver what you have proposed.

This is your opportunity to highlight any unique capabilities and prove to the evaluation team that you can meet the requirement to a high standard.

Depending on the requirement, this could include a detailed description of recent relevant experience in successfully supplying a similar requirement. It could also include your organisation’s expertise in this field, brief information on relevant personnel (highlighting relevant expertise and experience), details of relevant intellectual property or unique products used.

You may also attach brief supporting information specific to the requirement including tailored CVs for Specified Personnel.

Do not include any pricing or pricing information in this Part. All pricing information should be included in Part 5.

Specified Personnel

DRAFTING NOTE:

Only propose Specified Personnel where your proposal has referenced the skills of specific personnel and you reasonably expect them to perform the roles nominated. Include their role, the percentage of the project they will complete, and if relevant, their current Commonwealth Government security clearance. Add extra lines to the table as required.

Where there is a number of staff who could perform a particular role, include details of the position/role and the percentage of project time which this role will perform. In these circumstances it would not be necessary to name the person.

Include details for subcontractor personnel if applicable. You will need to give additional details for subcontractors in the next section.

If no Specified Personnel are proposed, insert “Not Applicable”.

| Name | Position/Role | Current Security Clearance Level [#] | Percentage of Total Project Time |
|-----------------------------|---------------|---|----------------------------------|
| | | | |
| | | | |
| Total personnel time | | | 100% |

if requested at A.A.2(b)

Subcontractors

DRAFTING NOTE:

The Customer is required to publicly disclose information about subcontractors. Provide details for each subcontractor organisation you will use below.

If no subcontractors are proposed insert “Not Applicable”

| | |
|--|--|
| Full Legal Name: | |
| Postal Address: | |
| ABN / ACN / ARBN: | |
| Is this subcontractor registered on Supply Nation or 50% or more Indigenous owned? | |

Scope of Works to be Subcontracted

DRAFTING NOTE:

If no subcontractors are proposed insert “Not Applicable”.

Provide details of the roles (or specific parts of the contract) each subcontractor will perform.

The Supplier is solely responsible for all obligations under the contract, including subcontractor performance and management. The Supplier must ensure that any subcontract arrangement that is entered into imposes necessary obligations on the subcontractor.

If you are intending to include subcontractors, read and understand your obligations under the *Commonwealth Contract Terms, Subcontracting* [Clause C.C.10], *Relationship of the Parties* [Clause C.C.2], *Compliance with the Laws* [Clause C.C.21] and *Compliance with Commonwealth Laws and Policies* [C.C.22] specifically relate to subcontractors.

Conflicts of Interest

DRAFTING NOTE:

Public officials have an obligation to disclose conflicts of interest under section 29 of the [Public Governance, Performance and Accountability Act 2013](#) (PGPA Act). Suppliers to Commonwealth entities need to assist the Customer to meet its obligations by complying with the same standard of conduct.

Conflicts can be actual, perceived or potential. The perception of a conflict can be just as damaging to public confidence in public administration as an actual conflict based on objective facts.

It is important that if, after the response has been submitted or during the Contract period, any actual, perceived or potential conflicts arise they are reported to the Customer without delay.

If you are aware of a conflict (real or perceived) that could arise as a result of entering into a contract with the Customer (and Subcontractor where applicable) include full details and strategies to manage below, or for complex issues, attach a Conflict of Interest Management Plan detailing your proposed approach.

If no conflicts of interest were identified, type “Nil”.

Referees

DRAFTING NOTE:

Provide daytime contact details for three (3) referees who can attest to your capacity to meet the Requirement. A reference is stronger if your organisation and/or Specified Personnel has recently provided the referee with similar goods/services. It is good practice to ensure that nominated referees are aware they may be contacted.

