



PARLIAMENT OF AUSTRALIA

DEPARTMENT OF PARLIAMENTARY SERVICES

DPS ref: 15/1699/31

Ms Lyn Beverley  
Secretary  
Senate Finance and Public Administration Legislation Committee  
Parliament House  
Canberra ACT 2600

Dear Ms Beverley

**Inquiry into the Department of Parliamentary Services**

I am writing to clarify evidence provided to the Committee.

In response to questions on 2 March 2015 about the timeline contained at Appendix 1 of the ANAO audit *Managing Assets and Contracts at Parliament House*, I indicated that the document referred to in the ANAO *Timeline of procurement of photographic works for the 25<sup>th</sup> anniversary of Parliament House* matched with documents provided by DPS in response to Question No. 27. I have recently noted that the ANAO timeline in fact included some unsigned/draft briefs that were not provided to the Committee.

The Department believes these unsigned/draft briefs were not provided to the Secretary but were early drafts or drafts that were not progressed. DPS has discussed this with the ANAO and has written to clarify this; a copy of the letter to the ANAO is attached for the Committee's information.

The Department has also prepared the attached comparison of the documents referenced in the ANAO timeline with those provided to the Committee in response to Question No. 27. As there are some draft documents that were referenced by the ANAO and not previously provided to the Committee, these are now attached.

Yours sincerely

Myra Croke  
Chief Operating Officer

12 May 2015

Extract from ANAO Report Appendix 1: Timeline of Procurement of Photographic Works for the 25th Anniversary of Parliament House		Reference to the documents provided Committee by DPS to the Senate Finance and Public Administration
Date	Event	
January 2013	DPS had internal discussions about the upcoming 25th anniversary of Parliament House and identified the possibility of including a photographic exhibition as part of the celebrations. The DPS Director of Art Services provided a draft brief to the DPS Secretary that included a list of nine possible artists, which would be further investigated and shortlisted. The list included Ms Anne Zahalka.	The draft brief from the DPS Director of Art Services to the DPS Secretary was attached as <b>document 1 (no annotations) and document 2 (with annotations) to the response to QON 27.</b>
March 2013	After meeting with the Prime Minister's Office, DPS provided a brief to the Presiding Officers outlining the proposed activities for the 25th anniversary of Parliament House (which included photographic activities). The letter requested the Presiding Officers sign a letter to the Finance Minister requesting one-off funding of \$100 000 for DPS to meet the costs of the proposed anniversary. The letter was signed and sent to the Finance Minister. <i>ANAO comment:</i> DPS records did not include a response to this letter, however, the funding was made available.	The DPS brief to the Presiding Officers dated 5 March 2013 was attached as <b>document 4 to the response to QON 27.</b>
18 April 2014	In an unsigned brief to the DPS Secretary, the DPS Director of Community Engagement indicated that the artist to undertake the photographic exhibition would be selected in consultation with curatorial staff of the National Portrait Gallery.	This was a draft brief that did not progress to the Secretary. Discussions with the ANAO confirmed that they had no evidence to suggest the brief was actually submitted to the Secretary. It was created in the Trim filing system on 18 April 2013 (not 2014). After 18 April the document was not further amended in Trim by the original author or any other person. While this 18 April document was a draft only, it is <u>attached at A</u> for the Committee's information.
6 June 2013	The DPS Director of Events and Business Development sought internal procurement advice on using a limited tender to commission an artist for the photographic works. The Director was advised that, consistent with the Commonwealth Procurement Rules, a limited tender could be used for this purpose.	Discussions with the ANAO have confirmed that the reference to 6 June is an error and should be 3 June. The information is contained in the email of 3 June that was attached as <b>document 5 to the response to QON 27.</b>

