

Anangu Pitjantjatjara Yankunytjatjara

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REQUEST FOR TENDER FOR CONTRACT 10/01

**Warru Fence at Donalds Well,
Anangu Pitjantjatjara Yankunytjatjara Lands**

Tenders Close: 4pm (CST) Wednesday 5th May 2010

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PART A - CONTRACT DESCRIPTION

A.1 CONTRACT INTENT

Anangu Pitjantjatjara Yankunytjatjara intends to enter into a contract for the purpose of constructing a predator-proof fence at the Donalds Well area located on the Anangu Pitjantjatjara Yankunytjatjara Lands in South Australia.

A.2 CONTRACT TERM

The Contract Term shall be minimum four (4) weeks and no more than five (5) weeks from the date nominated in the Letter of Acceptance.

A.3 TYPE OF CONTRACT

This contract is a Lump Sum contract.

A.4 CONTRACT DOCUMENTS

The following documents shall constitute the entire Contract and shall contain all the terms and conditions of the Contract

- Part A - Contract description
- Part B - Conditions of Tendering
- Part C - Tender Documents as submitted by the contractor
- Part D - General Conditions of Contract
- Part E - Specifications:
- Any Addendum issued by Anangu Pitjantjatjara Yankunytjatjara before the close of Tenders;
- Any document submitted by the Tenderer after the close of Tenders to:
 - Provide information by way of explanation or clarification. Or
 - Correct mistake or anomaly;
- The Letter of Acceptance
- Part F – Appendices

A.5 CONTRACT AWARD

The contract will only be awarded for the whole of the Works.

PART B - CONDITIONS OF TENDERING

B.1 ANANGU PITJANTJATJARA YANKUNYTJATJARA'S OBLIGATIONS

Anangu Pitjantjatjara Yankunytjatjara must provide an ethical and fair tendering procedure for the intended Contract.

B.2 THE TENDERER'S OBLIGATIONS

The Tenderer must make itself fully informed of the Contractor's obligations under the intended Contract by:

- ◆ Examining all the Request for Tender Documents;
- ◆ Examining all information provided by Anangu Pitjantjatjara Yankunytjatjara in relation to the intended Contract; and
- ◆ Examining all other information relevant to the risks, contingencies and other circumstances affecting the intended Contract obtainable by the making of reasonable enquiries.

The Tenderer must immediately notify Anangu Pitjantjatjara Yankunytjatjara of any apparent mistake in the Contract Documents they may identify during the above activities.

The Tenderer must allow in its tendered lump sum for all services described in the Contract Documents and any other associated works, services or expenses necessary to fulfill the Contract Intent.

B.3 PRE-TENDER COMMUNICATION

Any notification of an apparent mistake in the Contract Documents or request for information must be submitted electronically via email to reintroductionlmapy@anangu.com.au.

B.4 COMPLETION OF TENDER DOCUMENTS

The Tenderer must complete all forms in Part C – Tender Documents. All forms must be signed and witnessed where indicated.

B.5 SUBMISSION OF TENDERS

Tenders close 4.00pm (CST) Wednesday 5th May 2010.

The Tenderer must submit its Tender no later than 4.00pm (CST) Wednesday 5th of May 2010. Tenders must be submitted both electronically via email to reintroductionlmapy@anangu.com.au and sent by prepaid post to the address listed below. All costs associated with the preparation and submission of the Tender shall be borne by the Tenderer.

Mailing address:

Anangu Pitjantjatjara Yankunytjatjara
ATT: Warru Reintroduction Officer
PMB 227 Umuwa via Alice Springs NT 0872.

B.6 CONSIDERATION OF TENDERS

Only Tenders that have been completed and lodged in accordance with clauses B.4 and B.5 will be considered.

B.6.1 Conforming Tenders

A Conforming Tender is a tender that is not a non-conforming tender.

B.6.2 Non-Conforming Tenders

A tender is non-conforming if:

- ◆ It has not been submitted in compliance with these Conditions of Tendering; or
- ◆ It contains qualifications and/or conditions that result in any of the following:
 - a) A change to the extent or nature of the works and/or services specified in Part E - Specifications;
 - b) An uncertainty in any lump sum price or scheduled rate;
 - c) A change to the contractual conditions specified in Part D – General Conditions of Contract.

B.6.3 Alternative Tenders

An Alternative Tender is a tender that is non-conforming under (a) above by reason of it offering a different technology or methodology to achieve the Contract Intent. An Alternative Tender must accompany a Conforming Tender to be eligible for consideration.

Any Alternative Tender must include details of the different technology or methodology and any claimed advantages for Anangu Pitjantjatjara Yankunytjatjara.

Anangu Pitjantjatjara Yankunytjatjara has full discretion to accept or reject a Non-Conforming Tender for consideration, without having to give its reasons for so doing. If accepted for consideration, a Non-Conforming Tender will be evaluated by adjustment of the Price in accordance with Anangu Pitjantjatjara Yankunytjatjara's assessment of the cost of the changes under (a) and/or the financial risks created under (b) and (c) above.

B.7 TENDER ASSESSMENT

Tenders will be assessed on the following criteria:

- a) Demonstrated capacity to build fences of similar nature
- b) Experience in working with Indigenous communities
- c) Demonstrated ability to adhere to allocated budget
- d) Demonstrated ability to build fences in accordance to exact specifications
- e) Demonstrated ability to deliver fence training to a diverse range of trainees, in particular Indigenous trainees.
- f) Evidence of appropriate insurance policies as described in clauses D.11.1 and E.9
- g) References
- h) Lump Sum Price (GST inclusive)

Anangu Pitjantjatjara Yankunytjatjara, when evaluating tenders may determine a short-list based on some but not all of the above criteria. Those tenders which have been short-listed will then undergo further evaluation with regard to the remaining criteria.

B.8 TENDER VALIDITY PERIOD

The Tender must be valid for acceptance by Anangu Pitjantjatjara Yankunytjatjara for a period of 70 days from the close of Tenders.

If a Tender is withdrawn during this period, Anangu Pitjantjatjara Yankunytjatjara has the right to recover any damages incurred because of this withdrawal. Damages may include the cost of calling for new tenders, and costs due to delays in the work involved.

B.9 ACCEPTANCE OF A TENDER

Anangu Pitjantjatjara Yankunytjatjara is not bound to accept the lowest or any Tender.

A Tender is not accepted until written or electronic notice of acceptance has been delivered to or posted to the Tenderer at the email/address nominated in the Tender.

The date of acceptance of the Tender is the date the written acknowledgement of the notice of acceptance was delivered to or posted to Anangu Pitjantjatjara Yankunytjatjara.

PART C - TENDERING DOCUMENTS

C.1 TENDER FORM

I **(INSERT COMPANY NAME IN BLOCK LETTERS)**

offer to perform the work/services described in Part E - the Schedule, including the application of best practice with regard to standards, methods and service, for the following Lump Sum Price/s, inclusive of GST:

Enter amount in words here -

Enter amount in figures here -

..... Dollars; \$

[Include when a Contract Period or Date for Practical Completion is not prescribed]

And within a Contract Period of weeks.

Our address for service of notices is:

.....
.....
.....

