

Senate Finance and Public Administration References Committee Inquiry into Commonwealth Procurement Procedures

Mr John Sheridan, Australian Government Procurement Coordinator,
First Assistant Secretary, Technology and Procurement Division, 3.45pm,
21 March 2014

- The key principle of the Commonwealth's procurement framework is to achieve value for money through competitive, open, transparent, efficient and publicly-accountable processes. The Commonwealth Government's procurement framework is non-discriminatory in nature and is underpinned by the Commonwealth Procurement Rules (CPRs).
- In the most part, agencies undertake procurements effectively. While there will always be opportunities to improve how agencies procure goods and services, the underpinning framework is largely common-sense and clearly outlines these expectations on agencies.
- Contrary to some of the statements made in the submissions, while achieving value for money is the core principle of the CPRs, the procurement framework supports the consideration of non-financial factors and not just the price of goods and services.
- For example, procurement officials are expected to consider a range of factors during a tender evaluation. These include fitness for purpose, flexibility, environmental impact and whole of life costs rather than simply the supplier with the lowest bid.
- The CPRs are also not intended to target specific categories of goods or services, nor specific industries. They are the rule set for all Commonwealth Government procurement and importantly, require all potential suppliers to government to be treated equitably.
- The CPRs incorporate Australia's international obligations on government procurement from several FTAs, including the Australia-United States FTA. These FTAs include obligations on the Government to open our procurement market to suppliers from other countries.
- In turn, our international agreements provide access for Australian suppliers to the government procurement markets of other countries.

- Australia's FTA obligations limit the Government's ability to preference local suppliers in procurements. Amendments to FTAs are only possible with the agreement of all parties.

Australian supplier engagement

- Australian suppliers are competitive in Australian Government procurement. In 2012-13 the Commonwealth Government reported over 67,000 contracts worth in excess of \$39 billion on AusTender. Each year we undertake analysis of AusTender data to ascertain, among other things, the level of contracts being awarded to Australian suppliers in comparison to overseas suppliers.
- Over 82% (\$32 billion) of Australian Government contracts reported in 2012-13 were Australian sourced or delivered.
- The overall percentage of goods supplied by Australian suppliers increases significantly if you exclude Defence contracts for large military items such as aircraft and weaponry that are not produced by Australian suppliers.
- Having said that, I should note that in-depth analysis of 'Australian made or delivered' content is technically very difficult. This is because AusTender data includes the ABN (if available) of each supplier and their business address. These two identifiers are the only information that can be used to determine whether goods or services are sourced from Australian suppliers.
- In order to increase the accuracy of Australian supplied statistics we would need to impose additional onerous reporting requirements on suppliers in relation the content of the goods and services being supplied under each contract. This would introduce a significant amount of red tape for suppliers.
- A consensus definition of what is 'Australian' is also difficult to achieve as, for example, goods may be made up of components from various sources.
- Australian suppliers are competitive and win the vast majority of Commonwealth contracts without the need for restrictions or other mechanisms that may impact these same businesses competing overseas.
- For instance, Australian and New Zealand SMEs win more than half of government contracts (60%) awarded each year.

Commonwealth Contract Suite

- Finance has developed a set of standard terms and conditions for low risk procurements under \$200,000 that was launched by the Minister for Finance and the Minister for Small Business on Wednesday as part of the red tape repeal day announcements.
- The new Commonwealth Contract Suite replaces the old 'Basic Contract Suite' and increases the threshold for eligible contacts to \$200,000.
- In 2012-13, 84% of contracts reported on AusTender were below \$200,000. As such, the vast bulk of Government contracts will now be able to go through this new, simplified process.
- The new contract suite is much more user-friendly with easy, intuitive online templates which will remove the need for legal advice every time you tender. It is a maximum of 14 pages long and the standard terms and conditions fit on 5 pages. A copy of a dummy contract has been provided to the Committee.
- A key feature of the Suite is the standard liability, indemnity and insurance clauses, which have been significantly simplified.
- The Contract Suite is currently being rolled out across Australia to agencies and business and will be operational from 1 July 2014.

SME Participation

- The Commonwealth Procurement Rules include a commitment for agencies to source at least 10% by value from SMEs.
- In 2012-13, 31.7% by value and 60.5% by number of contracts reported on AusTender were awarded to SMEs.
- In 2012-13, of the 10,212 uniquely identified businesses awarded contracts, 89.1% were SMEs.



Commonwealth of Australia

Standard Form Approach to Market (SFATM) Services

The Commonwealth as represented by **The Department of Archived Media** (the Customer) is seeking tenders for the provision of the Services described in this *Standard Form Approach to Market (SFATM)*.

