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Expert Engagement Agreement



Australian Government
Department of Defence

Alexandra Kelton
First Assistant Secretary
International Policy & Agreements Division
Nuclear Powered Submarine Taskforce
Department of Defence
s47E(d)
Brindabella Park ACT 2609

s47E(d) @defence.gov.au

s47E(d)

Mr Steven Grzeskowiak

SG Advice Pty Ltd

s47F

Narrabundah, ACT 2604

Dear Steven Grzeskowiak,

LETTER OF ENGAGEMENT: LEAD OF THE REVIEW TO IDENTIFY LOCATIONS IN THE CURRENT AND FUTURE DEFENCE ESTATE THAT COULD BE SUITABLE TO STORE AND DISPOSE OF SPENT NUCLEAR FUEL AND HIGHER-LEVEL RADIOACTIVE WASTE

The Commonwealth of Australia (**Commonwealth**) wishes to engage **Mr Steven Grzeskowiak** (**Consultant**) through SG Advice Pty Ltd (**Company**) to provide the services described below in accordance with the Terms and Conditions below and set out in Attachment A to this Letter.

1. DESCRIPTION OF SERVICES:

The Consultant is required to:

- a. Lead the Review s47E(d) to identify locations in the current and future Defence estate that could be suitable to store and dispose of spent nuclear fuel and higher-level radioactive waste generated by Australia's nuclear-powered submarines.
- b. The role of the Consultant will be advisory in nature. s47E(d)

2. PERIOD OF ENGAGEMENT:

- a. The Commencement Date for the Services is from s47E(d)
- b. This engagement will continue to operate for a period up until s47E(d) to coincide with the planned completion of the Review, or until the agreement is

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terminated in accordance with either clause 16 or 17 of **Attachment A**.

- c. While an allowance has been made for up to s47E(d) under this agreement, actual working days will depend on the Commonwealth's requirements and the maximum allowance of days may not be utilised.
- d. The Commonwealth and the Contractor may extend the term of this agreement by mutual written agreement for 1 x 1 year extension period ('**Extension Term**').

3 FEES AND PAYMENT:

- a. **Daily Rate:** s47E(d) (ex GST) per day.
- b. **Not to Exceed:** AUD\$360 000 (exclusive of GST) for the Services.
- c. **GST:** in accordance with clause 7 of **Attachment A**.
- d. **Out of pocket expenses:**
 - (i) The Daily Rate does not include travel, accommodation and incidental expenses incurred by the Consultant and, subject to paragraph 3(d)(ii), these expenses may be separately recovered from the Commonwealth.
 - (ii) The Company is entitled to seek reimbursement of Commonwealth approved travel and accommodation related expenses up to the Defence SES Travelling Allowance rates (as adjusted for GST). The Company must seek the Commonwealth's prior approval for all other out of pocket expenses that it intends to recover from the Commonwealth.
 - (iii) Alternatively, the Commonwealth may arrange travel and accommodation for the Consultant, as required for the purposes of the engagement.
- e. **Manner of payment:** The Contractor must submit invoices to the Commonwealth, within 30 days of expenses being incurred. Invoices are to be submitted electronically to invoices@defence.gov.au. Invoices are to detail the Defence Purchase Order number associated with this agreement and a Defence point of contact to ensure timely processing of invoices.

4 INSURANCE:

The Company must procure the following insurance before commencing work under the letter of engagement:

- a. Public Liability Insurance of not less than s47F for each and every public liability occurrence, to be maintained until all work under the engagement is completed or terminated;
- b. Professional Indemnity Insurance of not less than s47F for each claim and in the annual aggregate for all claims, to be maintained for 7 years after the engagement is completed or terminated; and
- c. Insurance as required by law, such as worker's compensation insurance.

5 SECURITY CLEARANCES:

The security classification of the Services is up to and including s47F level. The Consultant must possess a personnel security clearance at s47F and must comply with the requirements and

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procedures of Principle 40 of the Defence Security Principles Framework, as amended from time to time.