<b>Extract from ANAO Report Appendix 1: Timeline of Procurement of Photographic Works for the 25th Anniversary of Parliament House</b>		<b>Reference to the documents provided Committee by DPS to the Senate Finance and Public Administration</b>
13 June 2013	A draft brief was provided to the Secretary identifying Anne Zahalka as the preferred artist for the project outlining her background and credentials for the commission. The brief noted that the artist had not yet been contacted, and identified three other potential artists (none of which were identified in the initial nine artists) if Ms Zahalka was not available. There was no explanation in this brief (or any other available documentation) of the rationale for DPS approaching only Ms Zahalka to tender for the work.	This draft brief appears to be an early internal draft of the brief that was approved by the Secretary on 4 July 2013 (as there are some common paragraphs). The approved brief was provided as <b>document 11 attached to the response to QON 27</b> . While this 13 June document was a draft only, it is <u>attached at B</u> for the Committee's information.
14 June 2013	The DPS Director of Events and Business Development contacted the DPS procurement team seeking advice on contacting the artist to determine availability for the required timeframes. DPS procurement advised that it was reasonable to contact the artist to ask her availability. The director made informal inquiries about the artist's availability and interest. The artist confirmed her availability and interest.	The DPS emails were attached as <b>document 6 to the response to QON27</b> .  The contract provided by the National Portrait Gallery was not attached to QON277; it is now <u>attached at C</u> for the Committee's information.
17 June 2013	DPS commenced drafting a contract with consideration given to the clauses to be included (for example reproduction rights, insurance and compliance with Work Health and Safety regulations). DPS requested examples from other national cultural institutes such as the National Portrait Gallery and the Museum of Australian Democracy.	The request for examples from another cultural institution was contained in the emails in <b>document 6 attached to the response to QON 27</b>
4 July 2013	A brief/business case was approved by the Secretary for DPS staff to formally approach Anne Zahalka to discuss the project and a budget of \$30 000. The brief detailed the artist's background, her suitability for the project, a draft contract and a draft invitation letter.  A letter was sent by the Acting Assistant Secretary inviting the artist to provide a proposal to undertake the commission.	The DPS brief to the Secretary of DPS was attached as <b>document 11 to the response to QON27</b>  The letter sent by the Acting Assistant Secretary to Ms Zahalka is <u>attached at D</u> for the Committee's information.
17 July 2013	The artist provided a proposal for the project. Contract negotiations began. The artist raised issues in relation to intellectual property rights, especially in regards to reproduction.	The artist's proposal was referenced as Attachment B in document 12 attached to the response to QON27; it was attached as <b>document 10 attached to the response to QON27</b> .
13 August 2013	The Secretary approved entering into the contract with the artist and negotiating intellectual property clauses.	The Secretary's approval was on <b>document 12 attached to the response to QON27</b>
22 August 2013	The contract was signed by the Director of Events and Business Development, consistent with DPS delegations at the time.	The contract is <u>attached at E</u> for the Committee's information.



Ms Barbara Cass  
Group Executive Director  
Australian National Audit Office  
GPO Box 707  
Canberra ACT 2600

Dear Ms Cass

**Audit Report No 24 2014-15: Managing Assets and Contracts at Parliament House**

During the conduct of the above audit, the Department of Parliamentary Services provided documents in relation to the procurement of photographic works for the 25<sup>th</sup> anniversary of Parliament House.

As discussed between Myra Croke of DPS and Andrew Morris, two of the documents listed in Appendix 1 to the report were unsigned/draft briefs that DPS believes were not considered by the Secretary. We appreciate that we should have identified this and advised the ANAO prior to finalisation of the report, but consider now that this information has become available it is important to clarify the issue. Updated information in relation to the two drafts and an incorrect date of an email is as follows:

- A document identified in Appendix 1 as an 'unsigned brief to the Secretary', ANAO timeline date 18 April 2014.  
DPS does not have evidence that this draft brief was provided to the Secretary and we do not believe that it was. This was a draft brief that was created in the Trim filing system on 18 April 2013 (not 2014) that was not amended in Trim at any time after 18 April 2013. Discussions with Mr Morris confirmed that no evidence was provided to the ANAO that the brief was considered by the then Secretary.
- A document identified in Appendix 1 as a draft brief which 'was provided to the Secretary', ANAO timeline date 13 June 2013.  
DPS does not have evidence that this draft brief was provided to the Secretary and we do not believe that it was. We note that the draft brief is missing key information, including where the funds had been received from (in the draft brief this place is marked with "XXXX"), a reference number and is not signed. We also note that the Acting Assistant Secretary of the Parliamentary Experience Branch at that time has no recollection of the draft brief being provided to the Secretary, but recalls that the brief was emailed to her and subsequently amended. We further note that some paragraphs of this brief are identical to the brief that was approved by the Secretary on 4 July 2013.
- A document identified in Appendix 1 as 'an email' where the DPS Director of Events and Business Development sought internal procurement advice on using a limited tender to commission an artist for the photographic works, ANAO timeline date 6 June 2013.  
Discussions with Mr Morris have confirmed that the date of the email was 3 June 2013.

I apologise if in conveying the material to your office we created an impression that the two briefs above were other than early draft documents.

I propose to provide a copy of this letter to the Senate Finance and Public Administration Committee.

Yours sincerely

Dr Dianne Heriot  
Acting Secretary

12 May 2015

A  
Treasurer's  
18/4/2013

**Department of Parliamentary Services**  
**Building Services**

**Ref no:** 13/3019/1

**Issue:** Proposal to seek and engage photographers to document the 25<sup>th</sup> anniversary events

**Background**

The 25<sup>th</sup> anniversary of Parliament House is being celebrated through a collection of events and activities coordinated across the three departments.

The Presiding Officers approved funding for the creation of a photographic record of the 25<sup>th</sup> anniversary activities that would become part of the Parliamentary Art Collection (Sub 2013/09).

It is proposed that a two-fold approach be taken to document the 25<sup>th</sup> anniversary activities:

1. That Auspic be engaged to create a comprehensive documentary record of all events on the calendar.

This record would capture the dynamism of visitors interacting with programs in the building, and be useful for marketing purposes.

It is anticipated this documentation will cost \$18,000.

2. That a notable Australian photographer be commissioned to create a folio of artistic images of people at key celebrations in the 25<sup>th</sup> year.

The proposed artistic commission would have a portraiture focus to capture evocative images of visitors and notable guests in a visual relationship with the building.

The artist would be selected in consultation with curatorial staff of the National Portrait Gallery.