Please note, Clause A.B.5 [Evaluation]: The Customer reserves the right to contact any referees, or any other person, directly and without notifying the Potential Supplier.

| Referee Name | Position | Organisation | Phone Number | Email Address |
|--------------|----------|--------------|--------------|---------------|
| | | | | |
| | | | | |
| | | | | |

Pre-existing Intellectual Property of Potential Supplier

DRAFTING NOTE:

List your pre-existing Intellectual Property (if any) noting that:

The Supplier grants to, or in the case of Third-Party Material, must obtain for, the Customer a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence (including the right to sub-licence) to exercise the Intellectual Property Rights in all Pre-existing Material and Third- Party Material incorporated into the Material to enable the Customer to receive the full benefit of the Goods and/or Services and the Material and to exercise its rights in relation to the Material.

If no pre-existing Intellectual Property is proposed insert “Not Applicable”.

Confidentiality of Potential Supplier’s Information

DRAFTING NOTE:

Identify any aspect of the Response, or any aspect of the proposed Contract, that you consider should be kept confidential, with reason.

The Customer will only agree to treat information as confidential in cases that meet the Commonwealth’s guidelines and which the Customer considers appropriate. In the absence of the Customer’s agreement, the Customer has the right to disclose any information contained in the Contract.

Add extra lines to the table as required.

Information to assist you to assess whether the Customer is able to treat particular information as confidential is available at: <https://www.finance.gov.au/publications/resource-management-guides/procurement-publishing-reporting-obligations-rmq-423>.

If none, type “Not Applicable”.

| Information to be kept Confidential | Reasons for Confidentiality Request |
|-------------------------------------|-------------------------------------|
| | |
| | |

Regulatory and Sustainability Considerations

DRAFTING NOTE:

The Australian Government has a commitment to sustainable procurement practices. Sustainable procurement aims to reduce adverse social, environmental and economic impacts of purchased goods and services throughout their life. This includes considerations such as waste disposal and the cost of operations and maintenance over the life of the goods and services.

Provide a brief statement of how your organisation intends to comply with relevant regulations or provide sustainable procurement benefits.

You may wish to include information, where relevant to the Customer’s Requirement, of your commitment to or targets for the following:

- **human rights and ethical employment practices** such as fair pay and avoiding slavery in the supply chain, preventing discrimination, support for worker’s rights, supporting socially inclusive practices, work health and safety and fair work conditions
- **protection of the environment** such as recycling, sustainable resource use, prevention of pollution, climate change mitigation and environmental conservation
- **fair operating practices** such as including prevention/detection of fraud, payment of fair share of tax (including in supply chain), fair competition, fair contractual practices for subcontractors/consumers
- **consumers** such as fair marketing and consumer data protection and privacy
- **community involvement and development** such as involvement in community activities, education and culture, employment creation and skills development – including with vulnerable sectors of the community.

Additional Information

DRAFTING NOTE:

Any information included here should be relevant to this proposal and should be as concise as possible.

To facilitate the Customer's reporting responsibilities under the Indigenous Procurement Policy, if you are an Indigenous business, have Indigenous employees, or are proposing Indigenous subcontractors you should highlight that information here and explain how you will report the ongoing participation of Indigenous people in fulfilling the proposed Contract.

To facilitate the Customer's reporting responsibilities, if you are a business that primarily exists to provide the services of persons with a disability highlight that information here and explain how you will report ongoing participation of disabled people in fulfilling the proposed Contract.

The Commonwealth's Fraud Control Framework requires the Customer to manage risk of fraud and corruption as part of contracting and procurement activities. You should include details of controls (if any) you will have in place to prevent fraud and corruption against the Commonwealth.

This section should **NOT** be used to include generic marketing information that is not specific to the Requirement.

Part 5 – Total Costs to be incurred by the Customer

DRAFTING NOTE:

The information you provide in this section will be used to assess the total costs the Customer will incur under your proposal.

Pricing

Fixed Price (including all expenses)

DRAFTING NOTE:

Complete the following table including fixed prices for each item. Fixed prices must include taxes, duties and other government charges which may be imposed or levied in Australia and overseas, and all other costs associated with providing the services, including delivery fees where applicable.