Our telephone and facsimile numbers are:

Telephone Facsimile

Our email address is:

Email

Our company and business numbers are:

ACN ABN

Name of person signing on behalf of the Tenderer:

Signature:

Dated this Day of 2010

Name of Witness:

Signature:

C.2 EVIDENCE OF EXPERIENCE

The Tenderer is to provide evidence of professional experience by including the following information in the Tender document:

- a) contact details for a minimum of three (3) referees
- b) a detailed plan of works to be conducted for Anangu Pitjantjatjara Yankunytjatjara
- c) an outline of on-the-job fence training to be provided to Anangu Pitjantjatjara Yankunytjatjara fencing staff; and
- d) a statement addressing all of the selection criteria listed in clause C.2.1

C.2.1 SELECTION CRITERIA

- Demonstrated capacity to build similar predator-proof fences (refer to Part F- The schedule for exact fence specifications)
- Experience in working with Indigenous communities and remote areas
- Demonstrated ability to adhere to allocated budget
- Demonstrated ability to build fences in accordance to exact specifications provided
- Demonstrated ability to deliver effective on-the job fence training to a diverse range of trainees, in particular indigenous trainees.
- Appropriate insurance policies as described in clauses D.11.1 and E.9

C.3 TENTERER’S DECLARATION

I,

on behalf of the company ,.....;

declare that I have read and I understand the concept of conflict of interest as set out on page 2 of this form and that the company’s directors, shareholders, officers and employees:

Have not offered or given and will not offer or give any financial reward or other inducement of any kind to any Anangu Pitjantjatjara Yankunytjatjara Officer with respect to any of my dealings or the dealings of the aforesaid company with Anangu Pitjantjatjara Yankunytjatjara in relation to this tender/contract.

Have not since publication of Anangu Pitjantjatjara Yankunytjatjara Tender, been in contact with other Tenderer(s) for any purpose whatsoever, including without limitation the circumvention of the competitive objective of Anangu Pitjantjatjara Yankunytjatjara’s tendering process;

Are not in any way connected with and do not have any actual or potential conflict of interest with any Anangu Pitjantjatjara Yankunytjatjara staff except as disclosed hereunder:

.....
.....
.....
.....

I understand and accept that Anangu Pitjantjatjara Yankunytjatjara reserves the right to terminate any contract, transaction or agreement that Anangu Pitjantjatjara Yankunytjatjara may enter into with me or the aforesaid company as a result of this tender, should it subsequently be shown that I have failed to disclose herein any matter or contravene any statement relevant to this Declaration. I also accept Anangu Pitjantjatjara Yankunytjatjara’s right to reject any future tenders from me or the aforesaid company, if I am shown to have made any false declaration herein or otherwise.

.....
Name & signature of person making declaration

.....
Date

.....
Name and signature of Witness

C.4 CONFLICT OF INTEREST

Conflicts of interest occur when Anangu Pitjantjatjara Yankunytjatjara staff could be seen to be influenced by a personal interest in carrying out their work. They can be divided in two parts.

Non-Pecuniary Interest

A 'non-pecuniary interest' is any private or personal interest with Anangu Pitjantjatjara Yankunytjatjara staff which does not relate to financial gain (eg kinship, friendship, membership in an association, society etc), or involvement or interest in an activity.

Pecuniary Interest

A 'pecuniary interest' is a financial interest that Anangu Pitjantjatjara Yankunytjatjara staff has in a matter because of a likelihood or expectation of financial gain or loss. This applies not only to Anangu Pitjantjatjara Yankunytjatjara staff but also to anyone who is associated with them such as relatives, partners and associates.

Some related interests that may give rise to a conflict of interest include:

- a) The Tenderer's financial interest (other than that relating to a tender submission) in a matter that Anangu Pitjantjatjara Yankunytjatjara staff deal with or the Tenderer having friends or relatives with such an interest.
- b) The Tenderer's co-ownership or co-interest in any asset, business, transaction etc with any Anangu Pitjantjatjara Yankunytjatjara staff.
- c) Personal relationship with Anangu Pitjantjatjara Yankunytjatjara staff that go beyond the level of a professional relationship.

C.4.1 Disclosure of Conflict of Interest

A Tenderer may often be the only person aware of the potential for conflict of interest. It is their responsibility to avoid any financial or other interest with any Anangu Pitjantjatjara Yankunytjatjara staff. It is also their responsibility to disclose any potential or actual conflicts of interest when making tender submissions.

Where a Tenderer has any doubts as to whether a conflict of interest exists, the Tenderer should err on the side of caution by disclosing the potential conflict.

The Tenderer's disclosure of any potential conflict of interest will be evaluated by Anangu Pitjantjatjara Yankunytjatjara staff to determine its impact on the overall probity of the tender evaluation process. Disclosure of a potential conflict of interest will not necessarily result in the disqualification or non-consideration of the Tenderer's submission.

PART D - GENERAL CONDITIONS OF CONTRACT

D.1 APPLICABLE LAW

The law applicable to the Contract shall be the law of the State of South Australia. The courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this Contract and any proceeding brought in a Federal Court will be instituted in the Adelaide Registry of that Federal Court. The Contractor shall not apply to transfer any proceedings to another registry of the Federal Court.

D.2 DEFINITIONS

- ◆ “ABN” has the meaning attributed in the GST Legislation.
- ◆ “ANTS GST Act” means the A New Tax System (Goods and Services Tax) Act 1999.
- ◆ “Attributable Input Costs” means the costs to the Contractor of acquiring the goods or services or rights used for the purposes of a Taxable Supply made under this Contract.
- ◆ “Brief” means the brief annexed to this Contract and incorporates all documents referred to within the brief.
- ◆ “Contractor’s Staff” means the person or persons specified in clause D.17 who will carry out the necessary work in order for the Contractor to provide the Services.
- ◆ “Commencement Date” means the date specified in clause 3.2.1
- ◆ “Completion Date” means the date specified in clause 3.2.2
- ◆ “Crown” means the Crown in right of the State of South Australia.
- ◆ “Document” means any embodiment of any text or image however recorded.
- ◆ “Fee” means the fees specified in clause E.4
- ◆ “GST” means the tax imposed by the ANTS GST Act.
- ◆ “GST Legislation” means the ANTS GST Act and associated legislation.
- ◆ “Input Tax Credit” has the meaning attributed in the ANTS GST Act.
- ◆ “Insolvency Administration” means:
 - an administrator is appointed to the Contractor or action is taken to make that appointment;
 - the Contractor resolves to be wound up;
 - an application is made to a court for an order or an order is made that the Contractor be wound up (whether on grounds of insolvency or otherwise);
 - the Contractor ceases to carry on business;
 - a receiver or a receiver and manager of property of the Contractor is appointed whether by a court or otherwise;
 - the Contractor enters into a compromise or arrangement with its creditor or a class of them;
 - the Contractor is or states that it is unable to pay its debts when they fall due.
- ◆ “Intellectual Property Rights” means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of confidential information, or any right to registration of such rights and any other form of intellectual property right whether arising before or after the execution of this Contract.
- ◆ “Location” means the location described in clause E.5.
- ◆ “Services” means those services to be provided by the Contractor as specified in clause E.2
- ◆ “Tax Invoice” has the meaning attributed in the ANTS GST Act.
- ◆ “Tax Reform” means a change or concatenation of changes to taxes of the Commonwealth and States of Australia, (including the imposition of a new tax, repeal of a tax and change to the rate of a tax) including the imposition of GST, which affects or is expected to affect the Input Costs of the Contractor.