Existing collections of images of the building have a monumental feel and lack the presence of people and their stories. Creating this body of work will enable interpretation of the building in which people's stories are at the forefront.

It is anticipated this commission will cost in the range of \$20,000-\$25,000.

**Current Position**

Auspic is accessible to document all the 25<sup>th</sup> anniversary events.

A photographer could be engaged easily for the artistic commission. If supported, a list of photographers would be submitted to you for consideration in the coming week.

**Recommendation**

Action / Decision / Noting / Approval

That you support the proposed direction for the photographic documentation of the 25<sup>th</sup> anniversary events.

**Contact Officer**  
Greg Lissaman  
Director Community Engagement

Siwan Davies  
Assistant Secretary

Carol Mills                      approved / not approved / notes  
Secretary

13/6/13 <sup>B</sup> email on core

**Department of Parliamentary Services**  
**Parliamentary Experience**

Ref no: "ref."

**Issue:** 25<sup>th</sup> Anniversary Photography Commission

**Background**

DPS has received funds from XXXX to acknowledge and celebrate the 25<sup>th</sup> Anniversary of Parliament House. DPS would like to acknowledge the occasion by commissioning a work of art for the Australian Parliament House Collection. Because of its immediacy and contemporary nature, digital photography has been identified as a suitable medium for this project. It is intended that the artist interpret the function and working of Parliament House in a folio of photographic prints that become part of the Australian Parliament House Collection.

**Current Position**

Renowned Photo Media artist Anne Zahalka has been identified as an excellent artist for this project (see **Attachment 1** Anne Zahalka website). Zahalka is represented in major national and international art collections and has extensive experience in photographic commissions that connect the client with their audience (see **Attachment 2** website reference Commission for Sydney Airport).

Zahalka has not been approached for this project as yet as the Director Events and Business Development is working with the Director Procurement to develop a suitable contract, budget and timeline. DPS has a contract that is used for commissioning memorial-style works of art such as portraits of Speakers etc. With the addition of a paragraph about potential commercial reproduction of the commissioned works of art, this existing contract is appropriate for the project. The Director of Procurement is drafting a new paragraph to reflect the possibility of developing commercial product from the resulting commission.

Should Zahalka not be available for the commission, other artists suitable for the project include Fiona Hall, Robyn Stacey and Mark Kimber.

The Director of Procurement has advised that because the commission is a unique work of art (i.e. the work of art can only be produced by a particular individual) it is not necessary to use a tender process. It is not a breach of policy for DPS to approach an artist directly to undertake the commission.

**Recommendation**

That you approve the following:

- that the Director Events and Business Development contact Anne Zahalka to discuss the project
- budget \$30 000 including travel, accommodation, printing and framing
- the development of a contract for this project
- a letter on invitation to Anne Zahalka

**Attachments:**

- (1) <http://www.zahalkaworld.com.au/>
- (2) <http://www.zahalkaworld.com.au/pages/welcometosydney.html>
- (3) draft letter to Anne Zahalka

**Contact Officer**

David Sequeira  
Director Events and Business Development

Fiona Bowring-Greer



Acting Assistant Secretary

Carol Mills  
Secretary

C



**Australian Government**

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**National Portrait Gallery**

**CONTRACT FOR ARTISTIC SERVICES**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**

**AND**

in relation to a portrait of

## Details

<b>Parties</b>	<b>Commonwealth and Artist</b>
<b>Commonwealth</b>	Commonwealth of Australia represented by the National Portrait Gallery, within the Office for the Arts ABN SAMPLE
<b>Contact Details</b>	National Portrait Gallery King Edward Terrace Parkes ACT 2600  Phone: 02 6102 7000 Fax: 02 6102 7001 Attention: )
<b>Artist</b>	XXX , ABN _____ an individual having their main business at address below.
<b>Contact Details</b>	Address  Phone: Fax: [Insert] Attention: [Insert]
<b>Recitals</b>	<b>A</b> The Commonwealth wishes to engage the Artist to provide a Portrait in the specified Medium, for inclusion in the collection of the National Portrait Gallery.  <b>B</b> The Artist has agreed to provide the services, on the terms of this contract.
<b>Commencement</b>	This contract commences on the date it is signed by both parties, and continues until the Portrait is collected by the Commonwealth and the Commonwealth has paid the Fees.
<b>Subject</b>	Portrait of
<b>Medium</b>	
<b>Framing</b>	The artist is responsible for framing the painting.
<b>Specific requirements</b>	No specific requirements. An Artistic Proposal as per clause 3 is not required.
<b>Fees</b>	\$ (including GST), which: <ul style="list-style-type: none"><li>includes the cost of framing the Portrait.</li></ul>
<b>Payment arrangements</b>	<ul style="list-style-type: none"><li>A single payment will be made upon delivery of the portrait.</li></ul>

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**Ownership and  
Licence**

As per clause 9

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**Due Dates**

Artistic Proposal – The concept and size of the portrait has been agreed in prior correspondence.

