

PART A – DRAFT CONTRACT

RFT 2016/10

2017 NAPLAN online writing marking operation

DRAFT CONTRACT

DRAFT CONTRACT IN RELATION TO THE 2017 NATIONAL ASSESSMENT PROGRAM - LITERACY AND NUMERACY (NAPLAN) ONLINE WRITING MARKING OPERATION

Australian Curriculum, Assessment and Reporting Authority
ABN 54 735 928 084

^Party 2 Name^

^Party 2 ABN^ ^Party 2 ACN^

Tenderers should refer to **PART B – REQUEST FOR TENDER (INCLUDING TENDER RESPONSE SCHEDULES)** which sets out the conditions of tender and tender response requirements.

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DRAFT CONTRACT

DRAFT CONTRACT IN RELATION TO THE 2017 NATIONAL ASSESSMENT PROGRAM - LITERACY AND NUMERACY (NAPLAN) ONLINE WRITING MARKING OPERATION

Date

This Contract is made on ^{^day(numeric) month(name) year(numeric) in full^}.

Parties

This Contract is made between and binds the following parties:

1. **Australian Curriculum, Assessment and Reporting Authority (ACARA)** ABN 54 735 928 084
Level 13, Centennial Plaza, 280 Elizabeth Street, Sydney NSW 2000
2. ^{^Party 2 Name^ ^Party 2 ABN and ACN/ARBN if applicable^}
^{^Party 2 Address^} (the Contractor)

Context

This Contract is made in the following context:

- A. ACARA requires the provision of trial test administration consultancy services in support of its conduct of the 2017 National Assessment Program - Literacy and Numeracy (NAPLAN) program (the **Project**)
- B. The Contractor has fully informed itself about the requirement and has submitted the proposal referred to in Item 1 of the Schedule.
- C. The parties have agreed that the Contractor will perform the Services for ACARA on the terms and conditions set out in this contract.

Operative Provisions

1. Interpretation

1.1. Definitions

1.1.1. In this contract, unless the context indicates otherwise:

- | | |
|-----------------------|---|
| ACARA | includes any successor entity to ACARA which is from time to time responsible for administering this contract; |
| ACARA Material | means any Material: <ol style="list-style-type: none">a. provided by ACARA to the Contractor for the purposes of this contract; orb. derived at any time from the Material referred to in paragraph a; |
| Attachment | means a document attached to the contract or incorporated by reference in the Schedule, and includes the Attachment as amended or replaced from time to time by agreement in writing between the parties; |

Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item 25;
Commencement Date	means the date on which this contract is made, unless otherwise specified in Item 5;
Confidential Information (of the Contractor)	means information that is by its nature confidential and is described in Item 20.
Contract Material	means any Material (including Existing Material and Third Party Material): <ul style="list-style-type: none"> a. created for the purposes of this contract; b. provided or required to be provided to ACARA as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b;
Existing Material	means any Material in existence at the Commencement Date and specified in Item 15;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
Instalment	means the fee payable under clause 3.1.1.a and Item 10 in relation to a specified part or the whole of the Services;
Intellectual Property	includes: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information;
Material	means anything in relation to which Intellectual Property rights arise;
Moral Rights	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;
Official Information	means any information developed, received or collected by or on behalf of ACARA to which the Contractor gains access under or in connection with this contract, and

	includes the Contract Material and the terms of the contract;
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Contractor - any natural person who is an officer, employee, agent or professional advisor of the Contractor or of its subcontractors; and b. in relation to ACARA - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of ACARA.
Project Manager	means the person specified (by name or position) in Item 7 or any substitute notified to the Contractor;
Project Plan	means the plan developed by the parties setting out the timeframe for the delivery of the Services, as approved by ACARA;
Schedule	means the schedule to this contract entitled 'Contract Details', and includes the Schedule as amended or replaced from time to time by agreement in writing between the parties;
Education Council	means the COAG Education Council comprised of State, Territory, and Australian Government Ministers with responsibility for the portfolios of school education and early childhood development and includes any successor or replacement body with the same or similar functions
Services	means the services described in Item 2 and includes the provision to ACARA of the Material specified in Item 3; and
Specified Personnel	means the Personnel specified in Item 9 as required to perform all or part of the work constituting the Services; and
Third Party Material	means any Material in which the Intellectual Property rights are owned by third parties.

1.2. Interpretation

1.2.1. In this contract, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in the Schedule;
- i. the Schedule and any Attachments form part of this contract;
- j. if any conflict arises between the terms and conditions contained in the clauses of this contract and any part of the Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
- k. if any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of contract

- 1.3.1. This contract records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the contract remains in force.
- 1.3.4. A provision of this contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement

- 1.4.1. The terms of this contract apply on and from the Commencement Date.

2. Provision of Services

2.1. Principal obligations of Contractor

- 2.1.1. The Contractor agrees to:
 - a. perform the Services as specified in Item 2 as part of the Project and in accordance with the Project Plan;
 - b. provide to ACARA the Material specified in Item 3;
 - c. adopt relevant best practice, including any ACARA, Commonwealth or industry standards and guidelines including those specified in Item 4;
 - d. comply with the time frame for the performance of the Services specified in Item 5; and
 - e. submit invoices, and any required supporting documents, in the manner specified in Item 6.
- 2.1.2. The Contractor agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by ACARA under this contract to be determined.

2.2. Liaison with Project Manager

- 2.2.1. The Contractor agrees:

- a. to liaise with the Project Manager and other officers of ACARA as reasonably required and necessary to facilitate the successful implementation and completion of the Project;
- b. to comply with directions of the Project Manager that are consistent with this contract; and
- c. to report to the Project Manager on the basis agreed between ACARA and the Contractor in the Project Plan.

2.3. Subcontractors

- 2.3.1. The Contractor agrees not to subcontract the performance of any part of the Services without ACARA's prior written approval.
- 2.3.2. ACARA may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.
- 2.3.3. ACARA has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item 8.
- 2.3.4. The Contractor agrees to make available to ACARA (if requested), details of all subcontractors engaged in the performance of the Services.
- 2.3.5. The Contractor acknowledges, and must inform all subcontractors that, ACARA may publicly disclose the names of any subcontractors engaged in the performance of the Services.

2.4. Specified Personnel

- 2.4.1. The Contractor agrees that the Specified Personnel will perform work in relation to the Services in accordance with this contract.
- 2.4.2. If Specified Personnel are unable to perform the work as required under clause 2.4.1, the Contractor agrees to notify ACARA immediately.
- 2.4.3. The Contractor agrees, at the request of ACARA acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Services.
- 2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Contractor will provide replacement Personnel acceptable to ACARA at no additional cost and at the earliest opportunity.

2.5. Responsibility of Contractor

- 2.5.1. The Contractor is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:
 - a. involvement by ACARA in the performance of the Services;
 - b. subcontracting of the Services;
 - c. acceptance by ACARA of Specified Personnel; or
 - d. payment made to the Contractor on account of the Services.

2.6. ACARA Option

- 2.6.1. At any time prior to completion of the Project, ACARA may, but is under no obligation to, issue to the Contractor a notice to extend the Contract for the provision of NAPLAN online writing marking operation services in support of its conduct of the 2018 National Assessment Program - Literacy and Numeracy (NAPLAN) program (Option Notice).

- 2.6.2. The Option Notice must contain:
- a. a description of the Services required;
 - b. a time frame for performance of the Services; and
 - c. ACARA's proposed fees.
- 2.6.3. After receiving the Option Notice, the Contractor will notify ACARA if it accepts extension of the Contract.
- 2.6.4. If the Contractor accepts extension of the Contract, the Contract will be extended on the same terms and conditions as this Contract except:
- a. the Services required in Item 2 will be amended to reflect the Option Notice (or as otherwise agreed between the parties);
 - b. the time frame for the performance of the Services specified in Item 5 will be amended to reflect the Option Notice (or as otherwise agreed between the parties);
 - c. the Fees specified in Item 10 will be amended to reflect the Option Notice (or as otherwise agreed between the parties); and
 - d. this clause 2.6 is deleted.
- 2.6.5. If the Contractor does not respond to the Option Notice within 14 days of receiving the notice, or such other period as ACARA in its absolute discretion allows for acceptance, then this will be treated as notification by the Contractor to ACARA that the Contract will not be extended.

