

Commonwealth Deed of Standing Offer Approach to Market Terms (Commonwealth DoSO ATM Terms)

D.B.1 Background

- 1.1 Some terms used 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 DoSO ATM, or the draft CCS DoSO.
- 1.2 Any queries or complaints regarding this ATM must be directed to the relevant contact in D.A.5 [Lead Customer's Contact Officers].
 - a) The Lead Customer may:
 - b) amend or clarify any aspect of this ATM prior to the Closing Time, or
 - c) suspend the ATM process or issue a Public Interest Certificate prior to DoSO 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.
- 1.3 No Standing Offer Arrangement will exist until the DoSO is executed by the Lead Customer. The Lead Customer, acting in good faith, may discontinue this ATM, decline to accept any Response to this ATM, or satisfy its requirements separately from this ATM process.
- 1.4 Participation in this process is at the Potential Supplier's risk and cost, noting that there is no guarantee that a DoSO will be executed or any Contracts will be issued under any resulting DoSO.
- 1.5 Before the DoSO End Date, the Lead Customer reserves the right to extend the duration of the Standing Offer Arrangement or to add new suppliers to the Standing Offer Arrangement in accordance with the DoSO.

D.B.2 Precedence of Documents

- 2.1 If there is inconsistency between any of the parts of the ATM as issued by the Lead Customer, the following order of precedence will apply:
 - a) CCS DoSO ATM
 - b) CCS DoSO ATM Response Form
 - c) CCS DoSO ATM Annexes (if any)
 - d) Commonwealth DoSO ATM Terms
 - e) Additional DoSO Terms (if any)
 - f) Commonwealth DoSO Terms
 - g) draft CCS DoSO
 - h) Commonwealth Contract Terms, and
 - i) Commonwealth Contracting Suite Glossary and Interpretation

so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

D.B.3 Referenced Material

- 3.1 The Lead Customer will make available the Lead 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.

D.B.4 Lodging a Response

- 4.1 By lodging a Response, Potential Suppliers agree:
 - a) that their Response is subject to these Commonwealth DoSO ATM Terms
 - b) that their Response will remain open for acceptance for ninety (90) calendar days from the ATM Closing Time, and
 - c) if successful, to sign a DoSO which incorporates the Commonwealth DoSO Terms and to offer the Required Capabilities for the duration of the DoSO.
- 4.2 When lodging a Response, Potential Suppliers must:
 - a) lodge their Response as set out in
 - b) D.A.4 [Lodgement of Responses] using the ATM Response Form provided without changing the structure or formatting of the response form
 - c) comply with any conditions for participation and ensure their Response complies with any minimum content and format requirements set out in D.A.1 [Key Information and Dates]
 - d) ensure the Response is in English, and
 - e) 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 all taxes, duties (including any customs duties) and any government charges imposed or levied in Australia or overseas, and
 - iv) unless identified in the Pricing Schedule, include any and all other charges and costs and be the maximum payable by a Customer under the DoSO.

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

- 4.4 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.

- 4.5 The Lead Customer will only extend Closing Time in exceptional circumstances and, if extended, the extension will apply equally to all Potential Suppliers. The Lead 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 Lead Customer's mishandling.

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4.6 Prior to execution of a DoSO, the Lead 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 Lead Customer will treat all Potential Suppliers equitably and not allow any Potential Supplier to substantially alter their Response.

4.7 If any Conflicts of Interest arise during the evaluation period, Potential Suppliers must notify the Lead Customer immediately and comply with any reasonable directions issued by the Lead Customer. All communications must be confirmed in writing.

D.B.5 Evaluation

5.1 The Lead 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 Lead Customer.

5.2 The Lead 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 D.A.1 [Key Information and Dates].

5.3 The criteria for evaluation are the:

- a) extent to which the Potential Supplier demonstrates its capacity and capability to provide the Required Capabilities, and
- b) whole of life costs. Evaluation will take account of the Pricing Schedule, and any other costs that the Lead Customer will incur as a result of the Potential Supplier's Response for the duration of the Standing Offer Arrangement. This will also include consideration of the potential economic benefit to the Australian economy, if included in the ATM.

5.4 Unless otherwise stated in the DoSO ATM, the above two (2) criteria for evaluation will be of equal importance.

5.5 The Lead Customer may at any time exclude a Response from consideration if the Lead Customer considers that the Response is clearly not competitive.

5.6 If requested by the Lead Customer, the Potential Supplier must be able to demonstrate its ability to remain viable for the duration of the DoSO and must promptly provide the Lead Customer with such information or documentation as the Lead Customer reasonably requires.

5.7 The Lead Customer reserves the right to contact the Potential Supplier's referees, or any other relevant person, directly and without notifying the Potential Supplier.

5.8 The Lead Customer will notify all Potential Suppliers of the final decision and, if requested, will debrief

Potential Suppliers following the finalisation of the ATM process.

D.B.6 Reporting Requirements

6.1 Potential Suppliers acknowledge that Customers are subject to legislative and administrative accountability and transparency requirements including disclosure to Parliament and its Committees.

6.2 Without limiting a Customer's right to disclose other information, for any DoSO entered, the Lead Customer or relevant Customer will publicly disclose the Supplier's name, postal address and other details about the DoSO, and the value of any Contracts issued under the DoSO.

6.3 Potential Suppliers acknowledge that the Lead Customer or relevant Customer may disclose the names of any Subcontractors engaged in respect of a DoSO or any Contract issued under the DoSO. Potential Suppliers should also note the requirements of the *Freedom of Information Act 1982* (Cth).

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

7.1 Subject to this clause D.B.7, the Customer will treat all Responses as confidential before and after the award of a DoSO.

7.2 The Customer will not be in breach of the obligation in A.B.7.1 if the Customer discloses Response information to its advisers, officers, employees or contractors in connection with this ATM process, within the Customer's organisation or with another agency where this serves the Commonwealth's legitimate interests, or if it is required to disclose the information by a Minister or a House or Committee of Parliament, or for accountability or reporting purposes.

7.3 Potential Suppliers should note that, if successful, parts of their Response may be included in a subsequent DoSO and made available to Potential Customers. Potential Suppliers should identify and justify any aspects of their Response or the proposed DoSO that they consider should be kept confidential.

7.4 Potential Suppliers should note that the Lead 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 Lead Customer has the right to publicly disclose the information.

D.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).

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- 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.

D.B.9 Workplace Gender Equality

- 9.1 Where the Potential Supplier is a relevant employer under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act) the Potential Supplier must provide evidence that it complies with its obligations under the WGE Act before commencement of the DoSO and, if the term is more than 18 months, within 18 months of commencement and annually thereafter for the duration of the Standing Offer Arrangement and any Contract under the DoSO.

D.B.10 Personal Information

- 10.1 Potential Suppliers agree to provide the Lead 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 Lead Customer, the Potential Supplier warrants that they will have obtained consent or provided reasonable notification in accordance with the *Privacy Act 1988* (Cth).

D.B.11 Compliance with the Commonwealth Supplier Code of Conduct

- 11.1 If requested by the Lead Customer, Potential Suppliers should provide information in their Response demonstrating that they have the appropriate policies, frameworks, or similar, in place to comply with the Code.
- 11.2 The Lead Customer may take into account a Potential Supplier's ability to comply with the Code in evaluating the Potential Supplier's Response.



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