Portrait – The portrait should be ready for transport to the Gallery by [Date]

SAMPLE

## Terms and conditions

### 1 Definitions and interpretation

1.1 In this contract, capitalised terms not otherwise defined in the Details have the following meanings:

"Artistic Proposal" is defined in clause 3.1;

"Artistic Services" is defined in clause 2.1;

"Board" means the Board of the National Portrait Gallery, King Edward Terrace, Parkes, ACT, 2600;

"Director" refers to the person for the time being holding, occupying or performing the duties of Director, National Portrait Gallery, or any other person nominated in writing by that person with responsibility for liaising with the Artist on behalf of the Commonwealth and acting as the Commonwealth contact;

"Intellectual Property Rights" means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

"Moral Rights" means any moral rights including the rights described in *Article 6b* of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

"Portrait" means a portrait of the Subject, being a recognisable likeness of the Subject.

1.2 In this contract, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular; and
- (b) a reference to 'include', 'includes', 'including', 'in particular' and 'for example' do not limit the generality of the words to which they refer; and
- (c) clause headings are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference; and
- (d) all references to clauses are clauses in this contract; and
- (e) all references to dollars are to Australian dollars; and
- (f) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and

- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

## **2 Artistic Services**

- 2.1 The Artist will take all necessary steps to deliver a completed Portrait to the Commonwealth, which will include an Artistic Proposal, and may include sittings of the Subject, sketches and photographs (**Artistic Services**).
- 2.2 The Artist will provide the Artistic Services in accordance with this contract.

## **3 Artistic Proposal**

- 3.1 The Artist will provide the Commonwealth with an outline of the Artist's proposed idea for the Portrait in accordance with this clause 3 (**Artistic Proposal**) by the due date specified in the Details (or such other date as may be agreed between the parties).
- 3.2 The Artistic Proposal will:
  - (a) include sufficient detail to give the Commonwealth a complete appreciation of the proposed Portrait;
  - (b) propose a Portrait that is, and will continue to be, unique;
  - (c) propose a Portrait that is recognisable as being by the Artist;
  - (d) propose a Portrait that uses materials that will maintain archival integrity to ensure the longevity of the Portrait;
  - (e) propose a Portrait that is no larger than 250cm in any dimension;
  - (f) if the Artist is specified as responsible for framing in the Details, include a proposal for framing the Portrait; and
  - (g) meet any specific requirements set out in the Details.
- 3.3 On receipt of the Artistic Proposal (or a reworked Artistic Proposal), the Commonwealth may, in its absolute discretion:
  - (a) accept the Artistic Proposal;
  - (b) not accept the Artistic Proposal, and require the Artist to rework the Artistic Proposal in accordance with specified criteria; or
  - (c) reject the Artistic Proposal, providing written reasons for the rejection to the Artist.
- 3.4 The Commonwealth may seek advice from the Board in relation to its decision under clause 3.3.
- 3.5 If the Commonwealth accepts an Artistic Proposal under clause 3.3(a), the Artist may proceed with providing the Portrait in accordance with clause 4.
- 3.6 If the Commonwealth requires the Artist to rework the Artistic Proposal under clause 3.3(b), then the Artist will provide a reworked proposal to the Commonwealth in accordance with the specified criteria within the further period of time specified in the notice (and if no time is specified, within 2 weeks of the date of the notice).

- 3.7 If the Commonwealth rejects an Artistic Proposal under clause 3.3(c), or the Artist fails to resubmit a reworked Artistic Proposal as required under clauses 3.3(b) and 3.6 within the time specified, the Commonwealth may terminate this contract immediately by written notice to the Artist.

#### **4 The Portrait**

- 4.1 If the Artistic Proposal is approved, the Artist will provide the Commonwealth with a Portrait by the due date set out in the Details (or such other date as may be agreed between the parties). The Portrait must be consistent with the approved Artistic Proposal.

#### **5 Sittings**

- 5.1 If included in the Artistic Proposal or otherwise considered necessary by the Artist, the Artist will arrange, at times convenient for the Subject, a sitting or several sittings (as necessary) for completion of the Portrait by the due date in the Details (or such other date as may be agreed between the parties).

#### **6 Framing and collection**

- 6.1 If agreed and specified in the Details, the Artist will arrange for framing of the Portrait in accordance with the approved Artistic Proposal.
- 6.2 The Artist will notify the Commonwealth when the Portrait (and any framing, if required) is complete.
- 6.3 The Commonwealth will be responsible for collection, packaging and transportation of the completed Portrait from the Artist's premises to the National Portrait Gallery. The Commonwealth will consult with the Artist about collection, packaging and transportation of the Portrait.

#### **7 Display**

- 7.1 The Commonwealth reserves the right to display or not display the Portrait. The Artist acknowledges that nothing in this contract guarantees that the Portrait will be displayed by the Commonwealth.

#### **8 Payment, title and risk**

- 8.1 The Commonwealth will pay the Artist the Fees for the Artistic Services.
- 8.2 The Artist will submit invoices to the Commonwealth for payment of the Fees, as set out in the Details.
- 8.3 The Commonwealth will pay a correctly rendered tax invoice within 30 days of receipt.
- 8.4 Ownership of the Artistic Proposal and the Portrait passes to the Commonwealth on payment of the relevant part of the Fees. Risk in the Portrait passes to the Commonwealth on collection of the Portrait by the Commonwealth from the Artist's premises.