3. Fees, allowances and assistance

3.1. Principal obligations of ACARA

- 3.1.1. ACARA agrees to:
- a. pay the fees in the Instalments specified in Item 10;
 - b. pay the allowances and meet the costs specified in Item 11;
 - c. make all payments as and when specified in Item 6; and
 - d. provide facilities and assistance as specified in Item 12.

3.2. ACARA's rights to defer payment

- 3.2.1. ACARA will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long as the Contractor has not completed, to the satisfaction of ACARA, that part of the Services to which the Instalment relates.

3.3. Taxes, duties and government charges

- 3.3.1. Except as provided by this clause 3.3, the Contractor agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this contract.
- 3.3.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this contract is exclusive of any GST imposed on the supply.
- 3.3.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this contract, on receipt of a tax invoice from the supplier, the recipient will pay without

setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 3.3.4. No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

3.4. Superannuation

- 3.4.1. This contract is entered into on the understanding that ACARA is not required to make any superannuation contributions in connection with the contract, unless stated to the contrary in Item 10.

4. Intellectual Property

4.1. Use of ACARA Material

- 4.1.1. ACARA agrees to provide Material to the Contractor as specified in Item 13.
- 4.1.2. ACARA grants (or will procure) a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the ACARA Material for the purposes of this contract.
- 4.1.3. The Contractor agrees to use the ACARA Material strictly in accordance with any conditions or restrictions set out in Item 14, and any direction from ACARA.

4.2. Rights in Contract Material

- 4.2.1. Intellectual Property in all Contract Material vests or will vest in ACARA.
- 4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:
- a. any ACARA Material;
 - b. any Existing Material; or
 - c. any Third Party Material,
- that is incorporated into the Contract Material.
- 4.2.3. The Contractor grants to (or will procure for) ACARA a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, distribute, communicate and exploit any Existing Material in conjunction with the Contract Material for any purpose.
- 4.2.4. The Contractor grants to (or will procure for) ACARA a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, distribute and communicate any Third Party Material in conjunction with the Contract Material for any purpose.
- 4.2.5. The Contractor agrees, and will arrange for any third party, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2 on request by ACARA.
- 4.2.6. The Contractor represents and warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

4.2.7. In all publications produced by the Contractor for ACARA under this contract, the Contractor will include the copyright statement set out in Item 16, or such other statement as notified to the Contractor by ACARA from time to time.

4.3. Intellectual Property Register

4.3.1. The Contractor will establish and maintain a register detailing each item of Contract Material in a form acceptable to ACARA (the IP Register). The IP Register must, at a minimum, include the following details:

- a. a description of the Contract Material (including a description of any Existing Material or Third Party Material incorporated in the Contract Material and details of where and how that the Material has been incorporated into the Contract Material);
- b. the authors of the Contract Material, and, in respect of any Existing Material or Third Party Material, the owners of that Material; and
- c. in respect of any Third Party Material incorporated in the Contract Material, the date and terms of any licence in respect of the Third Party Material.

4.3.2. The Contractor must ensure the IP Register is complete and up to date throughout the term of the contract and must provide ACARA with a copy of the IP Register upon request during the term of the contract and on termination or expiry of the contract.

4.4. Moral Rights

4.4.1. In this clause 4.4:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
 - b. supplementing the Contract Material with any other Material;
 - c. using the Contract Material in a different context to that originally envisaged; and
 - d. the acts or omissions, specifically set out in Item 17;
- but does not include false attribution of authorship.

4.4.2. Where the Contractor is a natural person and the author of the Contract Material, he or she:

- a. consents to the performance of the Permitted Acts by ACARA or any person claiming under or through ACARA (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to ACARA's general policies and practices regarding Moral Rights as described in Item 17.

4.4.3. Where clause 4.4.2 does not apply, the Contractor agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by ACARA or any person claiming under or through ACARA (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to ACARA; and

- b. to ensure that each author's attention is drawn to ACARA's general policies and practices regarding Moral Rights as described in Item 17.

4.4.4. This clause 4.4 does not apply to any ACARA Material incorporated in the Contract Material.

5. Confidentiality of Official Information and other security obligations

5.1. Interpretation

5.1.1. In this clause 5:

Official Resources

includes:

- a. Official Information;
- b. people who work for or with ACARA; and
- c. assets belonging to (even if in the possession of contracted providers) or in the possession of ACARA;

Security Classified Resources

means Official Resources that, if compromised, could have adverse consequences for ACARA; and

Security Incident

means a security breach, violation, contact or approach from those seeking unauthorised access to or disclosure of Official Resources.

5.2. Confidentiality of Official Information

5.2.1. The Contractor will not, without prior written authorisation of ACARA, disclose any Official Information to any person (unless required to do so by law).

5.2.2. The Contractor is authorised, subject to clause 5.3.1.a to 5.3.1.c, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.

5.2.3. The Contractor agrees, on request by ACARA at any time, to arrange for the Personnel and subcontractors referred to in clause 5.2.2 to give a written undertaking in a form acceptable to ACARA relating to the use and non-disclosure of Official Information.

5.2.4. The Contractor agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

5.2.5. The obligations of the Contractor under this clause 5.2 is subject to any rights that the Contractor may have under the Public Interest Disclosure Act 2013.

5.3. Other security obligations of Contractor

5.3.1. The Contractor agrees:

- a. to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
- b. to make its Personnel available to attend any security training provided by ACARA;
- c. to notify ACARA of any change in the personal circumstances of Personnel referred to in 5.3.1.a;

- d. to notify ACARA immediately if it becomes aware that a Security Incident has occurred and otherwise implement ACARA's procedures for Security Incident reporting as advised by ACARA from time to time;
- e. not to perform the Services outside Australia without ACARA's prior written approval; and
- f. to comply with the additional security requirements specified in Item 18, if any, and any variations or additions to those requirements as notified by ACARA from time to time.

5.3.2. The Contractor agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to ACARA on request.

6. Privacy

6.1. Obligations of Contractor in relation to privacy

6.1.1. The Contractor agrees, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by the ACARA, would be a breach of the requirements of Division 2 of Part III of the Privacy Act; and
- b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 199, to the extent that they are consistent with the obligations referred to in subclause a above.

6.1.2. The Contractor agrees to notify ACARA immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 6.1.1.

7. Dealing with Copies

7.1. Interpretation

7.1.1. In clause 7.2:

Copy means any document, device, article or medium in which ACARA Material, Contract Material, or Official Information is embodied.

7.2. Actions at end of contract

7.2.1. The Contractor agrees, on expiration or termination of this contract, to deal with all Copies as directed by ACARA, subject to any requirement of law binding on the Contractor.

8. Confidential Information of Contractor

8.1. Confidential Information not to be disclosed

8.1.1. Subject to clause 8.2, ACARA will not, without the prior written authorisation of the Contractor, disclose any Confidential Information of the Contractor to a third party.

8.2. Exceptions to obligations

8.2.1. The obligations of ACARA under this clause 8 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by ACARA to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this contract;
- b. is disclosed by ACARA to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- c. is disclosed by ACARA to the responsible Minister;
- d. is disclosed by ACARA in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by ACARA within ACARA's organisation, or with another agency including Education Council, where this serves the ACARA's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 8.

8.2.2. Where ACARA discloses Confidential Information to another person pursuant to clauses 8.2.1.a - 8.2.1.e, ACARA will notify the receiving person that the information is confidential.