Make sure you include, costs of any reporting and attending necessary meeting as well as any travel, accommodation and associated costs.

Add additional lines to the table as required.

| Due Date | Milestone Description | Total Price GST Exclusive | GST Component | Total Price GST Inclusive |
|---------------------------------------|-----------------------|------------------------------|------------------|------------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total Fixed Price for Services | | | | |

Proposed Payment Schedule

DRAFTING NOTE:

Complete the table below if you propose that progress payments be made.

Do not propose a payment schedule that reflects more than the value of the milestones or deliverables you have delivered at any stage.

This payment schedule is for the Fixed Fees and Charges portion of the arrangement only. Variable costs will only be reimbursed after they have been incurred and invoiced.

Note: The Customer may propose alternative payment arrangements.

If you are not proposing any progress payments type "Not Applicable".

| Due Date | Milestone Description | Total Price (GST Exclusive) | GST Component | Total Price (GST Inclusive) |
|---------------------------------|-----------------------|-----------------------------|---------------|-----------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total Milestone Payments | | | | |

Additional Facilities and Assistance

DRAFTING NOTE:

Should you require the Customer to provide facilities and assistance, in addition to that stated at *Facilities and Assistance Offered by the Customer* [Clause A.A.2(f)], provide details here. If no additional facilities or assistance required insert “Not Applicable”.

If the pricing provided above is based on the provision of Additional Facilities and Assistance this should be stated below.

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.

| Clause | Reason for Non-Compliance | Proposed New Wording |
|--------|---------------------------|----------------------|
| | | |
| | | |
| | | |
| | | |



Australian Government

Commonwealth Contract – Consultancy Services

Reference ID: 2000011152

Customer

Customer Name: Department of Agriculture, Water and the Environment
Customer ABN: 34 190 894 983
Address: GPO Box 858
Canberra City ACT 2601

Supplier

Full Name of the Legal Entity: Morgan Stuart Pratchett
Supplier ABN: 68 408 872 125
Address: 60 Riverbend Drive
Douglas Queensland 4814

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: | Wednesday, 21 April 2021 |
| Contract Term: | This Contract will terminate on Monday, 20 December 2021. |
| Contract Extension Option: | The Contract Term will not be extended. |

C.A.2 The Requirement

Background:

The Australian Government Department of Agriculture, Water and the Environment (the department) develops and implements national policy, programs and legislation to protect and conserve Australia's environment.

This includes meeting Australia's obligations as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Wildlife Trade Assessments Section of the Wildlife Trade Office in the department performs the functions of the Australian CITES Scientific Authority. In order to permit the export of species listed in Appendix II of the Convention, Australia's Scientific Authority must first determine that the export will not be detrimental to the survival of the species. This assessment is known as a 'non-detriment finding' (NDF). Guidance for Parties' Scientific Authorities in assessing relevant information fields to determining whether a NDF can be made is available within Resolution Conf. 16.7 Rev COP17.

The department's Wildlife Trade Section requires a consultant to review available data and literature and provide expert advice to inform the Australian CITES Scientific Authority's decision on whether and under what circumstances NDFs for CITES-listed coral species harvested in Australian export fisheries can be made.

Overview:

A number of Australian fisheries including the Queensland Coral Fishery, the Northern Territory Aquarium Fishery, the Western Australian Marine Aquarium Fish Managed Fishery, and the Coral Sea Fishery currently take CITES-listed hard-coral species for export. Australia's CITES Scientific Authority needs to determine whether and under what circumstances NDFs may be made for continued export of relevant coral species.

The NDFs must consider relevant information on species biology, population status and trends, and harvest and management practices in order to determine whether harvest and export in the context of all cumulative sources of removal and mortality would be detrimental to the survival of the species in the wild.