- 8.5 The Artist bears all responsibility in respect of the Portrait up until the time of collection by the Commonwealth. If the Portrait is lost, destroyed or damaged in any way during this time, the Artist agrees, at the Artist's cost, to reproduce the Portrait in accordance with the provisions of this contract (with appropriate amendments to the due dates for the Portrait).

## **9 Intellectual Property**

- 9.1 All Intellectual Property Rights in the Artistic Proposal and the Portrait vest on creation in the Artist. Section 35(5) of the *Copyright Act 1968* (Cth) does not apply to the Artistic Proposal or the Portrait.
- 9.2 On completion of the Portrait, the Artist grants to the Commonwealth a permanent, irrevocable, perpetual, exclusive, world-wide, royalty-free licence (including a right to sublicense) to use, publicly display, publicise, reproduce or exploit the Intellectual Property Rights in the Artistic Proposal and the Portrait in any way.
- 9.3 The Commonwealth agrees that the Artist may retain a copy of the Portrait for the Artist's own portfolio and may use that copy (and may reproduce that copy) for the purpose of securing further commissions. The Artist may not otherwise exhibit or exploit for commercial gain the Portrait or any reproduction of the Portrait (at any stage of its development) without the prior written approval of the Commonwealth.
- 9.4 A party must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 9, at the request of the other party.

## **10 Moral Rights**

- 10.1 The Commonwealth will respect the Moral Rights of the Artist in the Portrait and agrees to acknowledge the authorship of the Portrait by the Artist whenever the Portrait is publicly displayed or reproduced by the Commonwealth.
- 10.2 The Artist agrees that the Commonwealth may reproduce the Portrait (in whole or in part) or overlay text on the reproduction without the Artist's prior consent.

## **11 Compliance with laws and originality**

- 11.1 It is the responsibility of the Artist to ensure that the Artistic Proposal and Portrait do not contravene any laws.
- 11.2 The Artist warrants that:
- (a) the Artistic Proposal and Portrait is the original work of the Artist personally; and
  - (b) the Artist did not infringe the Intellectual Property Rights of any third party in the creation of the Artistic Proposal or the Portrait.

## **12 Non-destruction or Alteration**

- 12.1 Subject to any disposal by the Commonwealth, the Commonwealth agrees to take reasonable steps to protect the integrity of the Portrait and the Artistic Proposal.



- 12.2 The Commonwealth agrees that it will not intentionally commit or authorise the intentional commission of any modification, defacement, alteration, mutilation, distortion or destruction of the Portrait after it has become the property of, and has come into the possession and custody of, the Commonwealth.
- 12.3 Subject to any disposal by the Commonwealth, the Commonwealth agrees to maintain and conserve the Portrait to a standard appropriate for display in the National Portrait Gallery, whether or not the Portrait is displayed in the National Portrait Gallery.
- 12.4 The Commonwealth may, on the advice of the Board and in accordance with the deaccessioning guidelines of the Acquisitions Policy of the National Portrait Gallery, dispose of the Portrait by way of sale, gift or other suitable means.

### **13 Termination and expiry**

- 13.1 Without limiting any other clause in this contract, the Commonwealth may terminate this contract immediately on written notice to the Artist if, in the Commonwealth's reasonable opinion:
- (a) the Artist is incapacitated and cannot complete the Portrait; or
  - (b) the Subject is incapacitated and cannot sit for the Portrait.
- 13.2 If either of the events in clause 13.1(a) or (b) occur before the Portrait has been completed, and taking into consideration any payment already made to the Artist under this contract, the Commonwealth will make fair and reasonable payment to the Artist (or the Artist's estate) for the work done in accordance with this contract prior to the relevant event occurring.
- 13.3 Without limiting any other clause in this contract, the Commonwealth may, by notice to the Artist, terminate this contract, for any reason. On receipt of a notice of termination, the Artist must stop work as specified in the notice and take all reasonable steps to minimise loss. (Notwithstanding the obligation to stop work under this contract in the termination notice, the Artist may complete the Portrait independently of this contract for the Artist's own purposes).
- 13.4 If this contract is terminated under clause 13.3, the Commonwealth will make fair and reasonable payment to the Artist for the work done in accordance with this contract prior to the termination notice, and pay any reasonable costs which are incurred by the Artist that are directly attributable to the termination. However, the Commonwealth is not liable to pay any compensation under this clause which would (in addition to any amounts paid or due, or becoming due, to the Artist under this contract) exceed the Fees.
- 13.5 If this contract is terminated under clause 13.3, the Artist must not advertise, promote or otherwise associate the Commonwealth or this commission from the Commonwealth with the unfinished (or later finished) Portrait, unless the Artist obtains the Commonwealth's prior written consent to do so.
- 13.6 On expiry or earlier termination of this contract under clause 13.1, the Artist will promptly deliver the Artistic Proposal and the Portrait (at whatever stage of

development) to the Commonwealth.