8.2.3. In the circumstances referred to in clauses 8.2.1.a, 8.2.1.b and 8.2.1.e, ACARA agrees not to provide the information unless the receiving person agrees to keep the information confidential.

8.3. Period of confidentiality

8.3.1. The obligations under this clause 8 in relation to an item of information described in Item 20 continue for the period set out there in respect of that item.

9. Liability

9.1. Proportionate liability regimes excluded

9.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this contract.

9.2. Indemnity

9.2.1. The Contractor indemnifies ACARA from and against any:

- a. cost or liability incurred by ACARA;
- b. loss of or damage to property of ACARA; or
- c. loss or expense incurred by ACARA in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by ACARA,

arising from either:

- d. a breach by the Contractor of this contract;
- e. an infringement or alleged infringement of a person's Intellectual Property or Moral Rights as a result of any use by ACARA or a third party of the Contract Material in accordance with this contract; or
- f. an act or omission involving fault on the part of the Contractor or its Personnel in connection with this contract.

- 9.2.2. The Contractor's liability to indemnify ACARA under clause 9.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of ACARA or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 9.2.3. The right of ACARA to be indemnified under this clause 9.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but ACARA is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

10. Dispute resolution

10.1. Procedure for dispute resolution

- 10.1.1. A party will not commence arbitration or court proceedings about a dispute, difference, question or claim arising out of this contract (Dispute) unless it has complied with this clause 10.
- 10.1.2. A party claiming a Dispute has arisen will notify the other party giving details of the Dispute (Notification).
- 10.1.3. On receipt of a Notification each party agrees to negotiate with the other party in good faith to resolve such a Dispute.
- 10.1.4. If the Dispute is not resolved under clause 10.1.3 within 5 business days of the Notification, the parties will refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited (ACDC) for resolution in accordance with the Mediation Guidelines of the ACDC and will enter into ACDC's standard mediation agreement in force at the time this contract is executed by the parties, or such other mediation as is agreed by the parties. The costs of any mediation are to be borne equally between the parties. Each party will bear its own costs of complying with this clause 10.
- 10.1.5. If the Dispute is not resolved under clause 10.1.4 within 10 days of referral to ACDC, either party may initiate proceedings in a court.

10.2. Continued performance

- 10.2.1. Despite the existence of a Dispute, the Contractor will (unless requested in writing by ACARA not to do so) continue to perform the Services.

10.3. Exemption

- 10.3.1. This clause 10 does not apply to:
- a. action by ACARA under or purportedly under clause 11.1;
 - b. action by either party under or purportedly under clause 11.2; or
 - c. legal proceedings by either party seeking urgent interlocutory relief.

11. Termination or reduction in scope of Services

11.1. Termination or reduction in scope for convenience

- 11.1.1. ACARA may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the Services immediately.
- 11.1.2. The Contractor agrees, on receipt of a notice of termination or reduction:
- a. to stop or reduce work as specified in the notice;

- b. to take all available steps to minimise loss resulting from that termination or reduction; and
- c. to continue work on any part of the Services not affected by the notice.

11.1.3. In the event of termination under clause 11.1.1, ACARA will be liable only:

- a. to pay any Instalment relating to Services completed before the effective date of termination;
- b. to reimburse any expenses the Contractor unavoidably incurs relating entirely to Services not covered under clause 11.1.3.a;
- c. to pay any allowance and meet any costs unavoidably incurred under Item 11 before the effective date of termination; and
- d. to provide the facilities and assistance necessarily required under Item 12 before the effective date of termination.

11.1.4. ACARA will not be liable to pay amounts under clause 11.1.3.a and 11.1.3.b which would, added to any fees already paid to the Contractor under this contract, together exceed the fees set out in Item 10.

11.1.5. In the event of a reduction in the scope of the Services under clause 11.1.1, ACARA's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

11.1.6. The Contractor will not be entitled to compensation for loss of prospective profits.

11.2. Termination or reduction in scope for fault

11.2.1. If a party fails to satisfy any of its obligations under this contract, then the other party - *if it considers that the failure is:*

- a. *not capable of remedy* - may, by notice, terminate the contract immediately; or
- b. *capable of remedy* - may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the contract immediately by giving a second notice.

11.2.2. ACARA may also by notice terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Contractor:

- a. *being a corporation* - comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*, or has an order made against it for the purpose of placing it under external administration; or
- b. *being an individual* - becomes bankrupt or enters into a scheme of arrangement with creditors.

12. Notices

12.1. Format, addressing and delivery

12.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Contractor to ACARA* - addressed to the Project Manager at the address specified in Item 21 or as otherwise notified by ACARA; or

- b. *if given by ACARA to the Contractor* - given by the Project Manager (or any superior officer to the Project Manager) and addressed (and marked for attention) as specified in Item 22 or as otherwise notified by the Contractor.

12.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

12.2. When effective

12.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address;
- c. *if transmitted electronically* - upon actual receipt by the addressee.

12.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

13. General provisions

13.1. Occupational health and safety

13.1.1. The Contractor agrees, in carrying out this contract, to comply with:

- a. all relevant legislation, codes of practice and national standards relating to occupational health and safety; and
- b. all applicable policies and procedures relating to occupational health and safety including those that apply to ACARA's premises when using those premises.

13.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 13.1.1, the Contractor will comply with those policies and procedures that produce the highest level of health and safety.

13.2. Audit and access

13.2.1. The Contractor agrees:

- a. to give the Project Manager, or any persons authorised in writing by the Project Manager, access to premises where the Services are being performed or where Official Resources are located; and
- b. to permit those persons to inspect and take copies of any Material relevant to the Services.

13.2.2. The rights referred to in clause 13.2.1. are subject to:

- a. ACARA providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

13.2.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause 13.2.

13.2.4. This clause 13.2 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

Note: For information about the *Auditor-General Act 1997 (Cth)* see the fact sheet referred to in Item 24.

13.3. Insurance

13.3.1. The Contractor agrees:

- a. to effect and maintain the insurance specified in Item 23; and
- b. on request, to provide proof of insurance acceptable to ACARA.

13.3.2. This clause 13.3 continues in operation for so long as any obligations remain in connection with the contract. Any professional indemnity insurance coverage must be in effect from the commencement of the contract and maintained for the period two (2) years after the expiry of the contract.

13.4. Extension of provisions to subcontractors and Personnel

13.4.1. In this clause 13.4:

Requirement means an obligation, condition, restriction or prohibition binding on the Contractor under this contract.

13.4.2. The Contractor agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this contract imposes all relevant Requirements on the other party.

13.4.3. The Contractor agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by ACARA.

13.5. Conflict of interest

13.5.1. In this clause 13.5:

Conflict means any matter, circumstance, interest, or activity affecting the Contractor, its Personnel or subcontractors which may or may appear to impair the ability of the Contractor to provide the Services to ACARA diligently and independently.

13.5.2. The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

13.5.3. If, during the period of this contract a Conflict arises, or appears likely to arise, the Contractor agrees:

- a. to notify ACARA immediately;
- b. to make full disclosure of all relevant information relating to the Conflict; and
- c. to take any steps ACARA reasonably requires to resolve or otherwise deal with the Conflict.

13.6. Relationship of parties

- 13.6.1. The Contractor is not by virtue of this contract an officer, employee, partner or agent of ACARA, nor does the Contractor have any power or authority to bind or represent ACARA.
- 13.6.2. The Contractor agrees:
- a. not to misrepresent its relationship with ACARA; and
 - b. not to engage in any misleading or deceptive conduct in relation to the Services.

13.7. Waiver

- 13.7.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.
- 13.7.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

13.8. Variation

- 13.8.1. A variation of this contract is binding only if agreed in writing and signed by the parties.

13.9. Assignment

- 13.9.1. The Contractor cannot assign its obligations, and agrees not to assign its rights, under this contract without ACARA's prior written approval.
- 13.9.2. If the administrative arrangements regarding ACARA are altered such that the program the object of this contract is transferred to another government entity, ACARA may assign its rights under this contract to that entity subject to that entity assuming ACARA's obligations under this contract. The Contractor shall have no objection to any such assignment or assumption.