6 COMMONWEALTH CONTACT OFFICER AND ADDRESS FOR NOTICES (INCLUDING INVOICES):

Sophia Blix

Assistant Secretary, Nuclear Powered Submarine Taskforce

s47E(d) Brindabella Park ACT 2603

Phone: s47E(d)

7 ACKNOWLEDGEMENT AND AGREEMENT:

If the Company agrees to provide the Services in accordance with the Terms and Conditions set out above and in **Attachment A**, please sign the enclosed copy of the letter (refer below) and return to me at your earliest convenience.

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If you have any questions or require further information, please do not hesitate to contact me.

Yours sincerely

s47F



Alexandra Kelton
First Assistant Secretary
International Policy & Agreements
Nuclear Powered Submarine Taskforce

27

February 2023

Signed for and on behalf of SG Advice Pty Ltd
ABN 14660729448 by its authorised signatory in
the presence of:

s47F



Signature of witness

MARK ANDREW SANDER

Full name of witness

s47F



Signature of sole director and sole company
secretary who states that he or she is the sole
director and the sole company secretary of the
company

S.R.GRZESKOWIAK

Name of sole director and sole company
secretary (print)

ATTACHMENTS:

- Attachment A: Terms and Conditions
- Attachment B: Confidentiality and Conflict of Interest Declaration
- Attachment C: Code of Conduct

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ATTACHMENT A

TERMS AND CONDITIONS

1. **Agreement**

1.1 The agreement comprises the particulars described in the Letter of Engagement and the Terms and Conditions set out in this Attachment A.

2. **Provision of Services**

2.1 The Consultant must provide the services described in paragraph 1 of the Letter of Engagement (**Services**) at the times, in the manner and at the location (if any) described in the agreement or as otherwise notified in writing by the Commonwealth. The Services must be provided with due care and skill in accordance with the highest professional standards to the satisfaction of the Commonwealth.

2.2 The Company must comply, and must ensure the Consultant complies, with all reasonable directions of the Commonwealth as may be given from time to time as to the nature and scope of the Services to be provided. This clause does not affect the Consultant's right to exercise its own judgment and to utilise its own skills as it considers most appropriate in order to comply with the Commonwealth's direction or its obligations under the agreement.

2.3 The Company must comply, and must ensure the Consultant complies, with the Code of Conduct set out at Attachment C.

3. **Nature of engagement**

3.1 The Commonwealth engages the Company, and the Consultant through the Company, to provide the Services as an independent contractor and not as the Commonwealth's agent or employee. Neither the Company nor the Consultant has any authority to bind the Commonwealth or act on the Commonwealth's behalf at any time. Neither the Company nor the Consultant is entitled to any benefit from the Commonwealth usually attributable to an employee.

4. **Payment**

4.1 The Commonwealth agrees to pay the Company the fees and other amounts specified in paragraph 3 of the Letter of Engagement for Services provided by the Consultant in accordance with this agreement, within 30 days of the Commonwealth's receipt of a correctly rendered invoice.

4.2 The Commonwealth must pay the Company:

- a. the Daily Rate if the Consultant undertakes 8 or more hours of work on the Services in a 24 hour period; and
- b. a pro-rata proportion of the Daily Rate if the Consultant undertakes less than 8 hours of work on the Services in a 24 hour period.

4.3 The Commonwealth is not obligated to pay the Company more than the Daily Rate for work done within any one 24 hour period, including where the Consultant has been required to travel in the course of that period to undertake the Services.

4.4 The maximum amount payable by the Commonwealth under the agreement, subject to any entitlement of the Consultant to be reimbursed for out of pocket expenses, is the amount specified as the Not to Exceed amount in paragraph 3(b) of the Letter of

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- 4.5 If the Commonwealth fails to pay a correctly rendered invoice within 30 days after the date of receipt, the Commonwealth must pay interest on the unpaid amount at the general interest charge rate (determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due) calculated in respect of each day that the payment was late.
- 4.6 The Commonwealth must pay interest whether or not the Company has submitted a separate invoice for the interest amount. Interest will only be payable in accordance with clause 4.4 if the interest amount exceeds A\$100.