#### **14 Access to the Artist's Premises**

- 14.1 At reasonable times and on reasonable notice, the Artist will give the Commonwealth (and any persons authorised in writing by the Commonwealth), access to the premises occupied by the Artist where the Artistic Services are being undertaken, and permit those persons to inspect the performance of the Artistic Services and material relevant to the Artistic Services.

#### **15 Taxes, Duties and Government Charges**

- 15.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Artistic Services will be borne by the Artist.
- 15.2 The amounts paid by the Commonwealth under this Contract includes Goods and Services Tax (GST) for supplies which are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*.

#### **16 General**

- 16.1 The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this contract and other related documentation.
- 16.2 This is not an exclusive agreement. The Commonwealth may engage other artists to produce a portrait of the same Subject, in the same or another Medium.
- 16.3 This agreement is governed by the law in force in the Australian Capital Territory
- 16.4 Clauses 7, 8, 9, 10 and 12 survive termination or expiry of this contract, in addition to any clauses that expressly or by their nature survive termination or expiry.

**EXECUTED** as an agreement

**DATE** \_\_\_\_\_

**SIGNED** for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**

SAMPLE

By,  
National Portrait Gallery  
Office for the Arts

in the presence of [*insert*]

)  
)  
)  
) .....  
)  
)  
) .....  
) (Signature)  
)

**SIGNED** by  
(Artist)  
ABN \_\_\_\_\_

in the presence of:

) .....  
) (Signature)

.....  
(Witness sign here)  
.....

.....  
(Full name and address of Witness)



Trim dak : 4/7/14

PARLIAMENT OF AUSTRALIA  
DEPARTMENT OF PARLIAMENTARY SERVICES

D

DPS ref: 13/4359/7



Dear Ms Zahalka

The Department of Parliamentary Services (DPS) has an opportunity to celebrate this year's 25<sup>th</sup> anniversary of Parliament House with an art commission. Given your work over the last 20 years and that you already have work in the Parliament House Collection, we believe that you are the ideal artist for this project, and I am writing to offer you that commission. Your works address issues of place, identity, history, and culture – themes that lie at the heart of our work in Parliament House.

Our proposal is that you would produce a suite of 6-10 photo media pieces. Whilst there is much room for interpretation, the imagery of the commission should address the history, function and work of the Australian Parliament and its connection with the people of Australia.

The commissioned works would become a permanent part of the Parliament House Art Collection. We would propose to celebrate their completion with an exhibition of the suite of works here at Parliament House toward the end of 2013.

I hope that you can be a part of this special project. Your photographs would make a valuable contribution to the way we see and understand the work that takes place within Australian Parliament House.

Please contact David Sequeira, Director, Events and Business Development to discuss your interest and availability for this exciting project. David will be able to work with you to develop a time line and address the budget for the commission.

Yours sincerely

Fiona Bowring-Greer  
Acting Assistant Secretary

5



Commonwealth of Australia

**Standard Form Contract**  
**DPS13073**

**Parties**

Name	<b>Commonwealth of Australia as represented by Department of Parliamentary Services (Commonwealth)</b> ABN: 57 997 141 147
Address	Parliament House, Canberra, ACT
Contract name	<b>Commonwealth</b>
Name	<b>Anne Zahalka</b> ABN/ACN/ARBN:
Address	
Contract name	<b>Supplier</b>

**A. Background**

- A.1** The Commonwealth requires the provision of the Goods and/or Services.
- A.2** The Supplier has fully informed itself on all aspects of the Commonwealth's requirements and has:
- (i) submitted an offer; and
  - (ii) represented that it has the requisite skills and experience to meet those requirements.
- A.3** The Commonwealth has agreed to engage the Supplier, and the Supplier has agreed to be engaged, to provide the Goods and/or Services on the terms and conditions of this Contract.

**B. This Contract**

- B.1. Goods and/or Services:** The Supplier agrees to provide the Goods and/or Services to the Commonwealth and the Commonwealth agrees to purchase the Goods and/or Services in accordance with the terms of this Contract.
- B.2. Contract Documents:** This Contract comprises:
- (a) the Special Conditions (if any);
  - (b) this document including the Statement of Requirement;
  - (c) The *Commonwealth General Conditions of Contract* available at <https://www.tenders.gov.au/?event=public.document.list> in the form they appeared at 9:00 am the date of this Contract; and
  - (d) *Annex 1 – Supplier's Offer* (if any).
- If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.
- B.3. Special Conditions:** The Supplier must comply with the Special Conditions (if any).

**B.4. Definitions:** Some terms are given special meanings in clause 2.38 of the *Commonwealth General Conditions of Contract*. Where a term is defined in the *Commonwealth General Conditions of Contract*, that term has the same meaning in each of the documents comprising this Contract, unless when read in context, it appears that a different meaning is intended.

<b>Statement of Requirement</b>
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**1.1 Term**

The Parties have entered into this Contract on the date of execution by the last party and, unless the Parties agree in writing to extend the term, the Contract will terminate on 28 November 2013.