- ◆ “Taxable Supply” has the meaning attributed in the ANTS GST Act.
- ◆ “Term” means the term of this Contract as defined in clause E.4
- ◆ “Value” of a Taxable Supply has the meaning attributed in the ANTS GST Act.
- ◆ Words denoting the singular include the plural and vice versa.
- ◆ Words denoting individuals shall include corporations and vice versa.
- ◆ Headings are for convenience only and must not be used to affect interpretation.
- ◆ Reference to any Act, regulation or by-law includes that Act, regulation or by-law as amended or replaced during the Term.
- ◆ If there is any inconsistency between any term of this Contract and any detail in the Annexure, then to the extent of that inconsistency, the terms of the Contract prevail.
- ◆ If there is any inconsistency between a provision of the Annexure and a provision of the Schedule, then to the extent of that inconsistency, the terms of the Schedule prevail.
- ◆ If there is any inconsistency between any term of this Contract (excluding the Schedule) and any term comprised in the Schedule, then to the extent of that inconsistency, the terms in the Schedule prevail.
- ◆ A reference to a clause, schedule, annexure or item is a reference to a clause, schedule, annexure or item of this Contract.
- ◆ A reference to a clause number is a reference to all its subclauses.
- ◆ A reference to a person includes a partnership and a body corporate.
- ◆ A reference to legislation includes legislation repealing, replacing or amending that legislation.

D.3 SERVICE OF DOCUMENTS

Any direction, notice or other document must be sent electronically via email to reintroductionlmapy@anangu.com.au and sent by prepaid post to the mailing address listed below. If a document is posted, it is taken to be received within ten (10) days after posting. If a document is sent electronically, it is taken to be received when the e-mail comes to the attention of the addressee.

Mailing address:

Anangu Pitjantjatjara Yankunytjatjara
 ATT: Warru Reintroduction Officer
 PMB 227 Umuwa via Alice Springs NT 0872.

D.4 THE SERVICES

The Contractor must provide the Services to Anangu Pitjantjatjara Yankunytjatjara during the Contract Term listed in clause E.5 at such times and in such a manner as is required by Anangu Pitjantjatjara Yankunytjatjara.

In carrying out the Services, the Contractor must:

- ◆ Perform the Services skillfully and in conformity with reasonable standards;
- ◆ Ensure the Services are performed personally or by the Contractor’s Staff; and
- ◆ Act in all respects in the interests of Anangu Pitjantjatjara Yankunytjatjara and without favour to any other person.

The Contractor must complete the Services no later than the Completion Date unless otherwise agreed in writing by both parties and ensure the Services are completed according to such timetables as specified in Part E- The Schedule.

The Contractor shall provide Anangu Pitjantjatjara Yankunytjatjara with a written weekly report on the performance of the Services on the dates specified in clause E.14 and provide

such other information as Anangu Pitjantjatjara Yankunytjatjara may from time to time request in respect of the Services. Weekly report template is prvo

The Contractor must provide the Services at the Location indicated in Clause E.5 (except as otherwise authorised by Anangu Pitjantjatjara Yankunytjatjara).

The Contractor must maintain proper records of the use of all Anangu Pitjantjatjara Yankunytjatjara fencing materials and supplies expended in providing the Services and must provide these records to Anangu Pitjantjatjara Yankunytjatjara upon demand.

If the Contractor becomes unavailable to perform the Services, the Contractor may engage another person (“the Replacement”) to replace the unavailable person. The Replacement must not provide services for the purposes of this Contract unless and until he or she has been approved by Anangu Pitjantjatjara Yankunytjatjara (which approval must not be unreasonably withheld) and has obtained a National Police Clearance Certificate and lodged an Anangu Pitjantjatjara Yankunytjatjara Lands permit application.

D.5 PAYMENTS TO THE CONTRACTOR

- ◆ Anangu Pitjantjatjara Yankunytjatjara must pay the Contractor the Fee (including any instalments specified) for the Services provided by the Contractor during the Term.
- ◆ Subject to the Schedule, Anangu Pitjantjatjara Yankunytjatjara must pay the Contractor the Fee and expenses pursuant to this Contract within seven (7) days of receiving the Contractor's itemised invoice in respect of the Services provided pursuant to this Contract.
- ◆ Anangu Pitjantjatjara Yankunytjatjara is not liable to pay any government rates, duties, taxes and charges which are payable in respect of the Services.

D.6 GST FEE ADJUSTMENT

D.6.1 Application of this clause

Subject to this Clause, at any subsequent time if the GST Rate is varied, the Fee payable for a Taxable Supply made under this Contract shall be adjusted in accordance with this Clause.

D.6.2 Adjustment on variation of GST Rate

The adjustment of fee payable under this Contract upon a variation in the GST Rate must be calculated by:

- ◆ deducting from the Fee an amount equivalent to the GST payable by the Contractor in respect of the Fee immediately before the variation in the GST Rate;
- ◆ determining the amount (if any) by which the Attributable Input Costs will be reduced as a result of any Tax Reform associated with the variation of GST (the “Input Cost Reduction”);
- ◆ deducting the Input Cost Reduction from the Fee (“Agreed Value”); and
- ◆ multiplying the Agreed Value by one plus the GST Rate.

D.6.3 Input Cost Reduction from Tax Reform

The amount of an Input Cost Reduction must:

- ◆ take into account (without limitation) recovery of GST by the Contractor of Input Tax Credits in relation to Attributable Input Costs;
- ◆ reflect a reasonable assessment, based on available information and economic modelling, of reductions in Attributable Input Costs that can be expected to result from Tax Reform; and
- ◆ subject to Clause D.5.3, be determined by negotiation in good faith between the parties.

D.7 TAX INVOICE

If any supply under this Contract is a Taxable Supply, then:

- ◆ any invoice for payment under the Contract must be a Tax Invoice, titled as such, (and any prescribed form of invoice under this Contract is amended accordingly); and
- ◆ Anangu Pitjantjatjara Yankunytjatjara is not obliged to make any payment under the Contract unless the Contractor has provided a Tax Invoice in respect of that payment.

D.8 ADMINISTRATION

For the purposes of this Contract:

- ◆ Anangu Pitjantjatjara Yankunytjatjara Project Manager may exercise all of the powers and functions of the Anangu Pitjantjatjara Yankunytjatjara under the Contract; and
- ◆ The Contractor's Project Manager may exercise all of the powers and functions of the Contractor under the Contract.

The Director of Anangu Pitjantjatjara Yankunytjatjara may appoint a substituted Project Manager at any time Anangu Pitjantjatjara Yankunytjatjara's project manager named in the Letter of Acceptance shall be responsible for inspecting the work, and shall be the Contractor's first point of contact with Anangu Pitjantjatjara Yankunytjatjara.

D.9 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in all works, matters or things produced by the Contractor in the course of performance of the Services will and do vest in the Anangu Pitjantjatjara Yankunytjatjara.