To inform these decisions, a consultant with expertise in coral species and fisheries management is required to gather and undertake a review of available information on Appendix II listed coral species and their harvest in the four Australian coral fisheries. Based on this review expert advice in relation to the suitability of current harvesting practices and management arrangements for meeting CITES sustainability requirements is required, to inform Australia's CITES Scientific Authority's determination of NDFs.

The consultant is required to produce two formal reports:

1. An overarching report 'Advice on a national policy for coral NDFs', which should identify:
 - Key structural elements and minimum requirements integral to a robust system for demonstrably sustainable management of CITES-listed coral species. The identification of these key elements is intended to provide a framework to assist fisheries managers in efforts to harmonise management nationally in meeting CITES requirements, noting full harmonisation will necessarily be constrained somewhat by geographical and practical differences between jurisdictions.
 - Management elements may include:
 - Harvest reporting requirements feasible for consistent national application, such as for of measurement used (e.g. number of pieces and or weight of individual pieces), spatial scale, species identification;
 - Measures designed to prevent serial or localized depletion; and
 - A consistent means of determining species-specific sustainable harvest limits, or responsive adaptive management frameworks to appropriately constrain harvest. This might include a framework for conducting nationally consistent ERAs and managing identified risks as well as the bulk of the lower-risk species harvested.

Commonwealth Contract – Consultancy Services

- Identify information needed to support NDF requirements and outline availability and gaps in this information including, but not limited to, population status, range, density, harvest and susceptibility to environmental matters such as climate events. Based on these information requirements, propose a cost methodology for data collection and assessment to support future reviews (or ongoing validity) of the NDF.
 - This aspect of the project will develop a plan for the assessment and review of the NDFs (if and as required) for coral species in Australia, including suggested conditions to be placed on the NDF if recommended, to improve the information underpinning NDFs. As a basis for this, the framework developed by the German government (Attachment 1) will be used to help clarify the information needs and the processes undertaken (periodically or as required to ensure NDF currency) in making an NDF determination.
2. The consultant will produce a report in four parts analysing available information on each of the four Australian coral fisheries to inform Australia's Scientific Authority in determining NDFs. Information fields relevant to this analysis for each fishery include:
- scientific literature on species biology and life-history characteristics;
 - species range (historical and current);
 - harvested species population structure, status and trends (in the harvested area, nationally and internationally);
 - threats;
 - any ecological risk assessments conducted;
 - historical and current species-specific levels and patterns of harvest and mortality from all sources combined;
 - harvest methodologies employed (such as whether whole colonies are harvested or only fragments, or selectivity in colour varieties harvested);
 - management measures currently in place and proposed, including spatial and temporal measures, adaptive management strategies, total allowable catches, with consideration of levels of compliance;
 - Protection afforded by areas closed to harvest;
 - scientific surveys conducted at harvest locations and at sites protected from harvest and other impacts;
 - population monitoring;
 - consultations with local, regional and international experts and relevant knowledge and expertise of local and indigenous communities; and
 - CITES trade data.

For each of the four fisheries, the consultant will report on species' harvest levels and trends, advise on recommended sustainable harvest limits, and the adequacy of current management arrangements to constrain harvest of individual species/species groups to non-detrimental levels. This should be in the context of all cumulative sources of mortality. Specifically, the consultant will:

- Detail species that are considered at higher risk of localised or serial depletion due to their biology, range, patterns of harvest, disturbances in the region, international demand and any other factors determined relevant;
- Identify strengths and inadequacies in the current suite of management arrangements for the fishery; and
- Propose options for management arrangements that will ensure the sustainable harvest of all species in the fishery and appropriate sustainable limits on harvest for individual species or

species-groups and/or adaptive management options. Options proposed should draw upon the recommendations made in the report 'Advice on a national policy for coral NDFs'.

This advice will inform the Australian CITES Scientific Authority's determination of whether, and under what circumstances, positive NDFs can be made for the export of the species harvested in each of the four Australian coral fisheries.

C.A.2(a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards, including, but not limited to, those specified in this Statement of Work.