5. Invoice

- 5.1 An invoice is correctly rendered if the amount claimed for payment is correctly calculated in accordance with the agreement, contains details of the days (including any part days) worked during the relevant invoicing period, identifies the purchase order number and the Contact Officer specified in paragraph 6 of the Letter of Engagement and is in the form of a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 5.2 If the agreement provides for reimbursement of out of pocket expenses, the invoice must separately itemise all expenses for which reimbursement is sought, and be accompanied by verifying documentation (including copies of invoices).

6. Price Basis

- 6.1 The fees and other amounts (if any) specified in paragraph 3 of the Letter of Engagement are inclusive of all taxes (excluding GST), duties and government charges imposed or levied in Australia or overseas, remuneration to the Company's officers, employees, agents and subcontractors and costs in respect of procuring and maintaining any insurance required under paragraph 4 of the Letter of Engagement.

7. GST

- 7.1 In this clause, "GST" means a Commonwealth goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions "adjustment event", "input tax credits", "taxable supply" and "tax invoice" have the same meaning as in that Act.
- 7.2 If a party to this agreement (the "Supplier") makes a taxable supply under or in connection with this agreement or in connection with any matter or thing occurring under this agreement to another party to this agreement (the "Recipient") and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.
- 7.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment must be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier must refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient must pay the deficiency to the Supplier.

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- 7.4 If a party to this agreement is entitled, under or in connection with this agreement or in connection with any matter or thing occurring under this agreement, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation must be reduced by the amount of (or the same proportion of the amount of) any input tax credits available in respect of those costs.

8. Intellectual Property

- 8.1 Title in and ownership of all intellectual property (**IP**) associated with any deliverable or material created by the Company or the Consultant in connection with the agreement ("**Foreground IP**") vests on creation in the Commonwealth. The Company agrees, and must ensure that the Consultant agrees, to execute all documents and do all acts and things required by the Commonwealth to give effect to this clause. The Commonwealth acknowledges that the vesting in the Commonwealth of all Foreground IP does not affect IP in any pre-existing material which is incorporated in any deliverable or material ("**Background IP**"). In such circumstances, the Company must grant (or ensure the grant) to the Commonwealth of a royalty free, irrevocable, non-exclusive, perpetual, world-wide licence (including the right to sub licence) of the Background IP to use (including copy, adapt, expand, develop, publish or otherwise change) the pre-existing material.

9. Moral rights

- 9.1 In relation to any material in which the Company, the Consultant or an individual involved in the creation of the material has a moral right as defined under the *Copyright Act 1968* (Cth), the Company consents (and must obtain the consent of the Consultant and/or any relevant individual) to the Commonwealth doing or omitting to do, anything that, but for the consent, would constitute an infringement of those moral rights.

10. Moral rights and IP Warranty

- 10.1 The Company warrants, and must ensure that the Consultant warrants, that the provision of the Services (and the Commonwealth's use of any deliverable developed or supplied under the agreement) will not infringe the intellectual property or moral rights of any person.

11. Privacy

- 11.1 Words defined in the *Privacy Act 1988* (Cth) have the same meaning in this clause.
- 11.2 If the Company, Consultant or a subcontractor obtains personal information in the course of performing the Services, the Company must, and must ensure that the Consultant and subcontractors, use and disclose that information only for the purposes of this agreement. The Company must comply with, and ensure that subcontractors comply with, the obligations contained in the Australian Privacy Principles as if they were an agency under the *Privacy Act*.
- 11.3 The Company must notify the Commonwealth as soon as reasonably practicable if it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 11, whether by the Company, Consultant or subcontractor to whom the Personal Information has been disclosed for the purposes of the Contract.