The Contractor must ensure that in providing the Services, it does not infringe the Intellectual Property Rights of any person.

The Contractor must indemnify and keep indemnified Anangu Pitjantjatjara Yankunytjatjara against all costs expenses and liabilities whatsoever arising out of or in connection with any claim that the performance of the Services by the Contractor infringes the Intellectual Property Rights of any person.

The Contractor must disclose all Intellectual Property Rights arising out of or in connection with the provisions of the Services to Anangu Pitjantjatjara Yankunytjatjara and must do all such acts and things and sign all such documents as Anangu Pitjantjatjara Yankunytjatjara requires to give effect to this clause (D.9).

The Contract does not vest in Anangu Pitjantjatjara Yankunytjatjara:

- ◆ Intellectual Property Rights in the Contractor's methodologies or other proprietary information in existence at or prior to the date of this Contract; or
- ◆ Copyright in existing publications or other work produced by or on behalf of the Contractor prior to or otherwise than in the course of providing the Services.

D.10 INDEMNITY

The Contractor must indemnify and keep indemnified Anangu Pitjantjatjara Yankunytjatjara and against any costs, loss, expense or liability of any kind howsoever suffered or incurred by Anangu Pitjantjatjara Yankunytjatjara in respect of any loss of life, personal injury or disability, loss of or damage to property, or any other loss whatsoever arising out of:

- ◆ Any negligence or wrongful act or omission by the Contractor or Contractor's Staff arising out of, in connection with, or incidental to this Contract;
- ◆ Any breach of this Contract by the Contractor; or

- ◆ The presence of the Contractor or Contractor's Staff any other person present at the request of any of them, at the Location.

The Contractor's obligation to indemnify Anangu Pitjantjatjara Yankunytjatjara under this clause is reduced in proportion to the extent that the act or omission of Anangu Pitjantjatjara Yankunytjatjara contributed to the loss or liability.

The provisions of this Clause will survive any expiry or termination of this Contract.

D.11 INSURANCE

D.11.1 Expenses

The Contractor must maintain in force at its own expense during the contract Term specified in clause E.3:

Public and product liability insurance in the name of the Contractor for not less than the sum specified in Clause E.9;

D.11.2 Insurance Policy

The Contractor must, without limiting the operation of clause D.11.2, ensure that the insurance policy for the insurances specified in clause D.11.1:

- ◆ Notes the interests of Anangu Pitjantjatjara Yankunytjatjara as principal;
- ◆ Provides that any misrepresentation, non-disclosure, breach or other vitiating conduct by any person or a party named in the insurance policy, will not affect or diminish the cover afforded by the insurance policy in respect of the other party;
- ◆ Provides that an insured may, separately and individually, make a claim under, use, enforce or have the benefit of the insurance policy as if it had been solely issued in its name;
- ◆ Provides that if the insurance policy covers more than one insured, all insuring agreements and endorsements, with the exception of limits of liability, will operate as if there were a separate policy of insurance covering each insured; and
- ◆ Provides that the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against any of the persons comprising the insured and that failure by any insured to observe and fulfill the terms of the insurance policy will not prejudice the insurance or availability to claim under the insurance policy by the other insured.

The insurances to be maintained by the Contractor pursuant to clause D.11.1 will be in a manner and within terms and conditions and with insurers satisfactory to Anangu Pitjantjatjara Yankunytjatjara

The Contractor must, upon request by Anangu Pitjantjatjara Yankunytjatjara, whether before or after the Commencement Date, provide Anangu Pitjantjatjara Yankunytjatjara with copies of:

- a) The insurance policies described in Clause D.11.1; and
- b) Cover notes or certificates of currency of each insurance policy.

D.11.3 Liability

Anangu Pitjantjatjara Yankunytjatjara in specifying levels of insurance in this Contract accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.

D.12 OCCUPATIONAL HEALTH AND SAFETY

Contractor must comply with the requirements of the Occupational Health, Safety and Welfare Act 1986.

D.13 CONFIDENTIALITY

Both the Contractor and Anangu Pitjantjatjara Yankunytjatjara may take all reasonable steps to preserve the confidentiality of any Confidential Information disclosed to it by the other party and must not disclose Confidential Information which has been entrusted to it by the other party without the consent of the other party, unless it is a disclosure which:

- ◆ it is reasonable for the party to make for the purpose of performing its own obligations under this Contract or monitoring the performance of this Contract;
- ◆ the law requires the party to make; or
- ◆ is for the purposes of prosecuting or defending any legal proceedings.

D.14 PUBLICITY

The Contractor must not use the name of Anangu Pitjantjatjara Yankunytjatjara, connected with the Services for its marketing, or permit to be made a public announcement or media release about any aspect of this Contract or otherwise, without Anangu Pitjantjatjara Yankunytjatjara prior written consent.

D.15 RELATIONSHIP BETWEEN THE PARTIES

The Contractor and Anangu Pitjantjatjara Yankunytjatjara, are to acknowledge and agree that nothing in this Contract constitutes any relationship of employer and employee, principal and agent, or partnership, between the parties. No party has any authority to bind the other party in any manner whatsoever. The Contractor is responsible for complying with the requirements of the Income tax Assessment Act (Comm.) 1997.

D.16 CONFLICT OF INTEREST

The Contractor must disclose to Anangu Pitjantjatjara Yankunytjatjara in writing all actual and potential conflicts of interest that exist, arise or may arise (either for the Contractor or the Contractor's Staff) in the course of providing the Services under this Contract as soon as practicable after it becomes aware of that conflict.

The Contractor warrants that it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, its duties and interest under this Contract.

D.17 THE CONTRACTOR'S STAFF

D.17.1 Contract compliance

The Contractor must ensure that all Contractor's Staff and Anangu Pitjantjatjara Yankunytjatjara Anangu fencing staff comply with this Contract.

The Contractor acknowledges and agrees that:

- ◆ There is no Consultancy of any nature in existence pursuant to this Contract or otherwise between Anangu Pitjantjatjara Yankunytjatjara and the Contractor's Staff or Anangu Pitjantjatjara Yankunytjatjara and any other person employed or engaged by the Contractor for purposes of this Contract;
- ◆ The Contractor is liable for all remuneration, claims and other entitlements payable to the Contractor's Staff; and
- ◆ The Contractor is responsible for complying with the requirements of the Income Tax Assessment Act 1936 (Commonwealth) and Anangu Pitjantjatjara Yankunytjatjara is not required to make PAYG deductions from the Fee.

D.17.2 Workers Rehabilitation and compensation Act 1986

If the Contractor or one or more members of the Contractor's Staff are workers within the meaning of the Workers Rehabilitation and Compensation Act 1986 then the Contractor

must comply with all the requirements of an employer under that Act arising out of or in conjunction with the provision of the Services.

If one or more members of the Contractors Staff are not workers within the meaning of the Workers Rehabilitation and Compensation Act 1986, then the Contractor must ensure that the Contractor's Staff effect and maintain a policy of insurance indemnifying Anangu Pitjantjatjara Yankunytjatjara for any personal injury or disability to the Contractor's Staff arising out of or in conjunction with the provision of the Services.