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

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 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. The Supplier will provide the Customer with a plan for approval.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any Work Health and Safety 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].

| Milestone Description | Contact for Delivery | Delivery Location/Email | Due Date |
|---|----------------------|-------------------------|------------|
| Project start-up phase | s. 22(1)(a)(ii) | wta@awe.gov.au | 21/04/2021 |
| Report writing (drafts produced): <ul style="list-style-type: none"> • Draft Report 1 - 'Advice on a national policy for coral NDFs'; and • Draft Report 2, Part A - 'Advice to inform Non-Detriment Findings for the Queensland Coral Fishery' | s. 22(1)(a)(ii) | wta@awe.gov.au | 17/05/2021 |

| | | | |
|---|------------------------|-----------------------|-------------------|
| <p>Report writing (drafts produced):</p> <ul style="list-style-type: none"> • Draft Report 2, Part B - 'Advice to inform Non-Detriment Findings for the Western Australian Marine Aquarium Fish Managed Fishery'; • Draft Report 2, Part C - 'Advice to inform Non-Detriment Findings for the Northern Territory Aquarium Fishery'; and • Draft Report 2, Part D - 'Advice to inform Non-Detriment Findings for the Coral Sea Fishery' | <p>s. 22(1)(a)(ii)</p> | <p>wta@awe.gov.au</p> | <p>16/08/2021</p> |
| <p>Final Reports:</p> <ul style="list-style-type: none"> • Report 1: 'Advice on a national policy for coral NDFs'; and • Report 2: 'Advice to inform CITES Non-Detriment Findings for Australian Coral fisheries' | <p>s. 22(1)(a)(ii)</p> | <p>wta@awe.gov.au</p> | <p>8/11/2021</p> |

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 facilitate supply of fisheries data to the consultant, some of which may be classified as commercial-in-confidence, and as such will require the Supplier to agree to be bound by a confidentiality agreement prior to provision of the data.

C.A.2(h) Conflicts of Interest

The Supplier has declared that it has or may have real or perceived or potential conflicts of interest (COI) relevant to the performance of its obligations under this Contract. During the Contract Term the Supplier agrees to keep the Customer informed of all relevant details relating to the following COI and implement any COI management strategies specified below:

I have continuing independent academic interest in Australian coral fisheries, and am preparing several scientific articles and reviews arising from past and ongoing research, including a review of harvest limits and catch records. I will ensure that any and all information that is provided to me for explicit purposes of the current project is not used in independent academic pursuits, except where complementary information is provided independently.

I am also directly involved in the Queensland Sustainable Fisheries Strategy (2017-2027), as a working group member (external research scientist) for both Aquarium Fish and Coral Fisheries Working Group and Reef Line Fishery Working Group. If awarded the current ATM I will immediately advise Queensland Department of Fisheries and recuse myself from relevant working groups, if required. Otherwise, I will be extremely judicious in maintaining separation of these duties and ensure that all recommendations (in both endeavours) are clearly justified, based on available and useable information.

My prior research on Australian coral fisheries was partly funded by relevant industry stakeholders. However, I have no vested interest in any relevant businesses or fisheries, and all research contracts will be finalised before undertaking the current contract.

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

Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to information available at: <http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.

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

| | |
|----------------|---|
| Name/Position: | s. 22(1)(a)(ii) / Assistant Director - Wildlife Trade Assessments |
| Email Address: | s. 22(1)(a)(ii)@environment.gov.au |
| Telephone: | s. 22(1)(a)(ii) |

C.A.2(j) Complaints Handling

Any complaints relating to this procurement should be referred to:

| | |
|----------------|---|
| Name/Position: | s. 22(1)(a)(ii) / Assistant Director - Wildlife Trade Assessments |
| Email Address: | s. 22(1)(a)(ii) @environment.gov.au |
| Telephone: | s. 22(1)(a)(ii) |

C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$72,600.00** as set out below.