**1.2 The Goods and/or Services**

(a) The Goods will be a suite of 6-10 images (with the final number in the suite to be determined by the Supplier) photo media works of art (initially as proofs or "Studies" and then in complete form or "Final Images") that the Supplier will create to celebrate the 25<sup>th</sup> Anniversary of Australian Parliament House. The Goods:

- (i) must be provided to the Commonwealth in print and electronic and in high and low resolution forms;
- (ii) must be of dimensions which are consistent with the Supplier's works which are being exhibited on or around the date of this Contract;
- (ii) must address the history, function and work of the Australian Parliament and its connection with the people of Australia; and
- (iii) if accepted by the Commonwealth, will become part of the Australian Parliament House Art Collection.

(b) The Services are all services required to produce the Goods as well as:

- (i) assisting the Commonwealth to select appropriate frames for the Final Images and attending an exhibition of the Final Images which will be held at Australian Parliament House toward the end of 2013;
- (ii) providing the Commonwealth with an artist's statement of approximately 200 to 500 words which will accompany the Final Images; and
- (iii) attending and giving a speech at the opening of the exhibition of the Final Images.

(c) The Parties acknowledge that prior to signing of this Contract the Supplier prepared and the Commonwealth accepted the Proposal which forms Annex 1 to this Contract in order to clearly set out details of the Goods and Services.

**1.3 Timing and delivery date(s)**

Goods and/or Services are to be delivered as specified in the following table:

<b>Deliverable</b>	<b>Date</b>
Delivery of Proposal to the Commonwealth for acceptance	23 August 2013
Delivery of Studies to the Commonwealth for acceptance	7 October 2013
Delivery of Final Images to the Commonwealth for acceptance and subsequent exhibition	14 November 2013

**1.4 Delivery location and instructions**

Delivery Address and Instructions for Goods and/or Services	Department of Parliamentary Services Parliament House PO Box 6000 CANBERRA ACT 2600
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**1.5 Specified Personnel**

The Specified Personnel are:

Name	Position	Role
Anne Zahalka	Supplier	Photomedia Artist

**1.6 Security Requirements**

The Supplier may be required to undertake and pass a police check in order to obtain a non-escorted security pass for access to Australian Parliament House.

Upon issue of the non-escorted security pass, the Supplier will be able to film and photograph approved areas within Australian Parliament House.

The Supplier will also be able to film and photograph within Australian Parliament House during the Australian Parliament House Open Day, to be held on 24 August 2013.

**1.7 Contract Price and payment**

The total Contract Price is \$30,000 (inclusive of GST), which is payable in instalments by the Commonwealth in accordance with the Contract, upon satisfactory completion of the milestones as set out in the following table.

Instalment	Amount of Instalment (incl GST)	Milestone	Expected date for completion of milestone
1	\$10 000	Acceptance of the Proposal by the Commonwealth and signing of the Contract by both Parties	By 23 August 2013
2	\$10 000	Acceptance of the Studies by the Commonwealth	By 7 October 2013
3	\$10 000	Exhibition of Final Images	By 28 November 2013

Instalment 1 is advance payment of remuneration for the production of the Studies.

Instalment 2 is advance payment for the production of the Final Images, including any reworking of the Studies.

Instalment 3 is payment for final acceptance of the Final Images as evidenced by their exhibition.

Unless otherwise agreed in writing by the Commonwealth, the instalment payments include the cost of providing all work, materials, parts, plant and equipment and other out-of-pocket expenses such as travel, accommodation costs necessary for the Supplier to provide the Goods and related Services in accordance with the Contract.



**1.8 Intellectual Property and use of the Goods**

All Intellectual Property Rights in the Goods will vest on their creation in the Supplier.

The Supplier grants the Commonwealth a non-exclusive, irrevocable, perpetual, worldwide, fee-free licence to use, publish, reproduce and publicly display (in accordance with this clause) the Goods (in whole or as a cropped version) and any Material to the extent that Material embodies any of the Supplier's Intellectual Property Rights.

Where the Commonwealth reproduces the Goods as a cropped version, the Commonwealth will attempt to include a small version of the full image printed on the reverse or inside of the publication. Appropriate captions and acknowledgements that the image is cropped or full will be used by the Commonwealth.

The Commonwealth will select 3 of the Goods in the suite to be exclusive to the Commonwealth but agrees that the Supplier may retain a copy of all of the Goods for the Supplier's own portfolio. The remaining Goods in the suite which are not exclusive to the Commonwealth may be editioned by the Supplier in an edition size of no greater than 5. The Supplier may not otherwise exhibit the Goods or any reproduction of the Goods (at any stage of their development) without the prior written approval of the Commonwealth.

The Commonwealth will not pay any fee to the supplier for reproducing the Goods on commercial paper products such as posters, cards, and calendars, and for online or digital purposes. The reproduction of the Goods on other commercial products such as T shirts, mugs and iPad covers will be done in consultation with the Supplier. In this instance, whether or not the Commonwealth will pay any fee to the Supplier will be negotiated at the time the agreement for that use of the Goods is prepared. The parties agree that if such an agreement is to be entered into, a flat fee will be payable at the commencement of the agreement rather than an ongoing royalty arrangement.