13.10. Survival

- 13.10.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:
- a. licensing of Intellectual Property;
 - b. confidentiality;
 - c. security;
 - d. privacy;
 - e. dealing with copies;
 - f. books and records;
 - g. audit and access;
 - h. an indemnity;
- or any other provision which expressly or by implication from its nature is intended to continue.

13.11. Compliance with Legislation

- 13.11.1. In this clause 13.11:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

- 13.11.2. The Contractor agrees to comply with any Legislation applicable to its performance of this contract.
- 13.11.3. The Contractor acknowledges that its attention has been drawn to the fact sheet referred to in Item 24 which provides details of some Legislation that may be applicable to the performance of the contract.

13.12. Applicable law

- 13.12.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item 25.
- 13.12.2. The parties submit to the jurisdiction of the courts of that State or Territory.

13.13. Access to documents

In this clause 13.13, 'document' and 'Commonwealth contract' have the same meaning as in the ***Freedom of Information Act 1982*** (Cth).

- 13.13.1. The Contractor acknowledges that this agreement is a Commonwealth contract.
- 13.13.2. Where ACARA has received a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of this contract (and not to the entry into the contract), ACARA may at any time by written notice require the Contractor to provide the document to ACARA and the Contractor must, at no additional cost to ACARA, promptly comply with the notice.
- 13.13.3. The Contractor must include in any subcontract relating to the performance of this contract provisions that will enable the Contractor to comply with its obligations under this clause 13.13.

1. Proposal

^To be completed following selection of the preferred Tenderer^

2. Services

(see clause 2.1.1.a)

2.1. Introduction

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is responsible for the development of rigorous, world class Australian curriculum from Foundation to Year 12.

To complement the development of an Australian curriculum, ACARA is also responsible for developing and administering a national assessment program aligned to the national curriculum that measures students' progress, and the provision of information, resources, support and guidance to the teaching profession.

The National Assessment Program – Literacy and Numeracy (NAPLAN) commenced in 2008. Every year from 2008, all students in Years 3, 5, 7 and 9 have been assessed on the same days using national tests in Reading, Writing, Language Conventions (Spelling, and Grammar and Punctuation) and Numeracy. Test Administration Authorities (TAAs) in each state and territory are responsible for the implementation, administration and marking of the NAPLAN tests in their jurisdictions.

ACARA publishes annually the My School website, www.myschool.edu.au, which provides a profile page for almost 10,000 Australian schools and is populated from a data repository created by ACARA. ACARA holds national schools data, including NAPLAN data, aimed at supporting school level performance reporting.

The National Assessment and Surveys Online Program (NASOP) is designed to deliver national assessments and surveys online. Within this program, among other responsibilities, ACARA is responsible for planning and implementing a clearly defined assessment and reporting research agenda that will allow reporting on related issues and options for delivering NAPLAN online.

In 2012 ACARA developed a research agenda to provide findings on a range of issues and provide evidence that would allow decisions to be made regarding the transition of NAPLAN from a paper-based test to a computer-based assessment. Research is continuing in 2016 in readiness for the first administration of NAPLAN online in May 2017, the first transition year.

From 2017, NAPLAN will be delivered online by ACARA in partnership with Educational Services Australia (ESA) with each responsible for interrelated aspects. ACARA is responsible for delivering the assessment and reporting services, including research into the online delivery of assessment programs. ESA is responsible for the delivery of the technical services for the Online National Assessment Platform ('the platform').

State/territory education authorities will make decisions about the logistics and timing to move NAPLAN online for their state/territory. These groups will also lead implementation in their state/territory.

Full transition to NAPLAN online is expected over a three to four year period.

ACARA reports to, and is directed by, the Education Council.

ACARA's work is carried out in collaboration with a wide range of stakeholders, including teachers, principals, governments, state and territory education authorities, professional education associations, community groups and the general public.

2.2. Background

2.2.1. National Assessment Program – Literacy and Numeracy

The National Assessment Program — Literacy and Numeracy (NAPLAN) is the main assessment program conducted by ACARA. Every year all Australian students in Years 3, 5, 7 and 9 are assessed in reading, writing, language conventions and numeracy. The tests are equated longitudinally each year in order to ensure comparability of results from year to year, and to enable tracking of students' results. Test Administration Authorities (TAAs) in each state and territory are responsible for the implementation, administration and marking of the NAPLAN tests in their jurisdictions.

In the writing domain, for the paper-based administration, students' writing scripts are hand-marked in jurisdictional-operated marking centres. An extremely high level of security surrounding NAPLAN testing materials is essential to ensure validity and fairness of the assessments.

Until 2014, students in Years 3, 5, 7 and 9 completed the same writing prompt. In 2015, the writing assessment used two tasks (prompts). Students in Years 3 and 5 sat one task, and students in Years 7 and 9 sat another so that more age-appropriate subject matter was presented to the two student groups. The 2017 writing assessment will follow the 2015 model.

In 2017, the majority of students will produce handwritten text for their NAPLAN writing assessment in a pen and paper based-administration of the NAPLAN program. However, a small percentage of students (estimated to be up to 10% of the total national cohort of NAPLAN test takers) will sit the first NAPLAN assessments online, in parallel with the paper-based administration. Students sitting the writing test online will type their writing response into the test delivery component of the purpose-built National Online Assessment Platform ('the platform').

A marking and scoring system (M&SS) is currently being built as part of the platform and is expected to be deployed for the human marking of the typed scripts following the May 2017 NAPLAN online administration. Students' typed scripts in the first instance will be scored by an Automated Essay Scoring (AES) engine. Following the automated scoring, all scripts and their scores will be available in the M&SS for blind human marking. Should there be discrepancies between the automated scores and the human marker scores, a third mark will be provided by an experienced human marker.

In order to facilitate accurate and consistent marking of both paper-based scripts (by jurisdictions) and online scripts (by the Contractor), a centrally-delivered training session for lead markers, including lead markers appointed by the Contractor, will be held at a secure central location prior to the NAPLAN tests in April 2017. Centre leaders will be provided with a training package containing identical marking materials, to be delivered to markers in their jurisdictions, or in the Contractor's online marking centre, immediately prior to the NAPLAN administration. In this way, consistent training is delivered to all markers across Australia for both handwritten and typed scripts.

Students' hand-written scripts will be scored on-screen by human markers in state and territory operated marking centres. These scripts will *not* be marked on the M&SS component of the platform.

2.2.2. 2017 NAPLAN online writing marking operation

During the administration of the 2017 NAPLAN online tests, each student in schools nationally will sit one writing test. There will be up to four writing tasks for the 2017 online test. Students in Years 3 and 5 will sit one of up to two tasks, and students in Years 7 and 9 will sit one of up to two different tasks. The tests will be delivered to students on the test delivery platform (via PCs, laptops and tablets). The tests will then be submitted to the automated essay scoring engine (AES) for automated marking.

In addition to each script receiving a score from the AES engine, ACARA has agreed to human-mark 100% of the scripts in 2017 and conduct an adjudication process for discrepant scripts – i.e. determine the final score for scripts where the marks between the automated score (from the AES) and the human score do not agree (within the marking protocol guidelines).

2.3. Purpose

The purpose of this Contract is to engage a qualified and experienced Contractor to conduct an online-web-based marking operation using the Marking and Scoring System component of the platform in a centrally located venue (or venues) for the human marking of students' online writing scripts from the administration of the 2017 NAPLAN online tests (9 – 19 May 2017).

The contractor will be required to hire suitably qualified personnel to undertake the marking.

The Contractor will also be required to conduct an adjudication process for discrepant scripts between the AES engine and human marking – i.e. determine a final score for scripts where the marks between the AES engine and the human marking do not agree within the marking protocol guidelines.