Fixed Price (including all expenses)

| Due Date | Milestone Description | Total Price GST Exclusive | GST Component | Total Price GST Inclusive |
|------------|--|---------------------------------|------------------|---------------------------------|
| 21/04/2021 | Project start-up phase | \$0.00 | \$0.00 | \$0.00 |
| 17/05/2021 | Draft Report 1 - 'Advice on a national policy for coral NDFs'. | \$11,000.00 | \$1,100.00 | \$12,100.00 |
| 17/05/2021 | Draft Report 2, Part A - 'Advice to inform Non-Detriment Findings for the Queensland Coral Fishery' | \$24,200.00 | \$2,420.00 | \$26,620.00 |
| 16/08/2021 | Draft Report 2, Parts B - 'Advice to inform Non-Detriment Findings for the Western Australian Marine Aquarium Fish Managed Fishery'. | \$5,500.00 | \$550.00 | \$6,050.00 |
| 16/08/2021 | Draft Report 2, Part C - 'Advice to inform Non-Detriment Findings for the Northern Territory Aquarium Fishery'. | \$5,500.00 | \$550.00 | \$6,050.00 |
| 16/08/2021 | Draft Report 2, Part D - 'Advice to inform Non-Detriment Findings for the Coral Sea Fishery' | \$4,400.00 | \$440.00 | \$4,840.00 |
| 8/11/2021 | Final Report 1: 'Advice on a national policy for coral NDFs'. | \$7,700.00 | \$770.00 | \$8,470.00 |
| 8/11/2021 | Final Report 2: 'Advice to inform CITES Non-Detriment Findings for Australian Coral fisheries' | \$7,700.00 | \$770.00 | \$8,470.00 |

Total Fixed Price for Services \$72,600.00 GST Inclusive

C.A.3(a) Payment Schedule

Progress payments of the *Fixed Fees and Charges* (inclusive of any GST and all taxes and charges) will be made as follows:

| Estimated Date | Milestone Description | Payment Amount |
|------------------------|--|----------------|
| 17/05/2021 12:00:00 AM | Delivery of draft report 1 and 2- Part A | \$38,720.00 |
| 16/08/2021 12:00:00 AM | Delivery of draft report 2- Part B, C, and D | \$16,940.00 |
| 20/12/2021 12:00:00 AM | Acceptance of Final Reports | \$16,940.00 |

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 - Wildlife Trade Assessments
 Currently: s. 22(1)(a)(ii)
 Telephone:
 Mobile:
 Email Address: s. 22(1)(a)(ii)@environment.gov.au
 Postal Address: John Gorton Building
 Parks ACT 2600

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

Addressee Name/Position Title: s. 22(1)(a)(ii) Assistant Director, Wildlife Trade Assessments
 Telephone:
 Email Address: s. 22(1)(a)(ii) @environment.gov.au
 Postal Address: GPO Box 858
 Canberra City ACT 2601

The Customer's preferred method of invoicing is by email.

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

Name: Professor Morgan Pratchett
 Position Title: Coral Reef Ecology consultant
 Telephone: 0488112295
 Mobile: 0488112295
 Email Address: morgan.pratchett@jcu.edu.au
 Postal Address: 60 Riverbend Drive
 Douglas Queensland 4814

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

Name: Professor Morgan Pratchett
 Position Title: Coral Reef Ecology consultant
 Email Address: morgan.pratchett@jcu.edu.au
 Postal Address: 60 Riverbend Drive
 Douglas Queensland 4814

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

For the purposes of this clause, "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, database, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

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

The Customer agrees that the following information meets the Commonwealth's confidentiality guidelines and agrees to treat the information as confidential unless required by law to disclose the information. The Customer retains the right to disclose any other information contained in this Contract.

Information to be kept confidential

The Supplier and Customer must be acutely aware of any confidentiality requirements pertaining to the use and analyses of commercial fisheries data to be provided by individual jurisdictions and fisheries. The Supplier will ensure all relevant reports clearly identify any and all information that may be subject to confidentiality, and the Client must, in turn, ensure that any communication or action arising from information provided does not violate required confidentiality, mainly associated with commercial in-confidence.