Potential Suppliers must submit their responses on the form provided (as *Response to Approach to Market*) with all details provided in English and prices quoted in Australian currency.

Potential Suppliers should note that the Customer:

- will not contract with a Potential Supplier where the Potential Supplier or a proposed subcontractor does not comply with the *Commonwealth Policy Requirements [clause A.B.15]* of this SFATM; and
- will terminate the Contract and recover its costs if the Supplier was not compliant with those conditions at the time that the contract was executed [*Termination for non-Compliance with Commonwealth Policy Requirements - clause C.C.10* of the *Standard Form Contract Terms*].

No contract will be formed until formally executed by the parties. An executed contract will incorporate the Commonwealth's *Standard Form Contract Terms* including any *Standard Form Contract - Special Conditions of Contract*.

SFATM – Statement of Requirement

A.A.1 Key Dates and Times

Event	Date	Time
Closing date and time	18/04/2014	14:00 ACT local time
Expected Contract execution date	2/05/2014	
The Services are required on or before	7/05/2014	
Contract Term	This Contract will remain in force for the period 2/05/2014 to 30/06/2014	
Contract Extension Option	Not Applicable	

A.A.2 The Requirement

Background

The Department of Archived Media (DAM) is considering providing its considerable archive of film and television recordings to the 'Museum Of All Things Archived' as a resource and for possible display. DAM's archive has existed for forty years but is not well organised.

The records of the archived contents are contained on a mixture of paper files, magnetic tape, floppy discs and digital imaging software. *Through previous failed attempts to compile the records in house, DAM has several copies of each set of records.*

Please note: The condition of the magnetic tape is deteriorating due to age and incorrect storage.

The disparate records have never been reconciled and therefore the department is unaware of the level of detail or how many items within the archive have been recorded.

Scope of Work

DAM requires the following work to be completed before it can make an offer to the museum:

- construction of a database (simple format), listing the contents of the archive, from each of the different types of existing records
- conduct an inventory check to establish the location and condition of each item stored in the archive and, to the extent possible, barcode the physical items for cross referencing and registration in the database
- establish the value, ownership and any other intellectual property rights existing in relation to each item.

All information retrieved, gathered, cross referenced, including bar-coding and location information as well as value, ownership and IP must be provided on electronic media e.g. (USB stick or CD) to the DAM on or before the contract end date.

Evaluation Criteria

Please refer to clause A.B.12 of the General Conditions of Response.

Acceptance Testing

All acceptance testing will be performed on a standalone PC to maintain network integrity. The media will be scanned for viruses and any other potential threats within the media that could harm the department's network.

On receipt of the information contained on the electronic media DAM will test the database to establish the

Acceptance testing will not take more than 2 working days to complete.

The supplier will need to start work within the next four weeks with an expected completion time of six to eight weeks. There are no extension options.

Payment Schedule

Payment will be based on the standard 30 days after receipt of a correctly rendered invoice

A.A.2(a) Facilities and assistance offered by the Customer

Access to the archive storage will be granted to the successful supplier with temporary security clearances issued for the term of the contract. Nominated supplier staff will be required to undergo a police check.

A clean, secure work area including desks, a standalone PC and printer will be made available.

A.A.2(b) Customer Material

Access to archive records on paper files, magnetic tape, floppy discs and digital imaging software will be provided.

All Customer material must be returned at the completion of the contract.

A.A.2(c) Standards

ISO 32000 Document management - Portable document format, would be an advantage.

A.A.2(d) Security Requirements

Refer to A.A.2(a)

A.A.2(e) Delivery Dates and Location

Delivery Address	Delivery Date	Contact Officer/Position	Phone
The Department of Archived Media 10 ABC Lane Federal Town ACT 2222	7/05/2014	Mr Joseph E Blogs	02 6262 6262

Additional Instructions

Not applicable

A.A.3 SFATM Distribution

This SFATM and any updates will be distributed via AusTender and is subject to the following conditions.

Document Download

AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this Approach to Market (ATM) process, Tenderers must comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at:

<https://www.tenders.gov.au/?event=public.termsOfUse>.

All queries and requests for technical or operational support must be directed to:

AusTender Help Desk
Telephone: 1300 651 698
International: +61 2 6215 1558
Email: tenders@finance.gov.au

The AusTender Help Desk is available between 9am and 5pm ACT Local Time, Monday to Friday (excluding ACT and national public holidays).

A.A.4 Lodgement Method

Electronic Lodgement

Responses must be lodged electronically via AusTender before the Response Closing Date and Time and in accordance with the Response lodgement procedures set out in this SFATM documentation and on AusTender.