In the event that the Marking and Scoring System component of the platform is unavailable in sufficient time to conduct the online marking operation, the contractor will be required to supply a web-based online marking system that accepts typed scripts (provided in Excel) for the purposes of marking the NAPLAN online scripts.

2.4. Work to be undertaken by other contractors

Education Services Australia (ESA) will provide the Test Delivery and Marking and Scoring System components of the Online National Assessment Platform ('the platform'), on which the test administration and the human marking will take place. ESA will provide access to writing scripts and scores from the Automated Essay Scoring (AES) engine. ACARA is responsible for the administration of the marking platform.

ACARA expects to take delivery of the M&SS from ESA in January. It is expected that testing will have been conducted by March and the system will be fully operational for the May marking operation.

The Contractor will be required to liaise with ACARA in relation to the platform. Key points of contact may include:

- provision of technical support during training in the platform
- set up of markers
- implementation of marking design
- human marking of the online writing scripts
- access to marker and marking progress reports
- adjudication of discrepancies between AES scores and human scores
- export of data.

2.5. Scope of project

The successful Contractor will be required to:

- provide all requested project documentation e.g. project plan, test security plan, risk management plan, project close-out report (see Deliverables 1 and 2)
- provide a quality assurance plan which details quality assurance measures that will be taken to ensure that marking of writing scripts is implemented as planned, in an accurate and consistent manner (see Deliverable 1)
- establish a secure, central marking centre (or centres) with technical support (unrelated to the platform) required for marking, including provision of computer hardware fitted with web-based programs as specified by ACARA (e.g. minimum requirements of Chrome 32/ Internet Explorer 11/Safari 5/Firefox 15; minimum requirements of Windows 7/Mac OSX 10.7) for markers' use, and facilities for marker training. The marking centre may be situated in any major Australian capital city*. Home based marking will not be considered (see Deliverable 3).

- employ suitably experienced marking personnel: centre leader(s), team leaders and markers, to carry out single-blind human marking of the 2017 NAPLAN online writing scripts and, where necessary, who will provide a third expert mark should the AES mark and the human mark be discrepant (see Deliverable 4).
- in conjunction with ACARA, set up the marking operation in the platform. The Contractor would be required to prepare/assign marker identities in the platform, assign scripts to markers as per the marking requirements, and implement check-marking and control script delivery procedures (see Deliverable 5). ACARA will provide user guides and training in the platform for markers and technical support for the platform. In the event that the M&SS is not available, the Contractor will be required to use a Contractor-supplied marking platform (see Deliverable 5).
- seed common scripts during the marking operation that will be used as part of the marker quality control process (see Deliverable 5)
- conduct single blind human marking of students' online scripts plus remarking and adjudication of scripts that are discrepant with AES scores in accordance with the marking rubrics and specifications provided by ACARA. (During the resolution of discrepant scripts, the AES and human scores will be visible)**. (see Deliverable 6)
- should a contractor-supplied marking platform be used, provide data files according to ACARA's specifications with quality assurance processes in place to ensure the accuracy and consistency of these data (see Deliverable 7)
- provide secure storage and destruction of all data (see Deliverable 8)
- outline a plan to provide feedback regarding contractual, financial and day-to-day-management aspects of the project, including a project close-out meeting and project completion report (see Deliverable 2)
- provide progress reports and consult regularly with ACARA (see Deliverable 2).

Role of the Contractor

The Contractor will be responsible for implementing the project objectives.

The Contractor is expected to work in close collaboration with ACARA's Project Manager and Writing Test Manager at all stages of the project to ensure that the procedures and methodologies are consistent with ACARA's writing marking protocols, and that the project deliverables and timelines are met. The Contractor's Project Director will report to ACARA's Project Manager on the basis agreed between ACARA and the Contractor in the project plan and at any other times when clarification is required.

The Contractor will be required to provide the following:

2.5.1. Deliverable 1 – Project plan

The Contractor will be required to provide a project plan after formal acceptance of a purchase order from ACARA. The project plan will need to be approved by ACARA and include the following:

- An overall project management plan which includes:
 - a timeline for deliverables and critical deadlines
 - the names of all persons involved in the project and their respective roles
- A quality assurance plan detailing how the quality assurance and quality control processes outlined in the original tender will be implemented and monitored by the Contractor throughout the project.

The quality assurance plan must specify in detail all and any perceived risks that may impact on the quality of the contract deliverables, and must provide detailed advice on the strategies for risk management for each identified risk. It is not sufficient to provide

information only about generic quality assurance systems and quality manuals. The following processes should be outlined in the quality assurance plan:

- training
 - qualification
 - check-marking
 - control monitoring
 - adjudication of discrepant scripts
 - generation of reports to monitor marker and marking progress
- A risk management plan outlining how risks identified in the original tender, as well as any further risks that are been identified, will be managed in relation to the project, detailing strategies to ensure project needs are met within the required timeframe and to the highest standard. This plan must include how all aspects of security are addressed.

ACARA requires the opportunity to audit risk management during the project, including where appropriate, attendance at the Contractor's place of work and or receiving briefings on the management of risk.

- A detailed security plan for managing all stages of the project, including incident management procedures and response plans, detailing how system access, security and unscheduled downtime will be managed. The security plan should be informed by the requirements listed in section 2.6 Security Requirements.

2.5.2. Deliverable 2 – Project management and reporting

After execution of a purchase order and initiation of a project the Contractor will be required to:

- i. provide regular status reports to ACARA
- ii. be available for regular dialogue with ACARA personnel across the entire project lifecycle
- iii. provide risk alerts to ACARA immediately upon detection of issues considered a risk to the project
- iv. respond to feedback from ACARA
- v. attend nominated meetings
- vi. provide agreed milestone reports to ACARA by the specified dates
- vii. meet the project deadlines.

Meetings

The Contractor will be required to attend a project initiation meeting with key members of ACARA's project team at an agreed time after the award of tender to discuss aspects of the project.

The Contractor will be required to communicate with ACARA's Project Manager and Writing Test Manager at key juncture points of the 2017 NAPLAN online writing marking operation project. These meetings will be organised by ACARA and held at a time and location (videoconference as default mode) agreed with the Contractor.

The Contractor may be asked to attend a project close-out meeting with key members of ACARA's project team at an agreed time after the delivery of the data to ACARA to discuss aspects of the project.

Progress reports

Project management progress reports

Throughout the project, the Contractor will regularly consult with ACARA in relation to the day-to-day management of the project. Written weekly operational progress reports are to be submitted at nominated times to ACARA outlining progress on the key deliverables and issues that have arisen. Exception reports are required in the event of unforeseen circumstances.

Marking progress reports

Throughout the project, marking progress reports, including marking completion, marker quality and adjudication reports, will be available through the system (or by export from the system) and should be monitored by the contractor, in conjunction with ACARA. Marking progress should be monitored and progress reports exported and supplied to ACARA at least once every marking session.

Project completion report

The Contractor must also provide a project completion report outlining, as a minimum, the following:

- actual or agreed timelines negotiated within the scope of this contract
- an outline of any obstacles, incidents or issues encountered that affected the delivery or reputation of the project in 2017, and any potential obstacles, incidents or issues that may affect the project in subsequent years
- an outline of any areas where a variation may improve any future work.

2.5.3. Deliverable 3 – Secure, central marking centre

The Contractor will be required to establish a secure, central marking centre including the provision of devices for marking and the training of markers including:

- computer hardware (large screen, keyboard, mouse) and internet connection for each marker
- printers
- copiers
- chairs and tables that adhere to good ergonomic design to facilitate occupational health and safety
- technical support required for marking
- meal storage and heating facilities and some basic kitchen facilities (e.g. refrigerators, microwaves, plates, cups, forks)
- tea and coffee making facilities
- break out training rooms

The marking centre should be held at highly secure premises and should accommodate sufficient markers to complete the marking operation. Multiple sessions (marking shifts) per day may be conducted e.g. day and night marking sessions, so the marking centre needs to accommodate the maximum number of markers who will be marking in the centre at any one point in time.