C.B.3 Interest on Late Payments

Where the Customer and the Supplier both have the capability to deliver and receive e-Invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing), 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, 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.

If the total initial value of the Contract (excluding any options, extensions, renewals or other mechanisms that may be executed over the life of the contract) is less than A\$1 million (GST inclusive) and 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 available on the Australian Taxation Office website as it applies on the day the amount was due and payable expressed as a daily rate.

C.B.4 Notifiable Data Breaches

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

Personal Information means 'Personal Information' as defined in the *Privacy Act 1988* (Cth).

- a) If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of this Contract or its provision of the Goods and/or Services, the Supplier agrees to:
- (i) notify the Customer in writing as soon as possible, which must be no later than within three (3) days of becoming aware; and
 - (ii) unless otherwise directed by the Customer, carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- b) Where the Supplier is aware that there are reasonable grounds to believe there has been, or where the Customer notifies the Supplier that there has been, an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of this Contract or its provision of the Goods and/or Services, the Supplier must:
- (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - (ii) unless otherwise directed by the Customer, take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and
 - (iii) take any other action as reasonably directed by the Customer.

C.B.5 Force Majeure

- a) Delay in or failure of performance by a party does not constitute a breach of this Contract by that party if and to the extent that the delay or failure is caused by a Force Majeure, provided the party claiming Force Majeure:
- i) promptly gives notice to the other party following the occurrence of the Force Majeure, providing details of the Force Majeure and its anticipated likely duration and effect; and
 - ii) uses its best endeavours to resume fulfilling its obligations as promptly as possible and gives written notice to the other party within five days of the cessation of the Force Majeure.
- b) If Force Majeure substantially prevents or delays performance of this Contract for more than 60 days either party may terminate this Contract by giving 14 days' written notice to the other party.
- c) For the purposes of this special condition, "Force Majeure" means an event or circumstance:
- i) which is beyond the reasonable control of the party claiming the event has occurred; and
 - ii) the adverse effects of which could not have been prevented or mitigated against by the party by reasonable diligence or reasonable precautionary measures,
- and includes:

- iii) an order or mandatory direction of a government authority or regulator;
- iv) an act of God, lightning strike, meteor strike, earthquake, cyclone, storm, flood, landslide, explosion or fire;
- v) stoppages, lockouts, strikes or other industrial action;
- vi) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, pandemic or epidemic; and
- vii) any event which would, at common law, frustrate this Contract.

Commonwealth Contract Terms**C.C.1 Background:**

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 Statement of Requirement.

Some terms used in these *Commonwealth Contract Terms* have been given a special meaning. Their meanings are set out either in the *Commonwealth Contracting Suite Glossary* or in the relevant *Commonwealth Contract*.

C.C.2 Relationship of the Parties:

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and cooperate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (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 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

C.C.4 Precedence of Documents:

The Contract is comprised of:

- (a) *Additional Contract Terms* (if any);
- (b) *Statement of Work*;
- (c) *Commonwealth Contract Terms*;
- (d) *Commonwealth Contracting Suite Glossary*; and
- (e) *Contract Annex 1 – Supplementary information* (if any),

unless otherwise agreed in writing between the parties.

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

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:

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

C.C.6 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was entered.

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 were correct when made and remain correct.

The Parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either Party unless in writing and agreed by both Parties.

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:

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*], C.C.22 [*Compliance with Commonwealth Laws and Policies*], C.C.22(A) [*Access to Supplier's Premises and Records*], C.C.22(F) [*Fraud*] survive termination or expiry of the Contract.

C.C.8 Notices:

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

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 effected on the next working day in that place.

C.C.9 Assignment:

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.

To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

C.C.10 Subcontracting:

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.

The Supplier must ensure that Subcontractors specified in Item C.A.6 [*Subcontractors*] (if any) perform that part of the Services Specified in that item. Unless otherwise agreed by the Customer (in writing) the Supplier must not subcontract any part of its obligations under the Contract other than to Subcontractors named in Item C.A.6. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

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.

Commonwealth Contract Terms

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.

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:

The Supplier must provide the Goods and/or Services as specified in the *Statement of Work* and meet any requirements and standard specified in the *Statement of Work*.

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 *Statement of Work* and advise the Customer when it will be able to so.

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 *Statement of Work*.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery or such longer period specified in the Contract at Item C.A.2(d) [*Delivery and Acceptance*], if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

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).

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.

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:

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.

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.

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:

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (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.

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.

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

C.C.14 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

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

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:

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.

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.

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.

Commonwealth Contract Terms

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 clause C.C.11 [Delivery and Acceptance] and item C.A.2(d) [Delivery and Acceptance] before the effective date of termination or reduction.

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.

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:

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 clause 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).

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:

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

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.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

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:

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, 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;
- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, 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 a further ten (10) business days, 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 fifteen (15) business days of the request.

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.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to clause C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In:

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:

If the Contract expires or is terminated under clause 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 Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

Commonwealth Contract Terms

C.C.22 Compliance with Commonwealth Laws and Policies:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services and must provide such reports and other information regarding compliance as reasonably requested by the Customer or as otherwise required by a relevant law or policy.

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to G below, it must:

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. Access to Supplier's Premises and Records: The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's, or its Subcontractor's premises, personnel, 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 (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request.

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.

B. Privacy Act 1988 (Cth) Requirements: 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.

C. Confidential Information: Other than information available in the public domain, 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. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

The Customer may at any time require the Supplier to arrange for its 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.

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. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.

D. Security and Safety: 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.

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.

The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, 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.

E. Criminal Code: 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). The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.

F. Fraud: For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.

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.

If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

G. Taxation: The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.



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Commonwealth Contracting Suite (CCS) Glossary

In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms** or the **Commonwealth Purchase Order Terms**, as the case may be.

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

“Approach to Market or ATM” means the notice inviting potential suppliers to participate in the procurement.

“Closing Time” means the closing time specified in clause A.A.1 [*Key Events and Dates*].

“Contract” means the documentation specified in clause C.C.4 [*Precedence of Documents*].

“Contract Extension Option” means an option of a Customer to extend the term of a Contract for one or more additional time periods.

“Contract Manager” means the contract manager for the Customer and/or Supplier (as relevant) specified in the Contract.

“Contract Price” means the total 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 calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer's Contract Manager;
- d) is for an amount which, together with all 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 a party specified in a Contract as a Customer.

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

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

“Goods and/or Services” means:

- a) the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

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

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

“Intellectual Property Rights” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

Commonwealth Contracting Suite (CCS) Glossary

“Material” means any material 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 in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Contract or as notified from time to time.

“Requirement” means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading 'Requirement';
- b) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading 'Requirement';
- c) for the purposes of the Commonwealth Purchase Order Terms the document setting out the Goods and/or Services.

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

“Statement of Requirement” means the section of the Approach to Market with the heading 'Statement of Requirement'.

“Statement of Work” means the section of the Contract, as the case may be, with the heading 'Statement of Work'.

“Supplier” means a party specified in a Contract as a Supplier.

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Consultancy 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
- 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 Agriculture, Water and the Environment
ABN 34 190 894 983 by its duly authorised delegate in the presence of

Signature of witness

Signature of delegate

s. 47F(1)

s. 47F(1)

Name of witness (*print*)

Name of delegate (*print*)

s. 47F(1)

s. 47F(1)

Position of delegate (*print*)

DIRECTOR - WTA

Date:

22 APRIL 2021

Executed by Morgan Stuart Pratchett ABN 68 408 872 125 in the presence of:

s. 47F(1)

s. 47F(1)

Name of witness (*print*)

Name of supplier (*print*)

s. 47F(1)

Morgan Stuart Pratchett

Date:

21 April 2021