The Contractor must from time to time whenever requested by Anangu Pitjantjatjara Yankunytjatjara so to do produce or cause to be produced to Anangu Pitjantjatjara Yankunytjatjara evidence of compliance with clause D.17.2.

D.17.3 Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981

The Contractor and the Contractor's Staff must comply with the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 and all rules and regulations associated with this Act. The Contractor will remove any Contractor's Staff member from the Anangu Pitjantjatjara Yankunytjatjara Lands if directed by Anangu Pitjantjatjara Yankunytjatjara to do so in its absolute discretion.

D.18 SITE CONTROL

The Anangu Pitjantjatjara Yankunytjatjara Lands is a prohibited area that is not open to public and alcohol is strictly forbidden. The Contractor shall observe all rules and regulations in force on the Anangu Pitjantjatjara Yankunytjatjara Lands and shall comply with all notices and instructions issued by Anangu Pitjantjatjara Yankunytjatjara in relation to such rules and regulations. Penalties for breaches of rules and regulations will apply to this Contract.

D.18.1 Permits

Permits are required by all visitors to the Anangu Pitjantjatjara Yankunytjatjara Lands, and for employees/contractors to remain in residence on the Anangu Pitjantjatjara Yankunytjatjara Lands. All visitors and granted permits must comply with the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981. Permit application forms can be downloaded from <http://www.anangu.com.au/permits.html>.

Contractor shall be responsible for the submission of all Anangu Pitjantjatjara Yankunytjatjara Lands permit applications for the Contractor and all Contractor Staff. The permit application procedures require the Contractor and any of the Contractor's Staff to obtain a current Police Clearance Certificate. The Contractor is therefore required to possess current Police Clearance Certificates and have lodged Anangu Pitjantjatjara Yankunytjatjara permits for all Contractor Staff prior to commencing work on the Anangu Pitjantjatjara Yankunytjatjara Lands. The National Police Certificate will remain the property of Anangu Pitjantjatjara Yankunytjatjara.

D.19 SUPERVISION OF WORKS

Contractor supervisor, nominated by Contractor and accepted by Anangu Pitjantjatjara Yankunytjatjara, must be present to supervise work whenever it is being carried out. Any directions about the performance of the Works that Anangu Pitjantjatjara Yankunytjatjara Project Manager gives to the Contractor Supervisor must be considered.

D.20 TITLE TO DOCUMENTS, DATA AND MATERIALS

Title in all documents, data, computer programs, computer disks and other material and things prepared by the Contractor or the Contractor's Staff arising out of or in connection

with this Contract ("Materials") vests in and remain solely with the Anangu Pitjantjatjara Yankunytjatjara .

The date at which the Materials vest in the Anangu Pitjantjatjara Yankunytjatjara is the Completion date, or such earlier date as may be specified by Anangu Pitjantjatjara Yankunytjatjara.

Upon the Completion date or at any other time upon demand by Anangu Pitjantjatjara Yankunytjatjara the Contractor must deliver to Anangu Pitjantjatjara Yankunytjatjara the Materials provided by or originating from Anangu Pitjantjatjara Yankunytjatjara and all Materials produced by the Contractor and any Contractor's Staff in the course of performing the Services whether before or after the date of this Contract.

The provisions of this clause will survive any expiry or termination of this Contract.

This clause does not affect the Contractor's rights contained in clause D.13

D.21 TERMINATION

D.21.1 Conditions

Anangu Pitjantjatjara Yankunytjatjara may terminate this Contract immediately upon giving written notice to the Contractor if:

- ◆ Anangu Pitjantjatjara Yankunytjatjara forms the opinion that the Contractor is unable to perform its obligations under this Contract
- ◆ The Contractor is in breach of this Contract and having been given reasonable notice in writing by Anangu Pitjantjatjara Yankunytjatjara to rectify such breach has not, within ten (10) days of that notice, rectified the breach;
- ◆ The Contractor suffers or is in jeopardy of becoming subject to any form of insolvency administration

D.21.2 Notice of termination

Anangu Pitjantjatjara Yankunytjatjara may, in any event, terminate this Contract (notwithstanding that the Contractor is not in default under this Contract) by giving the Contractor seven (7) days prior written notice. Where Anangu Pitjantjatjara Yankunytjatjara gives notice pursuant to clause D.21.3 Anangu Pitjantjatjara Yankunytjatjara may give reasonable directions to the Contractor as it thinks fit in relation to the subsequent performance of the Contract. Any termination of this Contract by Anangu Pitjantjatjara Yankunytjatjara is without prejudice to any rights, remedies or actions that Anangu Pitjantjatjara Yankunytjatjara may have against the Contractor that may have arisen prior to the date of termination.

D.21.3 Payments

If Anangu Pitjantjatjara Yankunytjatjara terminates this Contract by notice in writing under clause D.22.2, it must pay the Contractor for that part of the Services authorised by Anangu Pitjantjatjara Yankunytjatjara and performed by the Contractor prior to the Contractor receiving Anangu Pitjantjatjara Yankunytjatjara's notice

D.22 FURTHER TERMS

The terms set out in clause E.14 form part of and are incorporated into this Contract.

D.23 SEVERABILITY

If a clause or part of a clause is held by a court to be invalid or unenforceable, it is to be regarded as having been deleted from this Contract and this Contract otherwise remains in full force and effect.

D.24 ASSIGNMENT

Neither the Contractor nor Anangu Pitjantjatjara Yankunytjatjara may assign, sub-Consultancy or otherwise transfer any of its rights or obligations pursuant to this Contract whether in whole or in part without the prior written consent of the other party.

D.25 WAIVER

No waiver of any provision of this Contract is effective unless it is in writing.

No waiver by one party of a breach of a provision of this Contract operates as a waiver of another breach of the same or of any other provision of this Contract.

No forbearance, delay or indulgence by either party in enforcing the provisions of this Contract operates to prejudice or restrict the rights of that party.

PART E - THE SCHEDULE

E.1 THE CONTRACTOR

To be confirmed upon Contract engagement.

E.2 THE SERVICES

E.2.1 Scope of Works

Anangu Pitjantjatjara Yankunytjatjara is seeking quotations from suitably qualified fencing Contractors to undertake construction of a specialized 4.529km predator proof fence, as per exact specifications listed in clause E.2.2 at the location indicated in clause E.5. The extent of the project work is limited by the available budget. Tenderers should aim to keep the cost of their proposal below \$27,900 inclusive of GST. Fence construction is to take no less than four (4) weeks and no longer than five (5) weeks and Contractor services will also include supervision of four (4) Anangu Pitjantjatjara Yankunytjatjara fencing staff and the delivery of on-the-job fencing training for the four (4) fencing staff. Anangu Pitjantjatjara Yankunytjatjara shall organise the clearing of the fence line and the purchase of all fencing materials prior to the commencement date. All fencing materials required will be available for collection from Umuwa, approximately 50km from the project area. The Contractor shall provide all tools necessary for the fence construction and training.

E.2.2 Fence Specifications

The total length of fencing as outlined in Fig.1 is 4.529km and side lengths are indicated in clause E.2.2.1. Fenced area will include two (2) 3m wide gates at the locations indicated in clause E.2.2.1. The base of gate space will include railway iron or large diameter pipe welded in place at the bases of the gate posts.

This predator-proof fence has been modeled on the fence specifications of Arid Recovery, located in Roxby Downs, South Australia (www.aridrecovery.org.au)

E.2.2.1 Fence GPS coordinates and fence lengths

Outer fence corners

- ◆ South East - 53J, 234949.613, 7100506.77
- ◆ South West - 53J, 234043.799, 7100610.955
- ◆ North East - 53J, 235052.172, 7101597.295
- ◆ North West - 53J, 234160.874, 7101683.325

Inner fence corners

- ◆ P2 - North - 53J, 234689.954, 7101621.318
- ◆ P2 - Inside - 53J, 234671.823, 7101469.44
- ◆ P2 - East - 53J, 235036.975, 7101434.312

Gate GPS coordinates

- ◆ Gate - Inside - 53J, 234681.835, 7101546.359
- ◆ Gate - West - 53J, 234124.792, 7101333.12

Fence side lengths

- ◆ Both long NS lengths are 1100m
- ◆ Both long EW lengths are 900m
- ◆ Short NW length is 162m
- ◆ Short EW length 367m



Fig. 1. Warru Fence with enclosure and gate locations.

E.2.3 Fence structure

- Fence Panel 1 (ground level)
 - o Standard rabbit netting – Mesh Size 40mm
 - o 1200mm panel width
 - o 300mm of this outside foot netting
 - o 900mm above ground
- Fence Panel 2
 - o Standard rabbit netting – Mesh size 50mm
 - o 1500mm panel width
 - o Joins Panel 1 at 900mm above ground
 - o Panel 2 raises to 1800mm above ground
 - o Final 600mm of Panel 2 floppy external over hang (refer to Fig 2). Final hook is to be bent outward and upward to support the overhang's selvedge.
- Vertical Supports
 - o Primary Support Struts
 - Every 100m
 - Bore Casing/Iron/Railway line (not wooden)

- Minimum 1000 – 1500mm into the ground. Must be 1500mm deep at the corners and for the box assembly's inner post and for gate posts
 - 1800mm above ground
 - Box (or "H") assembly at corners (the corners need a box assembly rather than a 45 degree angle post)
 - Horizontal steel bore pipe brace 3000mm long
 - Vertical posts (corner and brace post) 1500mm in the ground, prefer railway line
 - Bore pipe held in place on pins minimum 15 mm diameter by 100 mm long welded to tops of vertical posts (bore pipe brace not to be welded to vertical posts)
 - Box assembly to be braced using twin loops of minimum 1.2 mm diameter fencing wire
 - Secondary support Star-droppers
 - 2400mm long
 - 600mm in the ground
 - 1800mm above ground
 - *Very important* holes of the droppers are at 300mm intervals above the ground to thread through the support wires, and ensure that the droppers all have identical spacing of the holes in particular the hole that will be 900mm above the ground (ie at 1500mm above the dropper's pointy end or 900mm from its blunt end) because there are at least 2 different hole spacings available, and we need to have the 900 mm hole for the support wire at the joining line of the lower and upper panels of meshes
 - 12 droppers in between main posts (which are spaced at 100m, see above)
 - Additional droppers may be required when fence line crosses water courses
- Floppy over hang
 - Supported by 1.1m lengths of high tensile wire cut to length
 - Bent in the field using a dropper hole
 - Small hook as per Fig 2 at the end to support overhang structure

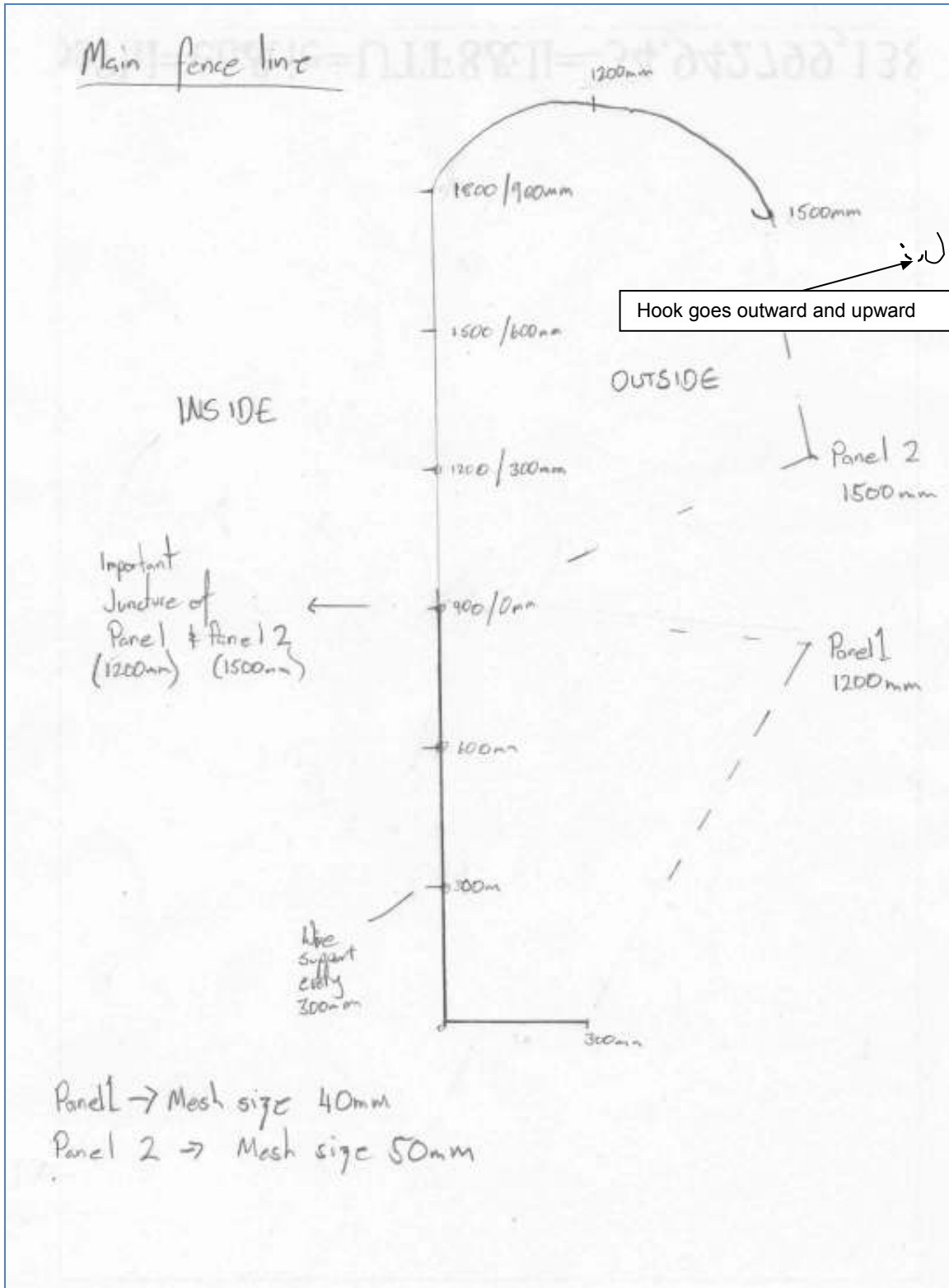


Fig 2. Side view of main fence line

Corners

- Box assembly on inside of corners (as stated above)
- Extra internal 45 degree fence of 6m which is attached to the inner vertical of the box assembly at its half way and for which supplementary posts will need to be added at its ends at the main fence line intercepts.
- The internal 45 degree fence needs to have an internal floppy overhang along its length and for at least 3m beyond and along the inside of the main fence.