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12. Confidentiality and Conflict of Interest

- 12.1 The Company must not, and must ensure that the Consultant does not, disclose to a third party any information that it knows, or ought reasonably to know, is confidential, without the prior written consent of the Commonwealth.
- 12.2 The Company warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of this agreement. The Company must ensure that it does not, and that the Consultant does not, engage in any activity that is likely to compromise the ability of the Consultant to perform its obligations fairly and independently. The Company must immediately disclose to the Commonwealth any activity which constitutes or may constitute a conflict of interest.
- 12.3 The Company must execute the Confidentiality and Conflict of Interest Declaration at Attachment B.

13. Commonwealth Disclosure

- 13.1 The Company acknowledges and agrees that the Commonwealth may disclose any and all information relevant to the Services and the Company's engagement to perform the Services to third parties without the need to obtain the Company's prior consent.

14. Commonwealth Items

- 14.1 The Company must not use any Commonwealth supplied documentation, materials or other items (Commonwealth Items) for any purposes other than:
 - a. a purpose for which that Commonwealth Item was designed, manufactured or constructed; and
 - b. for the provision of the Services.

15. Security and safety

- 15.1 The Company must comply with, and must ensure that the Consultant complies with, any security and safety requirements notified to it or the Consultant by the Commonwealth or of which the Company is aware and ensure that its officers, employees, agents and subcontractors, including the Consultant, are aware and comply with such security and safety requirements.
- 15.2 Throughout the provision of the Services, the Consultant and the Commonwealth must proactively identify and cooperate to manage any workplace health and safety issues that may arise.

16. Termination for default

- 16.1 The Commonwealth may terminate the agreement immediately by written notice:
 - a. if either the Company or the Consultant is in breach of any term or warranty contained in the agreement and, where the breach is capable of remedy, the breach is not remedied with 30 days of written notice by the Commonwealth;
 - b. if the Consultant is not available to provide the Services; or
 - c. the Company becomes bankrupt or insolvent, except to the extent the

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exercise of a right under this clause 16.1c is prevented by law.

17. Termination for convenience

17.1 In addition to clause 16, the Commonwealth may at any time and without cause or reason, terminate the agreement (in whole or in part) by written notice to the Company. If the agreement is terminated under this clause, the Commonwealth must pay the Company for Services rendered before the effective date of termination.

18. Notices

18.1 Any notice or communication under the agreement will be effective if it is in writing, signed and delivered to the Contact Officer or the Company (as the case may be) shown in the Letter of Engagement.

19. Assignment

19.1 The Company must not assign any of its rights under the agreement without the written consent of the Commonwealth.

20. Subcontracting

20.1 The Company must not subcontract the whole or part of its obligations under the agreement without the written consent of the Commonwealth. If the Company subcontracts any or all of its obligations in accordance with this clause, the Company is not relieved of any of its liabilities or obligations under the agreement.

21. Variation

21.1 This agreement may only be varied by written agreement of the parties.

22. Applicable law

22.1 The law of the Australian Capital Territory applies to this agreement.

23. Entire agreement:

23.1 The agreement represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

24. Severability

24.1 If any part of the agreement is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the agreement will not be affected and will be read as if that part had been severed.

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ATTACHMENT B

CONFIDENTIALITY DECLARATION

1. The Letter of Engagement signed by Ms Alexandra Kelton and Mr Steven Grzeskowiak, the *Privacy Act 1988* (Cth) and regulations under that Act, and the *Criminal Code Act 1995* (Cth) and regulations under that Act define the obligations of Mr Steven Grzeskowiak with respect to information. Mr Steven Grzeskowiak will have access to by virtue of their role as lead of the Review to identify a location in the current or future Defence estate that could be suitable to store and dispose of spent nuclear fuel and higher-level radioactive waste generated by Australia's nuclear-powered submarines. To clarify these obligations, information received by Mr Steve Grzeskowiak in connection with the Review must be:
 - a. kept confidential,
 - b. used only for the purpose of performing the Services in accordance their Letter of Engagement, and
 - c. only disclosed to persons who are authorised to receive such information.