The location of the marking facility may be in:

- a. one central location in a capital city with team leaders, markers and a minimum of one centre leader per marking shift (i.e. a minimum of two centre leaders where day and night shifts operate on the same day – one per marking shift) drawn from that jurisdiction
OR
- b. multiple central locations where team leaders, markers and a minimum of one centre leader per marking shift (i.e. a minimum of two centre leaders where day and night shifts operate on the same day – one per marking shift), each marking in their own

jurisdiction. Where multiple centres are used, it is expected that each centre will have its own centre leader(s).

Home based marking will not be considered.

NOTE TO TENDERERS:

It is not known which jurisdictions nor the number of schools or students that will be sitting the 2017 NAPLAN tests online. However, at this stage, the anticipated number of scripts will be between 35,000 and 75,000. The final scope will be confirmed with the successful tenderer during contract negotiations. ACARA requests that the Contractor provide quotes for the anticipated minimum, medium and maximum numbers of scripts, as per the costing table in Section B of this tender.

2.5.4. Deliverable 4 – Appoint and train writing markers

The Contractor will be responsible for the employment of centre leaders, team leaders and markers who will mark the tasks online, in the M&SS component of the platform, using the national marking rubrics.

The centre leaders will be responsible for assisting ACARA's Writing Test Manager to train team leaders and markers and monitor the marking centre(s).

The Contractor will be required to source and secure sufficient centre leaders, team leaders and markers to meet the timelines. The contractor must also ensure that the following are also managed within the expected timeframe: requisite marker training, team leader check - marking, completion of common, control scripts, and adjudication of discrepant responses

Requirements for markers

The markers employed by the Contractor are expected to:

- have proven experience in the marking of NAPLAN writing scripts and in the use of the NAPLAN marking guides
- be sufficiently skilled in using computer devices in order to learn how to mark scripts on a new online marking platform
- have a mobile phone.

Requirements for team leaders and centre leaders

The team leaders employed by the Contractor are expected to:

- have proven experience in the marking of NAPLAN writing scripts and in the use of the NAPLAN marking guides
- have experience as a team leader in a system-level large scale marking operation
- have proven strong communication skills with markers
- have demonstrated high levels of accuracy and consistency in main NAPLAN marking operations
- be sufficiently skilled in using computer devices in order to learn how to mark scripts on a new online marking platform
- have a mobile phone to access the platform.

Marking will be preceded by two days of training (scheduled for 8 and 9 May 2017) facilitated by ACARA's Writing Test Manager, who will be assisted by the Contractor's centre leaders. The training must be attended by all markers to refresh their knowledge of the marking rubrics and will utilise existing exemplars as well as test-specific scripts. Training in marking typed scripts will also be given. Markers will be expected to complete a qualification set prior to commencing marking. Training will also ensure that markers are fully aware of their responsibilities with regard to the security of test materials and the use of the system.

Centre Leaders will be required to attend the national NAPLAN centre leader training held on 27 and 28 April 2017 at a location yet to be determined.

The Contractor will be responsible for all costs associated with the hiring and training of markers, for the period from the commencement of training to the completion of marking, including the completion of discrepant marking. ACARA will provide user guides and training in the platform for markers appointed by the Contractor. ACARA will also provide technical support in the platform. The Contractor will be required to create marker profiles within the platform and assign the scripts (as determined by ACARA) to each marker.

2.5.5. Deliverable 5 – Human marking of the 2017 NAPLAN online writing scripts and remarking and adjudication of discrepant AES scripts

Up to four writing tasks (prompts) – up to two tasks for Years 3 and 5 and up to two tasks for Years 7 and 9 – will be administered during the 2017 NAPLAN online administration (9 – 19 May 2017).

It is anticipated that between 35,000 to 75,000 scripts in total will need to be single blind marked. The final scope will be confirmed with the successful tenderer. ACARA requests that the Contractor provide quotes for the anticipated minimum, medium and maximum numbers of scripts, as per the costing table in Section B of this tender.

The M&SS will allow scripts to be distributed to markers in several different ways. Scripts may be distributed such that markers can mark scripts from all year groups and all prompts administered, or such that markers mark scripts from only one prompt. Should it be necessary to use a contractor-supplied marking platform, such a platform must have the same flexibility as the M&SS does with prompt distribution to markers.

ACARA will inform the contractor of the script distribution during contract negotiations. If ACARA determines that markers mark scripts from one prompt before moving on to a different prompt, then markers will require a two-hour-prompt-specific training session in the different prompt (and different subsequent prompts) prior to commencing live marking on those prompts.

Marking of all NAPLAN online scripts

The Contractor will be required to conduct:

- single blind marking of all NAPLAN online scripts - markers will be required to provide one set of criteria scores for each script
- a minimum of 10% check marking of each marker on each day. During check marking team leaders will be required to keep a record of scripts that would be suitable for inclusion in a pairwise comparison activity.
- at the conclusion of the marking, the contractor will be responsible for selecting the requisite scripts for the pairwise comparison activity from the recommendations of the team leaders. Up to 80 scripts across a range of score points will be required. Specific details will be provided during the marking
- the delivery of up to two common control scripts to markers each marking session, every day of marking
- adjudication of discrepant marks. Markers who adjudicate must have extensive proven experience in the marking of NAPLAN writing scripts **and** have proven experience as NAPLAN marker trainers and/or as marking centre leaders. Markers responsible for adjudicating scores should not do so where their own marks are discrepant with another marker. The score tolerance for identifying discrepant scripts will be based on the National Marking Protocols and in the first instance, on criteria scores. Scripts will require adjudication if:
 - total scores are greater than or equal to 5 score points apart and/or
 - where a criterion score is greater than or equal to 2 score points apart.

Additional marking of AES-scored and human-marked discrepant scripts

Where required, the Contractor will be required to conduct additional marking as follows:

- Marking of criteria where the AES and human marks are discrepant by greater than or equal to 2 score points. Where a script is out of range on one or two criteria, only that criteria, and not other criteria, need be remarked. The re-marked criterion or criteria must be available as the final reportable mark, alongside the other human-marked criteria for that script.
- Marking of all criteria where, following resolution of criteria differences greater than or equal to 2 score points, the total scores of the AES and human marks are discrepant by greater than or equal to 5 score points. The entire set of re-marked criteria must be available as the final reportable mark.

Discrepancies between human scores and AES scores will be identified during the marking operation. The additional adjudicated mark will be required as soon as possible after such scripts are identified. Therefore, adjudication and marking will be concurrent.

A procedure for identifying these scripts will require reports of AES scores and markers' scores where scores can be matched for comparison. It is anticipated that the MS&S will provide the procedure through its reporting functions. Should it be necessary to use a contractor-supplied marking platform, such a platform must have the same reporting function.

It is estimated that there approximately 10% to 20% of total online scripts will be discrepant and will require an additional mark/adjudication (i.e. a second human marking).

AES flagged scripts

The AES scoring engine flags scripts which are outside predetermined parameters. Scripts which are flagged by the AES will be treated as all other scripts, i.e. with a human mark and if AES-discrepant, a second human mark. Where scripts are flagged as non-scoreable, e.g. because they are gibberish, such scripts will be marked once by a human marker.

Marker-flagged scripts

It has been common practice in marking centres for markers to flag for review scripts which have certain characteristics, such as disturbing content, or are not written to the topic. A similar set of system flags will be available for markers of 2017 NAPLAN online scripts through the MS&S comment and escalation functionality. All flagged scripts – either by AES or by human markers – will be identified as such in the marking system and in final data reports. Should it be necessary to use a contractor-supplied marking platform, such a platform must have a flag and review/escalation function.

Common (control) scripts

The Contractor will also be responsible for the management of seeding common scripts during the marking operation for use as part of the marker quality control process.

