

A.B.1 Background

Some terms in this document have been given a special meaning. The meanings are set out either in the Commonwealth Contracting Suite Glossary, the ATM or the Contract.

Any queries regarding this ATM should be directed as set out in Clause A.A.5 [Customer's Contact Officer].

At any time prior to the Closing Time, the Customer may amend or clarify any aspect of this ATM, by issuing a formal amendment to the ATM in the same manner as the original ATM was distributed.

At any time prior to contract execution, the Customer may suspend the ATM process or issue a Public Interest Certificate by issuing an addendum to the ATM in the same manner as the original ATM was distributed.

Where the ATM has been issued via AusTender, any amendments, clarifications, addenda or suspension notifications related to this ATM will be notified via AusTender.

Where the ATM was not issued via AusTender, any amendments, clarifications, addenda or suspension notifications will be issued simultaneously to all Potential Suppliers as far as practicable.

No Contract will be formed until executed by the Customer. The Customer, acting in good faith, may discontinue this ATM, decline to accept any response; decline to issue any contract; or satisfy its requirement separately from this ATM process.

Participation in any stage of the process is at the Potential Supplier's sole risk and cost.

A.B.2 Inconsistencies

If there is inconsistency between any of the parts of this ATM, the following order of precedence shall apply:

- (a) *ATM – Statement of Requirement*;
- (b) *Commonwealth ATM Terms*;
- (c) *Additional Contract Terms* (if any);
- (d) *Commonwealth Contract Terms*;
- (e) *Commonwealth Contract*; and
- (f) *Commonwealth Contracting Suite Glossary*,

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

A.B.3 Customer and Reference Material

The Customer will make available the Customer's material (if any) specified in clause A.A.2(g) [*Customer Material*].

If this ATM references any other materials, including but not limited to, reports, plans, drawings, samples or other reference material, the Potential Supplier is responsible for obtaining the referenced material and considering it in framing their Response.

A.B.4 Lodging a Response

By lodging a Response, Potential Suppliers agree:

- (a) that the Response will remain open for acceptance for sixty (60) working days from the date set out at ATM Closing Time in clause A.A.1 [*Key Dates and Times*]; and
- (b) to sign a Contract which incorporates the *Commonwealth Contract Terms*.

Responses are subject to these *Commonwealth ATM Terms*.

Potential Suppliers must submit Responses using the *Response to the ATM* form provided (with all details in English and prices quoted in Australian currency).

Prices quoted must show the GST exclusive price, the GST component, if any, and the GST inclusive price.

The Contract Price must be inclusive of GST and all other taxes, duties (including any customs duties) and any government charges imposed or levied in Australia or overseas.

The Contract Price, which will include any and all other charges and costs, will be the maximum price payable by the Customer under the Contract.

Potential Suppliers may submit Responses for alternative methods of addressing the Customer's *Statement of 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.

The Response must be lodged as set out in clause A.A.4 [*Lodgement Method*].

Potential Suppliers and their officers, employees, agents and advisors 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.

The Customer will only agree to extensions to the Closing Time in exceptional circumstances and, if approved, 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.

The Customer may decline to consider a Response in which there are alterations, erasures, illegibility, ambiguity or incomplete details.

The Customer may, at any time prior to execution of a contract, seek clarification or additional information from, and enter into discussions and negotiations with, any or all Potential Suppliers in relation to their Responses. In doing so, the Customer will not allow any Potential Supplier to substantially tailor or amend their Response.

Potential Suppliers must notify the Customer immediately if any actual, potential or perceived conflict of interest arises (a perceived conflict of interest is one in which a reasonable person would think that the person's judgement and/or actions may be compromised) and comply with any reasonable directions given by the Customer. As soon as practicable, any verbal advice should be followed by written confirmation.

A.B.5 Evaluation

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.

The Customer will exclude from consideration any Response that does not meet the Mandatory Conditions for Participation, if any.

The criteria for evaluation will encompass the:

- (a) extent to which the potential Supplier's Response meets the Customer's Requirement set out in this ATM;
- (b) potential Supplier's demonstrated capability and capacity to provide the Requirement; and
- (c) whole of life costs to be incurred by the Customer. Considerations will include both the quoted price and any costs that the Customer will incur as a result of accepting the potential Supplier's Response.

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

Unless stated otherwise in the Approach to Market documentation, the above three (3) criteria for evaluation will be of equal importance.

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>.

If requested by the Customer, the Potential Supplier must be able to demonstrate its ability to remain viable over the Contract Term and must promptly provide the Customer with such information or documentation as the Customer reasonably requires.

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

The Customer will notify all Potential Suppliers of the final decision and, if requested, will provide a debrief following award of the contract.

A.B.6 Reporting Requirements

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

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.

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

Potential Suppliers should note that if successful, parts of their Response may be included in a subsequent Contract. Potential Suppliers must identify any aspects of their Response or the proposed Contract that they consider should be kept confidential, including reasons.

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

Potential Suppliers should be aware 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).

The Potential Supplier must ensure that any intended subcontractors participating in the Potential Supplier's Response are aware of the information in this clause.



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