

Date: March 6, 2003

EXHIBIT A

**ADDITIONAL PROVISIONS
APPLICABLE TO
PRIME CONTRACT C338364 - ACSN TASK ORDERS**

To be used when the Commonwealth has submitted a Task Order for the provision of technical studies in support of C338364 to Boeing. [Buyer instruction]

1. Scope and Provision of Services

- 1.1 The Services provided under this Task Order Contract are technical studies to produce and deliver a report which:
 - a. provides the Commonwealth and Buyer with sufficient information to determine the need for a change to Boeing's Prime Contract C338364 with the Commonwealth of Australia; and,
 - b. provides the Commonwealth and Buyer with sufficient information to allow development of a request for a contract change.
- 1.2 Technical Study means a thorough examination, evaluation or analysis of a subject identified by the Buyer to accomplish the Buyer's stated purpose for the study.
- 1.3 The Seller shall perform the Services described in the Task Description issued by the Buyer pursuant to clause 3 of this Exhibit A. Subject to clause 3.3, the Seller shall ensure that the Services comply with the Task Order Contract.
- 1.4 The Seller warrants that it will render the Services with due skill and care and the Services will be fit for purpose as made known to the Seller expressly or by reasonable implication. Where the Buyer determines that the results of the study are not fit for purpose, the Buyer will identify the reasons for the determination and the Parties shall negotiate in good faith to resolve those reasons and agree on a way ahead.

2. Tasking

- 2.1 The Buyer is not bound to order any or any amount of Services and the Seller is not bound to accept or provide a proposal for requested Services.
- 2.2 As a requirement for Services arises, the Buyer will raise a Task Order, which shall include a Task Description, describing the Services required and will request the Seller provide a quotation based on the Task Description.
- 2.3 On receipt of a Task Order, the Seller shall, within seven days or such other period as may be agreed, complete and submit to the Buyer the pricing information included in the Task Order.
- 2.4 Should the Buyer wish to proceed it shall issue a contract change for the Services within a period as may be agreed to by the Parties. The study completion date for the contract change will be agreed between the Parties. The Contract Change shall include the pricing categories included in the Task Order and will specify the Not-to-Exceed amounts for provision of the Services, and any other Special Conditions.
- 2.5 Each Task Order shall constitute a separate contract line item on the contract.
- 2.6 No Services shall be carried out by the Seller and no amount shall become payable to the Seller unless and until a Contract Change has been issued.

3. Price Basis & Invoicing

- 3.1 The Buyer agrees to pay for all Services provided by the Seller under each Contract line item calculated in accordance with clause 4, Agreed Rates, up to the Not-to-Exceed (NTE) amount specified in the Purchase Order. If the Seller completes the Services for less than the Not-to-Exceed amount, the Buyer shall only be liable for that actual amount expended by the Seller in the performance of the Services.

- 3.2 Not to Exceed (NTE) means the amount estimated by the Seller to perform the Services requested by the Buyer in the Task Order by applying the Agreed Rates in clause 4 up to the resource hours identified in the Task Order. Subject to clause 3.4, the Seller shall not incur expenditures in excess of the NTE amount and shall not be obligated to continue work beyond that point and neither shall the Buyer be obligated in any event to reimburse Seller in excess of the NTE amount unless the NTE figure on the Contact line item has been adjusted by a contract change.
- 3.3 As soon as the Seller has reason to believe that the study cannot be accomplished within the NTE amount, the Seller shall notify the Buyer, identify the extent of study accomplishment which is possible within the NTE amount and provide a final NTE quotation to identify the additional funding required to complete the study. The Buyer may elect to either: 1) increase the NTE amount to complete the study; 2) stop further study activity; or, 3) request that the Seller continue work to the extent possible within the NTE price and then, prepare and submit to the Buyer a report of study accomplishment to the point where the NTE amount is expended.
- 3.4 If the Seller cannot accomplish the study within the NTE amount and the Parties agree that the study has significantly varied from the initial task description in the Contact line item, the Parties may agree to either 1) vary the Contact line item in accordance with clause 3.3; or 2) enter into a new Contact line item for that study.
- 3.5 Where the Buyer elects to increase the NTE amount in accordance with clause 3.3, the Buyer shall not be obligated to reimburse the Seller in excess of the revised NTE amount, and the Seller shall complete the study to the requirements of the Contact line item, notwithstanding that the Seller may have incurred expenditures in excess of the NTE amount.
- 3.6 NTE Price shall include Labour, Travel Expenses, Direct Materials and Other Direct Costs, including customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery (Free-in-Store), insurance, Goods and Service Tax where the Seller is registered for GST, and any other applicable costs and charges.
- 3.7 The Seller shall issue the Commonwealth with a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) **[If subcontractor is an Australian company.]**
- 3.8 The Seller is entitled to recover from the Commonwealth the amount of any GST payable on taxable supplies, within the meaning of the GST Act, provided under a Purchase Order. The amount of GST shall be calculated on the day the invoice is issued, and converted to Australian dollars based on the exchange rate published on that date. **[If subcontractor is an Australian company.]**

4. Agreed Rates:

- 4.1 The Contract line item NTE price shall be calculated using the Agreed Rates found elsewhere in this contract.
- 4.2 The Agreed Rates in clause 4.1 shall be valid for effort during the calendar year 2003. No later than 60 days after the start of each subsequent calendar year, the Seller shall provide the Buyer with updated rates for that calendar year.
- 4.3 Changes to the Agreed Rates shall be effected through a change order to this contract.

5. Exclusion of Liabilities

- 5.1 Disclaimer and Release: The warranties, conditions, representations, obligations and liabilities of Buyer and remedies of the Buyer set forth in this agreement, are exclusive and in substitution for, and Buyer hereby waives, releases and renounces all other warranties and other obligations and liabilities of the Seller, and any other rights, claims and remedies of Buyer against the Seller, express or implied, arising by law or otherwise, with respect to any non-conformance or defect in any Purchase Order or other things provided under this Standing Offer, including but not limited to:
- a. any implied warranty of merchantability or fitness;
 - b. any implied warranty arising from course of performance, course of dealing or usage of trade;

- c. any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligence of the Seller; and,
 - d. any obligation, liability, right, claim or remedy for loss of or damage to any property of the Buyer including without limitation the Airborne Early Warning & Control (AEW&C) System.
- 5.2 Exclusion of Consequential and Other Damages: The Seller shall have no obligation or liability, whether arising in contract (including warranty), tort (whether or not arising from the negligence of the Seller), or otherwise, for loss of use, revenue or profit or for any other incidental or consequential damages with respect to any nonconformance or defect in any deliverables under this contract.
- 5.3 Definitions: For the purpose of this section, "Seller" includes _____, its divisions, subsidiaries, the assignees of each, subcontractors, suppliers and affiliates, and their respective directors, officers, employees and agents.
- 5.4 Negotiated Agreement: Buyer and the Seller agree that this clause has been the subject of discussion and negotiation and is fully understood by the Parties, and that the goods and services and the other mutual agreements of the Parties set forth in the contract were arrived at in consideration of each of such provisions, specifically including this clause.
- 5.5 Contribution Toward Third Party Damage Claims by the Buyer against the Seller for contribution toward Third Party bodily injury or property damage claims, to the extent of Seller's relative percentage of the total fault or other legal responsibility of all persons causing such bodily injuries or property damage, are excepted from the terms of this Clause 5.

6 Waiver

- 6.1 Failure by either Party to enforce a provision of this contract shall not be construed in any way as affecting the enforceability in any other instance, or the enforceability of the contract as a whole.

7 Equal Opportunity for Women in the Workplace

- 7.1 The Seller shall not appoint any Australian subcontractors that have been named in Parliament as not complying with the requirements of the Equal Opportunity for Women in the Workplace Act 1999 (Cwlth) for the purposes of this contract. The Buyer shall immediately notify the Seller when it first believes that the Seller may make such appointment.

8 Order of Precedence

- 8.1 In the event of any inconsistency between the terms contained in this Exhibit A and the General Provisions and Special Provisions referred to elsewhere, the terms contained in this Exhibit A shall prevail.

TASK ORDER

Title:				
Task Description: Details of the Task are included at Annex 1				
Requested Completion Date:			Estimate is valid until:	
Proposed Special Conditions of Contract Applicable to the Purchase Order				
Price Summary				
Ref.	Description	Resource Estimate	Rate	Price in USD or AUD
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
Estimated Not-to-Exceed Amount for Resources			USD	AUD
Estimated GST	①Converted at _____ exchange rate USD per AUD for purposes of GST calculation per Reserve Bank of Australia media release as of _____.			① AUD
Estimated Purchase Order Values			USD	AUD

TASK DESCRIPTION

1. Background and Objective

(This section shall include any Background information that may be relevant to the Task)

2. Description of Services

[This section should briefly describe the Task/Services to be performed by the Seller) including details regarding the content or format (if required) of the Technical Study.

3. Purpose of Study

4. Technical Point of Contact

Buyer:

Seller:

Rev. A, 3/31/03

A = ADDED
D = DELETED
R = REVISED