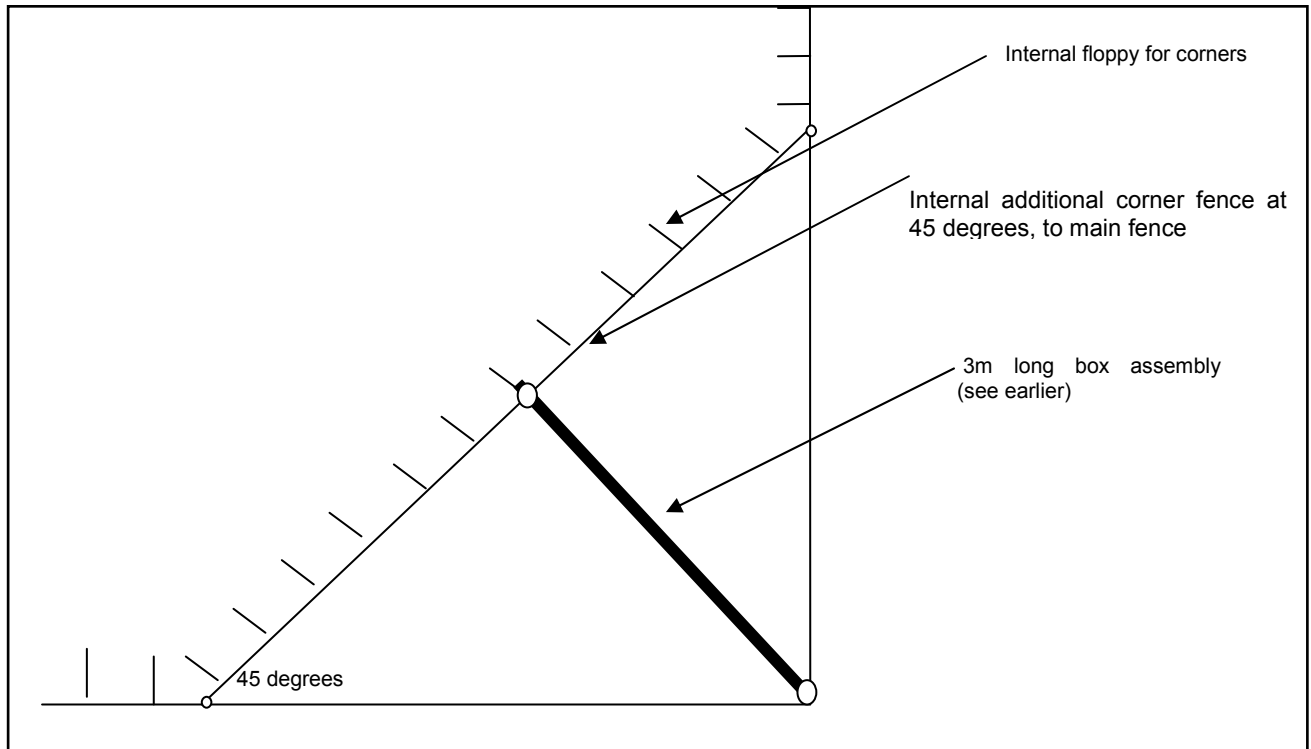


Fig 3. Plan view of fence corners

E.3 CONTRACT TERM

The Contract Term shall be a minimum four (4) weeks and no more than five (5) weeks from the commencement date.

E.3.1 Commencement Date

Monday 31st May 2010

E.3.2 Completion Date

Sunday 4th July 2010

E.4 FEE

Lump sum of XXXXX (lump sum of successful Tender) for no less than four (4) and no more than five (5) weeks of service (excluding GST).

E.4.1 MANNER AND SCHEDULE OF PAYMENT

Payments will be made as per the reporting stages nominated in Clause E.13. Funds will be electronically deposited into a nominated account on receipt of an appropriate invoice.

- First 25% payment - Wednesday 26th May 2010 or upon delivery of signed Letter of Acceptance to Anangu Pitjantjatjara Yankunytjatjara from the Contractor.

- Second 15% payment - Wednesday 9th June 2010 and upon delivery of a Tax Invoice and a signed Weekly Report (as per F.3)
- Third 15% payment - Wednesday 16th June 2010 and upon delivery of a Tax Invoice and a signed Weekly Report (as per F.3)
- Fourth 15% payment - Wednesday 23rd June 2010 and upon delivery of a Tax Invoice and a signed Weekly Report (as per F.3)
- Fifth 15% payment - Wednesday 30th June 2010 and upon delivery of a Tax Invoice and a signed Weekly Report (as per F.3)
- Sixth 15% payment - Wednesday 7th July 2010 and upon delivery of a Tax Invoice and a signed Weekly Report (as per F.3)

E.5 LOCATION

Fence is to be constructed on the Anangu Pitjantjatjara Yankunytjatjara Lands, based in the Donalds Well area, approximately 30km NE of Ernabella. For exact GPS coordinates of fence line refer to clause E.2.2. All fencing material required for the construction of the fence will be available for collection from Umuwa, approximately 30km SW from Ernabella.

E.6 CONTRACTOR'S STAFF

N/A

E.7 ITEMS TO BE PROVIDED BY THE CONTRACTOR

The Contractor is to provide on the job training for the four (4) Anangu Pitjantjatjara Yankunytjatjara fencing staff. Contractor is to provide tools required for the construction of the fence which are to be used by the Contractor, the Contractor's staff and four (4) Anangu Pitjantjatjara Yankunytjatjara fencing staff. The all-inclusive Lump Sum Tender nature allows the Contractor to self-fund all costs associated with vehicle, accommodation, and supplies.

E.8 ITEMS TO BE PROVIDED BY ANANGU PITJANTJATJARA YANKUNYTJATJARA

All fencing material required for the construction of the fence will be purchased and supplied by Anangu Pitjantjatjara Yankunytjatjara and available for collection from Umuwa, approximately 50km from the project area.

E.9 INSURANCES

E.9.1 Public Liability Insurance

Ten million dollars

E.9.2 WORKERS COMPENSATION

As required under the Workers Rehabilitation and Compensation Act 1986 in respect of the Consultant's staff and/or approved sub-Consultants.

E.10 PROJECT MANAGER

Anangu Pitjantjatjara Yankunytjatjara's Project Manager:
Jasmina Muhic - Warru Reintroduction Officer

E.11 ADDRESS FOR NOTICES TO ANANGU PITJANTJATJARA YANKUNYTJATJARA

Any notices to Anangu Pitjantjatjara Yankunytjatjara should be submitted electronically via email to reintroductionlmapy@anangu.com.au and sent by prepaid post to the mailing address listed below.