The Closing Time will also be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until Closing Time (For more information please see AusTender Terms of Use).

For the purposes of determining whether a tender response has been lodged before the Closing Time, the countdown clock will be conclusive.

Preparing to Lodge a Tender Response

Response File Formats, Naming Conventions and Sizes

The Customer will accept Responses lodged in Word 2007/2010 (.docx) and/or MS Excel 14.0 and/or PDF 1.6. [specify the appropriate format requirements]

The Response file name/s:

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

Response files should/must not exceed a combined file size of 5MB (specify reasonable size limit) megabytes per upload.

Responses must be completely self-contained. No hyperlinked or other material may be incorporated by reference. All supporting material that is not directly related to this SFATM should be provided on DVD which must be received by the nominated Contact Officer at the address specified in Clause A.A.5 within 5 business days following the Closing Time.

Scanned or Imaged Material, including Statutory Declarations (If any)

In the event that a Customer requires clarification of the Response, the Potential Supplier may be required to courier or security post the originals of the signature and/or initialed pages to at the Customer's Contact Officer address specified at the address specified at A.A.5 within 5 business days of the Closing time.

A.A.5 Contact Officer

For all matters relating to this SFATM, the Customer's Contact Officer will be:

Name: Fred Smith

Telephone: Not applicable

Email: fred.smith@dam.gov.au

SFATM - General Conditions of Response

A.B.1 General

Responses are subject to these *General Conditions of Response* and any *Special Conditions of Response* specified at A.C.1 in this SFATM.

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

No contract will be formed until formally executed. Any such Contract will incorporate the *Standard Form Contract Terms* including any *Standard Form Contract - Special Conditions of Contract*.

The Customer, acting in good faith, may discontinue the SFATM, decline to accept any Response; decline to issue any contract; or satisfy its requirement separately from the SFATM process.

Participation in any stage of the process is at the Potential Suppliers sole risk and cost.

A.B.2 Lodgement

The Customer will only agree to extensions to the Closing Time in exceptional circumstances and, if approved, will apply equally to all Potential Suppliers. The Customer will not consider any Responses received after the Closing Time specified in the SFATM unless the Customer determines, in its sole discretion that it has caused or contributed to the failure to lodge by the Closing Time.

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

A.B.3 Validity

Responses must remain open for acceptance for 60 calendar days from the Closing Time.

A.B.4 Alterations

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

A.B.5 Inconsistencies

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

- (a) SFATM – Statement of Requirement;
- (b) Special Conditions of Response (*if any*);
- (c) General Conditions of Response;
- (d) Special Conditions of Contract (*if any*);
- (e) Standard Form Contract Terms; and
- (f) Standard Form Contract Statement of Requirement (*if any*);

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

A.B.6 Amendments and Queries

The Customer may amend, or clarify any aspect of the SFATM prior to the Closing Time by issuing a formal amendment to the SFATM in the same manner as the original SFATM was distributed. Such amendments or clarifications will be issued simultaneously to all Potential Suppliers, as far as practicable.

Any queries regarding this SFATM should be directed to the Customer's Contact Officer [clause A.A.5].

A.B.7 Clarification

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.

A.B.8 Alternatives

Potential Suppliers may submit Responses for alternative methods of addressing the Customer's Requirement described in the SFATM where the option to do so was stated in the SFATM 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.

A.B.9 Customer Material

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

A.B.10 Reference Material

If the SFATM 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.11 Price Basis

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

A.B.12 Evaluation

The Customer will evaluate tenders in accordance 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 Special Conditions of Participation [clause A.C.1] if any.

The criteria for evaluation will encompass:

- (a) the extent to which the Potential Supplier's Response meets the Customer's requirement set out in the SFATM;
- (b) the Potential Supplier's proven capacity to provide the requirement; and
- (c) the total costs to be incurred by the Customer.

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

A.B.13 Financial information

If requested by the Customer, the Potential Supplier must be able to demonstrate both their financial stability and ability to remain viable over the term of any contract.

If requested by the Customer, the Potential Supplier must promptly provide the Customer with such information or documentation as the Customer reasonably requires in order to evaluate the Potential Suppliers financial stability.

A.B.14 Referees

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

A.B.15 Commonwealth Policy Requirements

Potential Suppliers acknowledge that the Customer will not contract with a Potential Supplier where the Potential Supplier or a proposed subcontractor either:

- (a) has a judicial decision against it (excluding decisions under appeal) relating to unpaid employee entitlements, where the entitlements remain unpaid; or
- (b) is not able to provide a letter of compliance from the Workplace Gender Equality Agency. NOTE: This requirement (b) only applies to non-public sector employers of 100 or more employees in Australia.
- (c) does not comply with the Special Conditions of Participation [clause A.C.1] if any.