Up to two common control scripts will be delivered to markers per marking session. These scripts will be provided to the contractor in electronic form.

The Contractor's centre leaders will follow procedures and protocols applied to NAPLAN marking to ensure that a high degree of accuracy and reliability is maintained. The Contractor must provide appropriate quality control statistics, which will be available through reporting functions in the MS&S platform.

The Contractor will be responsible for the secure storage of any complete raw data sets and/or reports held outside of the platform; and must ensure that these are made available to ACARA on completion of the project.

Should it be necessary to use a contractor-supplied marking platform, such a platform must have the capacity to seed typed controls and provide a suite of quality assurance reports.

	Anticipated minimum Scripts	Anticipated medium Scripts	Anticipated maximum Scripts
Mark	approx. 35,000	approx. 50,000	approx. 75,000
Check mark	approx. 3,500	approx. 5,000	approx. 7,500
Re-mark of discrepant AES scripts	approx. 3,500	approx. 5,000	approx. 7,500
Adjudication	as required	as required	as required
Total scripts	approx. 42,000	approx. 60,000	approx. 90,000

Script delivery

It is expected that the first tranche of scripts will be made available in the platform for marking on Wednesday 10 May 2017. Subsequent tranches should follow daily until the completion of NAPLAN (19 May 2017, with the possibility of a few scripts being provided during the third security week (up to 26 May) if schools experience severe technical issues during the two week testing window). As schools are instructed to conduct the writing test on days 1 and 2 of the NAPLAN test window (9 and 10 May) it is expected that the majority of scripts will have been made available during that week. It is expected that the AES scores will be delivered concurrently with the availability of the scripts in the platform. All marking should be completed by 26 May in order to meet the reporting deadlines expected by jurisdictions.

ACARA/ESA will keep the contractor informed of expected delivery times.

NOTE TO TENDERERS: ACARA requires a quote from the Contractor to provide and use their own secure, online marking system on which to conduct the marking operation, in the event that the platform being developed by ESA is not available. The Contractor's marking system must accept electronically-produced (typed) writing scripts; be configured for marking and adjudication (as detailed in Deliverable 5) on all criteria of the NAPLAN writing marking guide; and for quality control (score review) procedures. The Contractor must set up markers, marker access and marking teams in their online marking system and provide technical support (a helpdesk) for the duration of the marking operation, and training in their online marking system.

The final project scope will be confirmed with the successful tenderer during contract negotiations.

2.5.6. Deliverable 6 – Provide data files and staff support

It is expected that the MS&S component of the platform will be the repository of all marker and marking data, as it is expected that the platform will be used in May 2017. Data extract functionality will therefore be available from this platform. Contractor accessibility to such functionality will be negotiated during contract negotiations.

In the unlikely event that it is necessary to use a contractor-supplied marking platform instead of the MS&S, the contractor must have the capacity to provide an alternative platform. Such a platform must have the capacity to extract marker and marking data to ACARA's specifications.

Data files required by ACARA at the end of the marking operation will consist of all sets of raw score marks [AES, human and adjudicated human marks, response time] for each student, in a single row, according to ACARA's specifications. The student response will also be required in the same row, as will jurisdiction, school, student, task, any survey data, marker identification and marking time. The data matrix specifications will be provided to the successful contractor. The format of the data file is fixed width ASCII text file. Quality assurance processes must be in place to ensure the accuracy and consistency of these data.

These data files are used in psychometric analysis of the items/tasks to determine their suitability or otherwise for inclusion on the final (2017) NAPLAN test forms.

The Contractor is required to nominate one person with experience in the production of data files to be able to be contacted for a period of four weeks after the data files have been provided to ACARA to resolve any issues that might arise during the subsequent analysis of the writing results. The person should be readily available during that period.

After the marking, the contractor will be responsible for selecting the requisite scripts for the pairwise comparison activity from the recommendations of the team leaders, and providing the identifiers for up to 80 scripts across a range of score points. Specific details will be provided during the marking.

2.5.7. Deliverable 7 – Secure storage and destruction of materials

After the completion of the administration of the tests, the Contractor will be responsible for ensuring that any materials held externally to the MS&S platform, or internally to the contractor-supplied platform in the event it is utilised, that can compromise the security of the test and student data are securely provided to ACARA or destroyed. 'Secure' is specified in the section 2.6 Security Requirements.

2.6. Security Requirements

All aspects of writing marking and training must be carried out under strict security. The Contractor is required to provide a detailed security plan for managing all stages of the project, informed by the requirements below:

- The Contractor must maintain a high level of security throughout this contract. The security plan must outline how security will be maintained during all stages of the process.
- All tests, scripts, marking and training materials, administration instructions, data files and associated materials, in both printed and electronic forms, must be secured at all times so that unauthorised personnel (as specified by ACARA) do not have access to them.
- The Contractor must have in place an approval process for employing qualified and suitable markers.
- Incident management procedures and response plans, detailing how system access, security and unscheduled downtime will be managed.
- The Contractor is required to account for all printed material or paperwork used during the marking of writing that could potentially compromise the security of the tests. All markers notes must be collected by the Contractor before markers are allowed to leave the marking centre. The Contractor must check that all materials are accounted for when returned by markers.
- The Contractor is required to securely destroy all paperwork and all electronic artefacts and data files generated outside the platform for the duration of the project when instructed by ACARA. The Contractor is required to provide written assurance and confirmation of secure destruction of aforementioned material.
- If sub-contractors are engaged by the Contractor, the prescribed security measures must apply to them also. It is the responsibility of the Contractor to ensure that this occurs. All personnel including sub-contractors must have no conflict of interest.

All personnel employed by the Contractor (or any sub-contractors) must sign confidentiality agreements in which they agree not to disclose any information about the writing tests. Markers may not disclose information about or discuss any aspect of the of the writing tests, including student writing, topic and genre, with any party outside the marking centre. Failure to comply with this requirement will result in immediate dismissal of a marker from the marking centre.

All personnel accessing the platform are required by the Australian Government's security protocols to have a mobile phone to complete the compulsory two step authentication.

All electronic equipment including telecommunications apparatus, servers, disks, tape libraries etc. is to be kept in a secure location and access limited to authorised personnel. At a minimum the following requirements must be met:

- All locations where production of related materials occurs (including the locations for suppliers and subcontractors) are in a secure environment;
- All personnel including subcontractors and markers must declare any potential, actual or perceived conflict of interest to ACARA and accept the outcome of any determination by ACARA to manage this conflict/s. All personnel including subcontractors and markers must also sign confidentiality and non-disclosure agreements;
- All applications must have appropriate user authentication through passwords and access limitations; and
- All data to be transferred must have encryption (secure socket layer SSL) and be transferred via ACARA or the Contractor's File Transfer Protocol (FTP) site.

In addition, the Contractor is required to notify ACARA immediately of any breaches of security. If a breach of security occurs, the Contractor must follow ACARA's instructions for dealing with the breach. The Contractor is required to keep ACARA fully briefed on progress and any issues that may arise, and to provide periodic progress reports at specified dates.

2.7. Materials to ACARA

At each completion phase of the deliverables outlined in this document, the Contractor must provide ACARA with a report and/or an agreed sample of each of the materials produced, as appropriate. Where materials are developed electronically, ACARA will receive a copy of the electronic file/s for each of the materials developed. The Contractor must also provide ACARA opportunities to review and provide feedback on the development of the materials prior to and during the development phase.

3. Required Contract Material (see clause 2.1.1.b)

3.1. The following list of Materials is to be developed by the Contractor under the Contract in which ACARA would retain intellectual property:

- Project management plan and associated plans such as risk management and security management
- Student results data/reports (if relevant)
- Pairwise comparison activity script identifiers
- Reports provided to ACARA under this Contract.