2. Section 122.4 of the *Criminal Code Act 1995* (Cth) also provides that it is an offence for current and former Commonwealth officers (which includes a person who performs services for or on behalf of the Commonwealth, i.e. contracted personnel) to disclose any fact or document obtained by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity except to a person who is authorised to receive such fact or document. Unauthorized disclosure of Confidential Information may render the engaged party and personnel liable to prosecution and imprisonment under the act.

Declaration:

I, S.R. GRZESKOWIAK of S.G. advice Pty Ltd

[Printed Name]

[Organisation/Employer]

acknowledge my obligations to keep information provided to me in relation to the NPSTF Review confidential and to only disclose any such information to persons who are authorised to receive that information. s47F

s47F

Sign	Date: <u>27/02/2023</u>
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CONFLICT OF INTEREST DECLARATION

As Lead of the Review, I have been asked to disclose any interest that I may have which could preclude me from properly undertaking my duties in respect of my role.

I acknowledge that it is my responsibility to declare any actual, perceived or potential conflicts of interest and that in doing so I will have regard to any entity that I believe, or Defence has identified, as being relevant to Lead NPSTF Review (regardless of whether that entity is listed at Table 1 below).

I set out below any actual, perceived or potential conflicts of interest of which I am aware:

<p>Shareholdings and other business interests:</p> <p>Do you have shareholdings, investments or other business interests in, interaction or dealings with any tenderer or potential tenderer? This includes holding nominee shareholdings on behalf of others.</p> <p>If they could conflict with NPSTF Review give the name and nature of the operations of the tenderer or potential tenderer, and the nature of the interest.</p>	<p><i>[either set out interests, or declare no conflicts exist. You may use the back of this form to set out proposals for the management of any declared interests]</i></p> <p>None</p>
<p>Personal Interests:</p> <p>Do you have any personal association with any tenderer or potential tenderer? If so, provide details.</p>	<p>None</p>
<p>Other interests:</p> <p>Are you aware of any other substantial financial or other interest held or accruing to you or a member of your immediate family which could reasonably raise an expectation of a conflict of interest with the NPSTF Review? If so, provide details.</p>	<p>None.</p>

This information is true and correct to the best of my knowledge and belief. If a further actual, perceived or potential conflict of interest arises in the future I will immediately provide an updated declaration to the NPSTF Probity Manager at taskforce.probity@defence.gov.au detailing that conflict of interest.

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Si	Date: 27/02/23
Pr S.R. GRZESKOWIAK	Position: DIRECTOR.

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TABLE 1: LIST OF POTENTIAL INTERESTED ENTITIES*

This list is indicative only and may be updated from time to time. It is intended as a guide and you should consider whether you may have a personal, professional and/or financial interest in an entity which may be involved in the base services industry regardless of whether that entity is listed here. You should consider whether the declaration you have provided needs to be updated when any changes are made to the list of potentially interested entities below.

List of potential suppliers to the Nuclear Powered Submarine Taskforce, which includes (but is not limited to) companies such as those listed below:	
s47E(d)	
Consideration should also be given to related bodies corporate of the companies listed, such as parent companies, Australian and overseas subsidiary companies and affiliated companies of those entities listed in Table1.	

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ATTACHMENT C

CODE OF CONDUCT

1. As a service provider to the Commonwealth, the Company and the Consultant are expected to comply with the following:
 - a. act honestly, in good faith and in the best interests of Defence as a whole;
 - b. use due care and diligence in performing the Services;
 - c. accept that in carrying out the Services, your primary responsibility is to Defence;
 - d. not make improper use of information acquired during the performance of the Services;
 - e. not take improper advantage of your position;
 - f. assert your independence in judgment and actions and take all reasonable steps to be satisfied with the soundness of your advice;
 - g. not engage in unacceptable behavior or conduct likely to bring discredit to Defence; and
 - h. comply with the spirit, as well the letter of the law and with the principles of this Code.