A.B.16 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 will publicly disclose the Supplier's name, postal address and a range of details about the Contract, including contract value and 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*.

A.B.17 Confidentiality of Tenderer Information

In their Response, Potential Suppliers must identify any aspects 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 appropriate. In the absence of such an agreement, Potential Suppliers acknowledge that the Customer has the right to publicly disclose the information.

A.B.18 Collusive tendering and Unlawful Inducements

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 SFATM process.

A.B.19 Conflict of Interest

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).



Commonwealth of Australia

Standard Form Contract - Services

for the Provision of

Data Base construction, Media conversion, Inventory Audit, IP, Ownership and Cost identification

Parties

Customer

Customer Name Commonwealth of Australia as represented by
the The Department of Archived Media (the Customer)

Customer ABN 123 456 789

Address 10 ABC Lane
Federal Town ACT 2222

Supplier

Supplier Name Representation Data
(the Supplier)

Supplier ABN 15 086 284 589

Supplier ACN
(if applicable) Not applicable

Supplier ARBN
(if applicable) Not applicable

Registered business
Address 1 Smith St
Smithville Vic 3111

Standard Form Contract - Statement of Requirement

C.A.1 Key Dates and Times

Event	Date	Location
The Services are required on or before	7/05/2014	ACT
Contract Term	This Contract will remain in force for the period from 2/05/2014 to 30/06/2014	
Contract Extension Option	Not Applicable	

C.A.2 The Requirement

Response

Representation Data will convert all separate data files for the Department of Archived Media. All of these files could consist of different structures, contents, and are stored in a variety of formats. Our experience has shown that files of this nature have had little or no data validity checking done during the collection process. This will result in the files containing missing, duplicated, and conflicting data.

Process

Any cleaning of the data if required will be done prior to any conversion. Each of the data files will be analysed and where required converted separately. This analysis of the data will identify any highly compromised records including empty records, partially filled records, non-identical duplicate records, and data that violate referential integrity constraints.

Representation Data will work with the Department of Archived Media to identify any IP or owned data on file. Any additional identification of IP, ownership and valuation will be conducted by our in-house investigations team who have extensive experience in this field and to date have a 96% success rate of producing results. If IP and or ownership of some records cannot be determined a report of the investigations will be provided.

Representation Data does not have the resources to conduct onsite audits and bar coding. Ugly Bar Codes and Audits Pty Ltd a wholly owned subsidiary of Representation Data will undertake this work. Ugly Bar Codes and Audits Pty Ltd have a direct link into Representation Data via a secure web portal and all audit records will be entered into the portal via the bar code reader and data entry technician. In real time the Representation Data team can cross reference the incoming data with the converted records, removing any duplicate records immediately.

Result

The result will be clean, usable database including the value, bar code and audit records provided to the department in an agreed format.

Timeline

Work will commence immediately on receipt of the records and the final audited records including IP, ownership and valuation will be completed within the expected timeframe as stated in the statement of requirement of your request for offer.

C.A.2(a) Facilities and Assistance

Access to the archive storage will be granted to the successful supplier with temporary security clearances issued for the term of the contract. Nominated supplier staff will be required to undergo a police check.

A clean, secure work area including desks, a standalone PC and printer will be made available.

C.A.2(b) Customer Material

Access to archive records on paper files, magnetic tape, floppy discs and digital imaging software will be provided.

All Customer material must be returned at the completion of the contract.

C.A.2(c) Standards and Best Practice

Not applicable

C.A.2(d) Security Requirements

Refer to C.A.2(a)

C.A.2(e) Delivery and Acceptance

The Customer may accept or reject any Goods and/or Services provided within 14 calendar days after its delivery to the Contact Officer specified below or after receiving notification that a Milestone has been completed.

The Customer may reject any Goods and/or Services, which does not comply with the Contract. However, if the Customer does not notify the Supplier of rejection of the Goods and/or Services within this 14 day period, the Supplier may assume the Customer's acceptance.

If the Customer rejects any Goods and/or Services the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier's cost, so that the Goods and Services meet the requirements of the Contract. The Supplier must comply with any such requirement.

Rectified Goods and Services are subject to acceptance under this clause. The Supplier will refund all payments related to the rejected Goods and Services unless the relevant Goods and Services are rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer's timeframe, the Customer may terminate the Contract in accordance with *clause C.C.11 [Termination for Cause]*.

Milestone	Due Date	Customer Contact Officer	Customer Contact Details
Database Construction	1/06/2014	Casey Needham	02 5552 5222
Onsite inventory check audit and bar coding services.	15/06/2014	Casey Needham	02 5552 5222
IP, ownership & valuation	27/06/2014	Casey Needham	02 5552 5222

C.A.2(f) Intellectual Property

The Supplier grants the Customer a non-exclusive irrevocable, world-wide licence to use, sub-licence, modify adapt and publish the Material for any purpose.

The Supplier warrants that it is entitled to grant this licence; and that the provision of the Services and any Material under this Contract, and its use by the Customer in accordance with this Contract, will not infringe any third Party's intellectual property rights.

C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges is as follows:

\$164,450.00

Item No.	Item Description	Qty	Unit price Ex GST	Unit price GST Component	Unit Price Inc GST	Total Price Inc GST
1	Onsite inventory check audit and bar coding services.	1	\$19,500.00	\$1,950.00	\$21,450.00	\$21,450.00
2	Database Construction	1	\$45,000.00	\$4,500.00	\$49,500.00	\$49,500.00
3	IP, ownership & valuation	1	\$65,000.00	\$6,500.00	\$71,500.00	\$71,500.00
Total Price for Goods and Services						\$142,450.00

C.A.3(a) Variable Costs

If the Supplier incurs any of the following variable items, the Customer agrees to reimburse the Supplier at cost (exclusive of GST) on production of satisfactory evidence and pay variable charges in accordance with Payment [clause C.C.17].

Item	Description / comments	Cost (GST exclusive)	GST component	Total cost (GST inclusive)
1	Hermetically sealed storage unit for transporting deteriorating media	\$20,000.00	\$2,000.00	\$22,000.00
Total Estimated Variable Costs (additional to above)				\$22,000.00

C.A.3(b) Proposed Payment Schedule

Payments inclusive of any GST and all taxes and charges will be made as follows:

Estimated Date	Milestone	Payment Amount (\$)	% of Total Contract Price
1/06/2014	Database Construction	\$49,500	30.10
15/06/2014	Onsite inventory check audit and bar coding services.	\$21,450	13.04
27/06/2014	IP, ownership & valuation	\$71,500	43.48
			86.62

C.A.3(c) Pricing for Extension Period

Not applicable

C.A.4 Contract Managers and Addresses for Notices

C.A.4(a) The Customer's Contract Manager:

The person occupying the position of: **Assistant Director**

Currently: **Joseph E Blogs**

Address for Notices: **10 ABC Lane,
Federal Town,
ACT 2222**

Telephone: **02 6262 6262**

Mobile: **04040372810**

Email Address: **joe.blogs@dam.gov.au**

C.A.4(b) Customers Address for Invoices

Addressee Name: **William Cash**

Position title: **Finance Manager**

Address for Invoices: **10 ABC Lane,
Federal Town,
ACT 2222**

Email Address: **william.cash@dam.gov.au**

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

Name: **Hayden Needham**

Position title: **Conversion Manager**

Address for Notices: **PO Box 13
Smithville,
Victoria 3111**

Telephone: **02 5552 5223**

Mobile: **0409 909 090**

Email Address: **hayden@representation.com.au**

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

C.A.5 Specified Personnel

Name	Position/Role	% Time	Current level of Security Clearance
Not applicable			
Total all project personnel		0.0	

C.A.6 Subcontractors

Subcontractor	Services to be performed	ACN / ABN
Ugly Bar Codes and Audits Pty Ltd -	To conduct onsite inventory check audit and bar coding services. All data captured will be transferred to Representation Data via secure online portal.	61 320 965 431

Standard Form Contract - Special Conditions of Contract

Not applicable

C.B.1 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 the Contract.

Information in the Contract to be confidential	Reasons for confidentiality
Not applicable	

Contract Signing Page

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented
by The Department of Archived Media

ABN 123 456 789 by its duly authorised delegate in the presence of

Signature of witness

Signature of delegate

Name of witness (*print*)

Name of delegate (*print*)

Position of delegate (*print*)

ON: Insert Date

Executed

by Representation Data

ACN: _____ in accordance with Section 127 of the Corporations Act
2001

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (*print*)

Name of director/company secretary (*print*)

ON: [*insert date*]

ON: [*insert date*]

Contract Annex 1 – Supplementary Information

Not applicable

Standard Form Contract Terms

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 Requirement.

C.C.1 Relationship of the Parties: Neither Party is the employee, agent or partner of the other Party. Neither Party, by virtue of this Contract, is authorised to bind or represent the other Party.

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

- (a) communicate openly with each other and cooperate in achieving the contractual objects; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct.
- (d) consult, co-operate and co-ordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health of workers and workplaces.

C.C.2 Precedence of Documents: The Contract is comprised of:

- (a) the Special Conditions of Contract (if any)
- (b) the Contract Statement of Requirement;
- (c) the Standard Form Contract Terms
- (d) the Standard Form Contracting Suite Definitions; and
- (e) Annex 1 – Supplementary information (if any).

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

C.C.3 Survival: Clauses C.C.9 [Liability of the Supplier] C.C.18 [Supplier not to make representations] C.C.20 [Compliance with Commonwealth Laws and policies] and clause C.A.2(f) [Intellectual Property] (if included) survive termination or expiry of the Contract.

C.C.4 Conflict of Interest: The Supplier has declared

- (a) any real or perceived conflicts of interest that might arise; or
- (b) has stated 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, the Supplier will immediately notify the Customer and comply with any Notice given to the Supplier by the Customer.

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. Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing).

No agreement or understanding varying or extending the Contract is 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 their rights, that failure or delay does not operate as a waiver of those rights.

C.C.7 Assignment: Before assigning any rights under the Contract, 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, for the Customer's written consent.

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.

C.C.8 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 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 is 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.9 Liability of the Supplier: The Supplier will indemnify the Customer, its officers, employees and contractors against any claim, loss or damage arising in connection with any breach of the Supplier's obligations or representations under the Contract.

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

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

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C.C.10 Termination for non-compliance with Commonwealth Policy Requirements: The Customer will terminate the Contract at any time if the Supplier was not compliant with the Customer's SFATM clause A.B.15 [Commonwealth Policy Requirements] at the time that the contract was executed. Where the Customer terminates the Contract under this clause the Supplier:

- (a) is not entitled to any compensation; and
- (b) is liable for all reasonable costs or expense incurred by the Customer as a result of the termination, including costs of contracting a new Supplier.

C.C.11 Termination for Cause: The Customer may terminate the Contract in whole or in part 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 the Acceptance clause of the Contract;
- (c) the Supplier breaches the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remedy a breach of the Contract which is capable of remedy within the period specified by the Customer in a Notice of default issued to the Supplier; or
- (e) the Supplier:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, administrator or equivalent appointment under legislation other than the Corporations Act 2001 appointed to it or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the Bankruptcy Act 1966.

Where the Customer terminates a Contract under this Clause, the Customer will pay the Supplier for Goods and/or Services accepted in accordance with Delivery and Acceptance [clause C.A.2(e)], before the effective date of termination.

C.C.12 Termination or Reduction for Convenience: In addition to any other rights either Party has under the Contract, either Party, acting in good faith, may at any time 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 directions given by the Customer.

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 directions given by the Customer.

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 the Acceptance Clause of the Contract, 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 that is terminated or subject to a reduction in scope.

C.C.13 Dispute Resolution: For any dispute arising under the Contract both the Supplier and the Customer must comply with (a) to (e) of this clause:

- (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 the 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; and
- (d) failing settlement within a further ten (10) business days, the Customer must refer the dispute to a 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.
- (e) Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind their organisation and act in good faith to genuinely attempt to resolve the dispute. If the dispute is not resolved within thirty (30) business days after mediation commences, either the Customer or the Supplier may commence legal proceedings. The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator. 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.

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This procedure for dispute resolution does not apply to action relating to Termination for Cause under clause C.C.11 or to legal proceedings for urgent interlocutory relief.

C.C.14 Specified Personnel: The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly replace any Specified Personnel that the Customer reasonably considers should be replaced with personnel acceptable to the Customer.

C.C.15 Licences Approvals and Warranties : The Supplier must obtain and maintain all licenses or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for the Goods. 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 Material, even if the use may otherwise be an infringement of their Moral Rights.

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 manufacturers' warranties in respect of the Goods it has manufactured and supplied.

C.C.16 Invoice: 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 an invoice is not evidence that the obligations under the Contract have been completed satisfactorily, evidence of the value of the obligations performed by the Supplier, or an admission of liability, but is payment on account only.

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.17 Payment: The Customer must pay the amount of a Correctly Rendered Invoice to the Supplier within 30 calendar days after receiving it, or if this day is not a business day, on the next business day. The last day of this period is referred to as the "Due Date".

If the Customer fails to make a payment by the Due Date and the Supplier is a Small Business and the amount of interest calculated under this clause exceeds A\$10, the Customer will pay interest on payments to the Supplier made after the Due Date as follows:

(a) for payments made between 1 day and up to 30 days after the Due Date, the Customer will pay the interest calculated under this clause only if the Supplier issues a Correctly Rendered Invoice for that interest;

and

(b) for payments made more than 30 days after the Due Date, the Customer will pay interest calculated under this clause together with payment of the unpaid amount.

Interest payable under this clause will be simple interest on the unpaid amount, calculated using the General Interest Charge Rate formula available at the Australian Taxation Office website at: <http://www.ato.gov.au/Tax-professionals/Payment,-interest-and-penalties/>

C.C.18 Supplier not to make representations: The Supplier must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Customer, or as otherwise able to bind or represent the Customer. The Contract does not create a relationship of employment, agency or partnership between the parties.

C.C.19 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 the State, Territory or other jurisdictions in which any part of the Contract is performed.

C.C.20 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 including, but not limited to:

Standard Form Contract Terms

A. Access to Supplier's Premises:

The Supplier agrees to give the Customer, or its nominee, all assistance reasonably requested for any purpose associated with the Contract or any review of the Supplier's performance under the Contract. This will include, but is not limited to, access to premises, material, records and personnel associated with the Goods and/or Services and the Contract.

B. Confidential Information:

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 the prior written approval of the Customer. This obligation will not be breached where the Supplier is required by law or a Stock Exchange to disclose the relevant information. At any time, the Customer may require the Supplier to arrange for its employees agents or subcontractors to give a written undertaking relating to non-disclosure of the Customer's confidential information in the 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 specified information confidential. The Customer will not be in breach of any confidentiality agreement where the Customer is required to disclose the information.

C. Privacy Act 1988 (Cth) Requirements:

The Supplier agrees, in providing the Goods and /or Services to, and to ensure that its officers, employees, agents and subcontractors, comply with the Privacy Act 1988 (Cth) and not do anything which if done by the Customer, would be a breach of the requirements of Division 2 of Part III of that Act. The Supplier will immediately notify the Customer if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause.

D. 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*. The Supplier must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.

E. Freedom of Information (FOI) Act 1982 Requirements:

Where the Customer has received an FOI request for access to a document created by, or in the possession of the Supplier or its subcontractors that relates to the Contract and is required to be provided under the FOI Act, the Supplier must promptly provide the document to the Customer, on request, at no cost.

F. Record Keeping:

The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and allow the Customer or its authorised representative to inspect those records when requested. The Supplier will provide any assistance and information required should the Australian National Audit Office wish to conduct an audit of the Supplier's accounts and records.

The Supplier must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the Archives Act 1983 (Cth)) without the prior written consent of the Customer. All Commonwealth records must be returned to the Customer at the conclusion of the Contract.

G. 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 any material and property (including security-related devices and clearances) 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 returned as directed by the Customer.

Commonwealth Contracting Suite Definitions

Definitions:

In the Standard Form Contracting Suite:

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

"Contract Manager" means the contract manager specified in Clause C.A.4 of the Contract.

"Contract Price" means the total contract price specified in Clause C.A.3 of 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 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.

"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 and Milestones 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.

"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 right of attribution of authorship of work, right not to have authorship of work falsely attributed and right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

"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 Statement of Requirement.

"Small Business" has the meaning set out in Finance Circular 2012/02 available at: <http://www.finance.gov.au/publications/finance-circulars/2012/docs/fc2012-02.pdf>

"Specified Personnel" means the personnel specified in the Contract [clause C.A.5] or as accepted by the Customer.

Potential Supplier's Details

Full legal business name: Representation Data

Postal address: PO Box 13

Smithville

Victoria 3111

ACN/ARBN (if applicable):

ABN (if applicable): 15 086 284 589

Web address: www.representation.com.au

The entity's legal status: Company

Contact Officer

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

Name: Casey Needham

Position title: Operations Manager

Telephone: 02 5552 5222

Mobile: 0409 090 909

Email: casey@representation.com.au

Address for Notices (if different from the Contact Officer):

Name:

Position title:

Telephone:

Mobile:

Email:

Contract Manager

Name: Hayden Needham

Position title: Conversion Manager

Telephone: 02 5552 5223

Mobile: 0409 909 090

Email: hayden@representation.com.au

Potential Supplier's Claims

Detailed proposal to meet the Customer's requirement

Representation Data will convert all separate data files for the Department of Pretty Pictures. All of these files could consist of different structures, contents, and are stored in a variety of formats. Our experience has shown that files of this nature have had little or no data validity checking done during the collection process. This will result in the files containing missing, duplicated, and conflicting data.

Process

Any cleaning of the data if required will be done prior to any conversion. Each of the data files will be analyzed and where required converted separately. This analysis of the data will identify any highly compromised records including empty records, partially filled records, non-identical duplicate records, and data that violate referential integrity constraints.

Representation Data will work with the Department of Pretty Pictures to identify any IP or owned data on file. Any additional identification of IP, ownership and valuation will be conducted by our in-house investigations team who have extensive experience in this field and to date have a 96% success rate of producing results. If IP and or ownership of some records cannot be determined a report of the investigations will be provided.

Representation Data does not have the resources to conduct onsite audits and bar coding. Ugly Bar Codes and Audits Pty Ltd a wholly owned subsidiary of Representation Data will undertake this work. Ugly Bar Codes and Audits Pty Ltd have a direct link into Representation Data via a secure web portal and all audit records will be entered into the portal via the bar code reader and data entry technician. In real time the Representation Data team can cross reference the incoming data with the converted records, removing any duplicate records immediately.

Result

The result will be clean, usable database including the value, bar code and audit records provided to the department in an agreed format.

Timeline

Work will commence immediately on receipt of the records and the final audited records including IP, ownership and valuation will be completed within the expected timeframe as stated in the statement of requirement of your request for offer.

Proven Capacity

Statement of Skills and Experience

Representation Data has helped *execute four of the world's five largest data conversion projects*, converting unstructured documents into robust content repositories.

From unstructured content to SGML(Standard Generalised Markup Language) , XML and other structured information standards — *quickly, accurately and cost-effectively* and as the world's leading provider of data conversion services, that's exactly what Representation Data delivers.

Proven Leadership

Over the last two decades, we have built an extensive portfolio of successful conversion projects for leading publishers, media and information services companies, including Fortune 500 enterprises worldwide. More recently we have commenced providing IP, ownership identification and valuation services having acquired IPO & V Pty Ltd. This service is proving very popular with Government Departments and Agencies as part of their risk management strategies.

We've helped execute four of the world's largest XML data conversion projects and have converted raw, unstructured documents into powerful data repositories for dozens of museums, government agencies and secondary publishers. We've digitized production runs of a number of major newspapers and also converted legacy data for leading telecommunications and insurance companies. No matter what the situation, we've delivered on our promise of speed and accuracy.

Response to Approach to Market - Services

Conflict of Interest

NIL

Specified Personnel

Name	Position/Role	% Time	Current level of Security Clearance
Not applicable			
Total all project personnel		100%	

Subcontractors

Full legal name: Ugly Bar Codes and Audits Pty Ltd -

Postal address: PO 333

Smithville Victoria 3111

ACN/ARBN (if applicable): 61 320 965 431

ABN (if applicable):

Scope of works to be subcontracted

To conduct onsite inventory check audit and bar coding services. All data captured will be transferred to Representation Data via secure online portal.

Referees

Referee Name	Position/Company	Phone No	Email Address
Juan Foroad	Department of Education	02 6965 6365	foroad@education.gov.au
Hugo Firth	Department of Defence	02 6467 6166	hugo.firth@defence.gov.au

Additional Information

Testimonial

"I have used Representation Data since its introduction and have always found them to be a very efficient converting our records from a large number of different sources. The support staff has been universally helpful in resolving any questions and in incorporating requests for enhancements. "

- **Schmidt Haus**
Schmidt-Haus Realty

Confidentiality of Potential Supplier's Information

Information proposed to be confidential	Reasons for requesting confidentiality
Not applicable	

Response to Approach to Market - Services

Pricing

Prices for Services

Item No.	Milestone Description	Price - Ex GST	Price - GST Component	Total Price Inc GST
1	Onsite inventory check audit and bar coding services.	\$19,500	\$1,950	\$21,450
2	Database Construction	\$45,000	\$4,500	\$49,500
3	IP, ownership & valuation	\$65,000	\$6,500	\$71,500
Total Price for Services				\$142,450.00

Variable costs

Item	Description / comments	Cost (GST exclusive)	GST component	Total cost (GST inclusive)
1	Hermetically sealed storage unit for transporting deteriorating media	\$20,000	\$2,000	\$22,000
		\$	\$	\$
		\$	\$	\$
Total Estimated Variable Costs (additional to above)				\$22,000

Facilities and Assistance

All conversion work will be conducted on Representation Data's premises. The inventory audit will be conducted on the Department of Pretty Pictures Archive storage facility. All staff have current security clearances to the level of Highly Protected.

Non Compliance

Clause	Reason for non-Compliance	Proposed new wording
	Not applicable	

Proposed Payment Schedule

Estimated Date	Milestone	Payment amount (\$)	% of Total Contract Price
1/06/2014	Database Construction	\$49,500	30
15/06/2014	Onsite inventory check audit and bar coding services.	\$21,450	13
27/06/2014	IP, ownership & valuation	\$71,500	43
	Total Payment Amount	\$142,450.00	86