3.2. Secure deletion of data

The Contractor is required to provide evidence that all data not contained within the platform have been securely erased from all media including but not limited to networks servers, computer hard drives in the Contractor's possession, as specified by ACARA. This will include information on NAPLAN trial tests and marking and information on item/task performance including but not limited to any data used in preparation for the delivered files. The timeline for this activity will be negotiated with the Contractor at a later date.

4. Policies, Standards and Guidelines

The Commonwealth Style Manual, AGPS, Canberra (latest edition);

Australian Standards for Document Management (AS ISO 15489);

Commonwealth Fraud Control Guidelines (April 2011)

Data Standards Manual Student Background Characteristics (ACARA, 2012), as updated from time to time.

Macquarie Dictionary, Fifth Edition, (2013), Macquarie Dictionary Publishers Pty Ltd, Sydney.

Peters, P. The Cambridge guide to Australian English usage. (Cambridge University Press (2007).

5. Commencement and Time-frame

(see clause 2.1.1.d)

Commencement Date: TBC January 2017

Note to Tenderers: The project timeline will be confirmed during contract negotiations, and the final timeline will be included in the Contract. Tenderers should use the following information as the basis for preparing their Tenders. Although ACARA is prepared to discuss changes to the proposed timeline, it reserves the right not to alter the proposed timeline.

Project timeline

Task Name	Start	End
Project initiation	January 2017	March 2017
Set up of markers in the platform	April 2017	6 May 2017
Marker training	8 May 2017	9 May 2017
Administration NAPLAN tests	9 May 2017	19 May 2017
Writing marking in conjunction with chief writing assessor	10 May 2017	26 May 2017
Writing data capture	10 May 2017	31 May 2017
Provision of identifiers for pairwise scripts	24 May 2017	24 May 2017
Provide data to ACARA	5 June 2017	5 June 2017
Provide student scripts and marking materials to jurisdictions	Monday 5 June 2017	Monday 5 June 2017
Project close-out meeting	July 2017	July 2017

6. Invoicing and Payment

(see clauses 2.1.1.e & 3.1.1.c)

Invoices:

Invoices will be issued by the Contractor on delivery of each milestone identified in Item 10.

To be correctly rendered, invoices must include the following information:

- a. the words “tax invoice” stated prominently;
- b. the Contractor’s name;
- c. the Contractor’s ABN;
- d. ACARA’s name and address;
- e. the date of issue of the tax invoice;
- f. the title of this contract and the contract number or purchase order number (if any);
- g. details of fees, allowances and costs including the items to which they relate;
- h. the total amount payable (including GST);
- i. the GST amount shown separately; and
- j. written certification in a form acceptable to ACARA that the Contractor has paid all remuneration, fees or other amounts payable to its Personnel and/or subcontractors involved in performance of the contract.

All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Contractor’s entitlement to those allowances or costs.

An invoice is not correctly rendered where:

- a. it includes amounts that are not properly payable under this contract or are incorrectly calculated; or
- b. it relates to a payment in relation to which ACARA has exercised its rights under clause 3.2 of the contract.

All invoices must be addressed to the Project Manager.

Payment

Payment will be made within 30 calendar days after delivery of a correctly rendered invoice. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.

Payment will be effected by electronic funds transfer (EFT) to the following bank account of the Contractor: ^{^insert details^}

No payment shall be made against any claim for payment which varies from the agreed scope of work as set out in Item 2 of this Schedule without ACARA’s prior consent and written agreement.

7. Project Manager (see clause 2.2)

^{^To be completed following selection of the preferred Tenderer^}

The Project Manager is the person for the time-being holding, occupying or performing the duties of ^{^insert position^}, currently ^{^insert name^}, available on telephone number ^{^insert number^} or via the address and facsimile number set out in Item 21.

8. Subcontractors (see clause 2.3)

^{^To be completed following selection of the preferred Tenderer^}

The Contractor may subcontract the performance of parts of the Services as follows:

Part of the Services being subcontracted	Subcontractor	Additional conditions
^insert^	^insert company details^	^insert conditions^
^insert^	^insert company details^	^insert conditions^

9. Specified Personnel

(see clause 2.4)

^To be completed following selection of the preferred Tenderer^

The Contractor agrees that the following work, **^insert details^** will be undertaken by **^insert name^**.

10. Fees

(see clauses 3.1.1.a, 11.1.3.a & 11.1.3.b)

Note to Tenderers: A payment schedule, linked to project milestones and deliverables, will be negotiated with the successful Tenderer.

^To be completed following selection of the preferred Tenderer^

11. Allowances and Costs

(see clauses 3.1.1.b & 11.1.3.c)

^To be completed following selection of the preferred Tenderer^.

12. Facilities and Assistance

(see clauses 3.1.1.d & 11.1.3.d)

^To be completed following selection of the preferred Tenderer^

13. Required ACARA Material

(see clause 4.1)

^To be completed following selection of the preferred Tenderer^

14. Use of ACARA Material

(see clause 4.1.3)

ACARA Material may only be used for the purposes of providing the Services.

15. Existing Material

(see clause 4.2.2)

^To be completed following selection of the preferred Tenderer^

16. Copyright notice

(see clause 4.2.7)

The copyright notice is set out below:

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ACARA owns the copyright in this publication. This publication or any part of it may be used freely only for non-profit education purposes provided the source is clearly acknowledged. The publication may not be sold or used for any other commercial purpose.

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ACARA

Level 13, 280 Elizabeth Street

Sydney

17. Moral Rights

(see clause 4.4)

Permitted Acts

In addition to those set out in clause 4.4.1, the following are 'Permitted Acts' for the purposes of clause 4.4.1.d:

- a. use of the Contract Material for advertising or promotional purposes of any kind;
- b. incorporating the Contract Material into a website, other assessments or as part of a professional development program;
- c. use of the Contract Material in tests and test items including without attribution of the authors of that Material;
- d. editing, contextualising, summarising or truncating the Contract Material for use in tests and test items including without attribution of the authors of that Material or reference to editing of the Material;
- e. associating an item of Contract Material with similar or different items of Contract Material;
- f. use by State and Territory education authorities including the Contract Material in workshop presentations, posters, and other teacher professional development materials; and
- g. publication of tests online on public websites by ACARA and the States and Territories including without attribution of the authors of that Contract Material.

ACARA policy on Moral Rights

None specified.

18. Security Requirements

(see clause 5)

Confidentiality agreements required for personnel with access to secure items (scripts) and/or marking material.

19. Privacy Directions, Guidelines, Determinations or Recommendations

(see clause Error! Reference source not found.)

^insert relevant items^

20. Contractor's Confidential Information

(see clause 8)

(a) Information contained in contract:

Item	Period of Confidentiality
-------------	----------------------------------

^insert relevant items^

(b) Information obtained or generated in performing contract:

Item	Period of Confidentiality
-------------	----------------------------------

^insert relevant items^

21. ACARA's Address for Notices

(see clause 12.1.1.a)

Physical address	Level 13, 280 Elizabeth Street, Sydney, NSW 2000
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Postal address	Level 13, 280 Elizabeth Street, Sydney, NSW 2000
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Email	procurement@acara.edu.au
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Facsimile	1300 995 468
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22. Contractor's Address for Notices

(see clause 12.1.1.a)

Physical address

Postal address

Email

Facsimile

23. Insurance

(see clause 13.3)

Required insurance:

- a. workers' compensation as required by law;
- b. public liability insurance to a value of \$10 million; and
- c. professional indemnity insurance to a value of \$5 million.

24. Applicable Legislation

(see clause 13.11.3)

See AGS Fact Sheet: *Commonwealth legislation that may apply to Australian Government contractors*, available at:

<http://www.ag.gov.au/publications/agspubs/factsheets/index.htm>

25. Applicable Law

(see clause 13.12)

New South Wales

Signatures

SIGNED for and on behalf of)
Australian Curriculum, Assessment)
and Reporting Authority by:)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

SIGNED for and on behalf of **[insert]**)
by:)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness