

Commonwealth Approach to Market (ATM) Terms

A.B.1 Background

- 1.1 Some terms in this document have been given a special meaning. The meanings are set out either in the Commonwealth Contracting Suite Glossary and Interpretation, the CCS ATM or the draft Commonwealth Contract.
- 1.2 Any queries or complaints regarding this ATM must be directed to the Customer's relevant contact officer listed in the Statement of Requirement.
- 1.3 The Customer may:
 - a) amend or clarify any aspect of this ATM, prior to the Closing Time, or
 - b) suspend the ATM process or issue a Public Interest Certificate prior to Contract execution,by issuing an addendum to the ATM in the same manner as the original ATM was distributed or, where this is not possible, issuing a notice to all Potential Suppliers.
- 1.4 No contract will exist until the Contract is executed by the Customer. The Customer, acting in good faith, may discontinue this ATM; decline to accept any Response to this ATM or issue any contract; or satisfy its requirements separately from this ATM process.
- 1.5 Participation in this process is at the Potential Supplier's risk and cost.

A.B.2 Precedence of Documents

- 2.1 If there is inconsistency between any of the parts of this ATM, the following order of precedence will apply:
 - a) CCS ATM – Statement of Requirement
 - b) CCS ATM Response Form
 - c) CCS ATM Annexes (if any)
 - d) Commonwealth ATM Terms
 - e) Additional Contract Terms (if any)
 - f) Commonwealth Contract Terms
 - g) draft Commonwealth Contract (if any), and
 - h) CCS Glossary and Interpretation,so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

A.B.3 Referenced Material

- 3.1 The Customer will make available the Customer's Material (if any) referenced in this ATM. Potential Suppliers are responsible for obtaining all other Referenced Material (if any).
- 3.2 Potential Suppliers are responsible for considering Referenced Material in framing their Response.

A.B.4 Lodging a Response

- 4.1 By lodging a Response, Potential Suppliers agree:
 - a) that their Response is subject to these Commonwealth ATM Terms
 - b) that the Response will remain open for acceptance for ninety (90) calendar days from the ATM Closing Time, and
 - c) if successful, to sign a Contract which incorporates the Commonwealth Contract Terms.

- 4.2 When lodging a Response, Potential Suppliers must:
 - a) lodge their Response as specified in the Statement of Requirement using the CCS ATM Response Form provided (if any) without changing the structure or formatting of the response form
 - b) comply with any conditions for participation and ensure their Response complies with any minimum content and format requirements set out in the Statement of Requirement
 - c) ensure the Response is in English, and
 - d) ensure that prices quoted:
 - i. are in Australian currency
 - ii. show the GST exclusive price, the GST component (if any) and the GST inclusive price
 - iii. are inclusive of GST and all other taxes, duties (including any customs duties) and any government charges imposed or levied in Australia or overseas, and
 - iv. unless identified in the Potential Supplier's Response, include any and all other charges and costs and be the maximum payable by the Customer under the Contract.

- 4.3 The Customer may decline to consider a Response that is unable to be read or contains alterations, erasures, illegibility, ambiguity or incomplete details.

- 4.4 Potential Suppliers may submit Responses for alternative methods of addressing the Customer's Requirement described in this ATM, where the option to do so was stated in the ATM or agreed in writing with the Customer prior to the Closing Time. Potential Suppliers are responsible for providing a sufficient level of detail about the alternative solution to enable its evaluation.

- 4.5 Potential Suppliers and their officers, employees, agents, advisors and proposed subcontractors must not engage in any collusive, anti-competitive or any other similar conduct with any other Potential Supplier or person, or offer any unlawful inducements in relation to their Response or this ATM process.

- 4.6 The Customer will only extend the Closing Time in exceptional circumstances and, if extended, the extension will apply equally to all Potential Suppliers. The Customer will not consider any Responses received after the Closing Time specified in this ATM unless the Response is late as a consequence of the Customer's mishandling.

- 4.7 Prior to execution of a contract, the Customer may seek clarification or additional information from, and enter into discussions and negotiations with, any or all Potential Suppliers in relation to their Response. In doing so, the Customer will treat all Potential Suppliers equitably and not allow any Potential Supplier to substantially alter their Response.

- 4.8 If any Conflicts of Interest arise during the evaluation period, Potential Suppliers must notify

the Customer immediately and comply with any reasonable directions issued by the Customer. All communications must be confirmed in writing.

A.B.5 Evaluation

- 5.1 The Customer will evaluate Responses in accordance with the ATM and consistent with the *Commonwealth Procurement Rules* to determine the best value for money outcome for the Customer.
- 5.2 The Customer will exclude from consideration any Response that does not meet the minimum content and format requirements and the conditions for participation (if any) as set out in the Statement of Requirement.
- 5.3 The criteria for evaluation are the:
 - a) extent to which the Potential Supplier's Response meets the Customer's Requirement set out in this ATM
 - b) extent to which the Potential Supplier demonstrates its capability and capacity to provide the Requirement, and
 - c) whole of life costs to be incurred by the Customer. Evaluation will take account of the quoted price and any costs that the Customer will incur as a result of accepting the Potential Supplier's Response.
- 5.4 Unless stated otherwise in the Approach to Market documentation, the above three (3) criteria for evaluation will be of equal importance.
- 5.5 The Customer may at any time exclude a Response from consideration if the Customer considers that the Response is clearly not competitive.
- 5.6 Potential Suppliers should note that the Commonwealth's *Indigenous Procurement Policy* (IPP) will apply to the Customer in respect of this procurement. During evaluation, the Customer may favourably consider the Potential Supplier's ability to assist the Customer to meet its IPP obligations. More information is available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
- 5.7 If requested by the Customer, the Potential Supplier must be able to demonstrate its ability to remain viable for the duration of the Contract and must promptly provide the Customer with such information or documentation as the Customer reasonably requires.
- 5.8 The Customer reserves the right to contact the Potential Supplier's referees, or any other person, directly and without notifying the Potential Supplier.
- 5.9 The Customer will notify all Potential Suppliers of the final decision and, if requested, will debrief Potential Suppliers following award of the Contract.

A.B.6 Reporting Requirements

- 6.1 Potential Suppliers acknowledge that the Customer is subject to legislative and administrative accountability and transparency requirements including disclosure to Parliament and its Committees.

- 6.2 Without limiting the Customer's right to disclose other information, for any contracts awarded, the Customer may publicly disclose the Supplier's name, postal address and other details about the Contract, including contract value.
- 6.3 Potential Suppliers acknowledge that the Customer may disclose the names of any Subcontractors engaged in respect of the Contract. Potential Suppliers should also note the requirements of the *Freedom of Information Act 1982* (Cth).

A.B.7 Confidentiality of Potential Supplier's Information

- 7.1 Potential Suppliers should note that, if successful, parts of their Response may be included in a subsequent Contract. Potential Suppliers must identify and justify any aspects of their Response or the proposed Contract that they consider should be kept confidential.
- 7.2 Potential Suppliers should note that the Customer will only agree to treat information as confidential in cases that it considers consistent with Australian Government legislation and policies. In the absence of such an agreement, Potential Suppliers acknowledge that the Customer has the right to publicly disclose the information.

A.B.8 Criminal Code

- 8.1 Potential Suppliers acknowledge that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).
- 8.2 Potential Suppliers must ensure that any intended Subcontractors participating in the Potential Supplier's Response are aware of the information in this clause.

A.B.9 Personal Information

- 9.1 Potential Suppliers agree to provide the Customer, or its nominee, relevant Personal Information relating to the Potential Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security breach relating to this ATM. When providing Personal Information to the Customer, the Potential Supplier warrants that they will have obtained consent or provided reasonable notification in accordance with the *Privacy Act 1988* (Cth).



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