Mailing Address:

Anangu Pitjantjatjara Yankunytjatjara

Att: Warru Reintroduction Officer
PMB 227
Umuwa via ALICE SPRINGS NT 0872

E.12 ADDRESS FOR NOTICES TO THE CONTRACTOR

To be confirmed upon Contract engagement

E.13 REPORTING

The Contractor is to report on the progress of Works using the weekly report template provided in clause F.3. The total of five (5) reports and weekly invoices should be delivered to either the mailing or email address listed in clause E.12 by no later than 10am every Monday morning. Alternatively the Contractor may hand deliver the reports and invoices to the Project Manager at the Land Management office when collecting fencing materials. The reporting dates are as follows:

First weekly report – Monday 7th June 2010
Second weekly report – Monday 14th June 2010
Third weekly report – Monday 21st June 2010
Fourth weekly report – Monday 28th June 2010
Fifth weekly report – Monday 5th July 2010

E.14 FURTHER TERMS

N/A

PART F - ANNEXURE

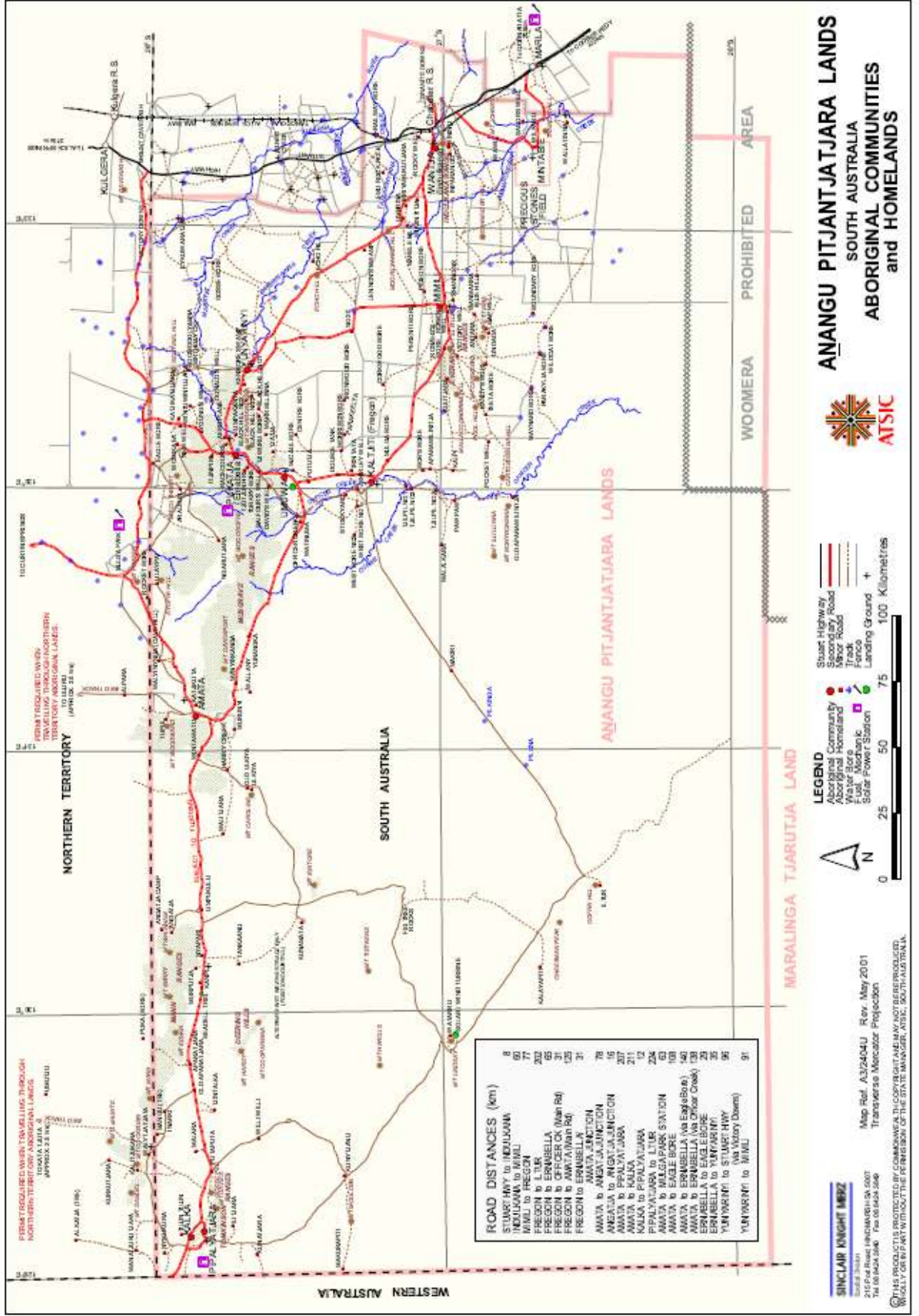
F.1 PROJECT BACKGROUND

The Black-footed rock wallaby, also known as Warru, is South Australia's most endangered mammal. The construction of a predator-proof fence on the Anangu Pitjantjatjara Yankunytjatjara Lands is critical to the overall Warru Recovery project, which is assisting the conservation of a species which is critically endangered within South Australia (thought to number approximately 100-120 animals). The Warru Recovery project is being driven by the Warru Recovery Team, a co-operative effort between APY Land Management, Alinytjara Wilurara NRM Board, Zoos SA, University of Adelaide, the Department of Environment and Heritage and independent researchers. The Warru Recovery Project within South Australia in turns forms part of a nationwide Black-footed Rock Wallaby Recovery Project.

The Warru Recovery Team was established in early 2007 and since that time has made some major achievements in threatened species conservation in the Anangu Pitjantjatjara Yankunytjatjara Lands, including:

- Establishment of a cross-cultural recovery team with strong representation and stewardship from Traditional Owners
- The development of new tjukurpa (dreaming) around the Warru Recovery Program
- Establishment of a captive breeding population of Warru/Black-footed rock wallaby at Monarto Zoo to ensure long-term conservation of Warru genetics and to enable a future reintroduction program.
- Continual on-grounds monitoring (Warru survival through radio-telemetry) and management (fox and cat baiting) conducted by Anangu rangers
- Location of previously unknown small sub-colonies in the Musgrave Ranges through targeted helicopter surveys
- Employment (for at least 5 years) of eight Working on Country Warru Rangers from Pukatja, Kalka and Pinalvatiara and one Warru Recovery Officer to oversee the project from Anangu Pitjantjatjara Yankunytjatjara Lands

F.2 ANANGU PITJANTJATJARA YANKUNYATJATJARA LANDS MAP



F.3 WARRU FENCE WEEKLY REPORT

– to be delivered to Anangu Pitjantjatjara Yankunytjatjara by no later than 10am every Monday

DATE	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	TOTAL NO. HOURS WORKED
Week commencing.. & ending..								
Supervisor (Insert name)	insert work start-end time							
APY staff no. 1 (Insert name)								
APY staff no. 2 (Insert name)								
APY staff no. 3 (Insert name)								
APY staff no. 4 (Insert name)								
APY staff ranger 1 (Insert name)								
APY staff ranger 2 (Insert name)								

DESCRIPTION OF WORKS (including training activities) UNDERTAKEN THIS WEEK

.....

.....

.....

.....

SUPERVISOR NAME

SIGNATURE

DATE