The Commonwealth can reproduce the Goods for non-commercial purposes, including, but not limited to, the promotion of the Goods and the Parliament House Art Collection and the promotion of Parliament House generally.

The Supplier warrants that it owns all Intellectual Property Rights necessary to grant this licence, provide the Goods and Material to the Commonwealth and to allow the Commonwealth to use the Goods for their usual purpose and in the manner contemplated by the Statement of Requirement.

The Supplier warrants that the provision of the Goods in accordance with the Contract will not infringe any third party's Intellectual Property Rights.

**1.9 Contract Managers and Addresses for Notices**

**The Commonwealth's Contract Manager:**

Name/position title: The person occupying the position of Director, Events and Business Development, who, at the date of this Contract, is David Sequeira.

Postal Address: Parliament House  
PO Box 6000  
CANBERRA ACT 2600

**The Supplier's Contract Manager:**

Name/position title: Anne Zahalka, artist.

Postal Address: [REDACTED]  
[REDACTED]

Telephone: Ph /fax [REDACTED]

Mobile: [REDACTED]

Email Address: [REDACTED]

Both Contract Managers will be responsible for the general liaison and accepting and issuing any written notices under this Contract.

**1.10 Address for Invoices**

Name/position title: The person occupying the position of Director, Events and Business Development who, at the date of this Contract is David Sequeira.

Postal Address:

Parliament House  
PO Box 6000  
CANBERRA ACT 2600

<b>Special Conditions of Contract</b>
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The Parties agree that the Contract includes the following Special Conditions:

**1. Quality and workmanship of Goods**

- (a) The Goods must be produced using museum quality materials that will maintain archival integrity to ensure longevity of the Goods.
- (b) The style of framing used for the Final Images will be one which complements and is sympathetic to the style of Australian Parliament House. The frames will be selected by the Commonwealth, and the Supplier will be consulted on the selection of frames for the Goods.

**2. Insurance**

- (a) The Supplier is responsible for and must have an insurance policy for the protection and safekeeping of all Goods and Material produced as part of this Contract from their creation while they are in the Supplier's possession, and any loss or damage should be reported to the Commonwealth's Contract Manager without delay.
- (b) The Supplier must take out appropriate insurance policies, such as public and general liability insurance, to cover the Supplier in the event of any claim in respect of personal injury or property damage to the extent that it arises out of any act, omission or negligence of the Supplier. The Commonwealth does not insure or indemnify the Supplier in these circumstances.
- (c) The Supplier agrees that for so long as any obligations remain in connection with this Contract, to effect and maintain workers' compensation insurance as required by law.
- (d) The Supplier will, upon request, provide the Commonwealth with proof of the insurance cover required under this clause 2.

**3. Display**

- (a) The Commonwealth reserves the right to display or not display the Goods. The Supplier acknowledges that nothing in this Contract guarantees that the Goods will be displayed by the Commonwealth.

**4. Media Contact**

- (a) The Supplier must not have any contact with the media about this Contract except through the Commonwealth's Contract Manager. The Supplier may not give interviews or details of what is being photographed or provide access to the Studies or Final Images at any stage without the prior written approval of the Commonwealth's Contract Manager.

**5. Work Health and Safety**

- (a) The Supplier must:
  - (i) comply with all relevant legislation on work (or occupational) health and safety;
  - (ii) liaise with the Commonwealth on management of health and safety of the Commonwealth's 'workers' (as defined in relevant legislation);
  - (iii) where appropriate, assist the Commonwealth to manage risks and hazards in relation to workers subject to duties of care by one or both Parties;
  - (iii) inform the Commonwealth immediately of any notification given by the Supplier (or any subcontractor) under work health safety legislation in relation to this Contract; and

- (iv) liaise with the Commonwealth on management of the health and safety of the Commonwealth's workers.

**6. Heritage Values**

- (a) Parliament House and its surrounds have been assessed by the Australian Heritage Council to possess outstanding heritage value to the nation. A copy of the assessed national heritage values of Parliament House and its surrounds will be provided to the Supplier by the Commonwealth.
- (b) The Supplier must not take actions that result in, or will result in, an adverse impact on the assessed national heritage values of Parliament House and its surrounds.
- (c) The Supplier must not act inconsistently with the assessed national heritage values of Parliament House and its surrounds for the purposes of the ongoing protection and management of those outstanding heritage values.

**Signing Page**

**EXECUTED** as an Agreement

Signed for and on behalf of the  
**Commonwealth of Australia** as  
represented by the **Department of  
Parliamentary Services**  
ABN 57 997 147 141 by its duly authorised  
delegate in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (*print*)

\_\_\_\_\_  
Signature of delegate

DAVID SEQUEIRA.

\_\_\_\_\_  
Name of delegate (*print*)

Director Events + Business Dev  
Position of delegate (*print*)

22 August 2013  
ON: [*insert date*]

For an individual or sole trader

Executed by Anne Zahalka in the presence  
of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (*print*)

\_\_\_\_\_  
Signature of Supplier

ANNE ZAHALKA  
Name of Supplier (*print*)

22nd August 2013  
ON: [*insert date*]