

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. Their meanings are set out either in the Commonwealth DoSO Glossary, the CCS DoSO ATM, or the draft CCS DoSO.
- 1.2 The Lead Customer may:
 - a) At any time prior to the ATM Closing Date and Time, amend, or clarify any aspect of this ATM, or
 - b) at any time prior to contract execution, may suspend the ATM process or issue a Public Interest Certificate,

by issuing a formal addendum to the ATM in the same manner as the original ATM was distributed. Addendums will be issued simultaneously to all Potential Suppliers, as far as practicable.
- 1.3 Any queries or complaints regarding this ATM must be directed to the ATM Contact Officer set out in D.A.5 [*Lead Customer's Contact Officers*].
- 1.4 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.
- 1.5 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.
- 1.6 Before the DoSO End Date, the Lead Customer reserves the right to extend the term of the Standing Offer Arrangement or to add new suppliers to the Standing Offer Arrangement.

D.B.2 Inconsistencies

- 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 shall apply:
 - (a) CCS DoSO ATM;
 - (b) Additional DoSO Terms (if any);
 - (c) CCS DoSO ATM Response Form;
 - (d) CCS DoSO ATM Annexes (if any);
 - (e) Commonwealth DoSO ATM Terms;
 - (f) Commonwealth DoSO Terms;
 - (g) draft CCS DoSO;
 - (h) Commonwealth DoSO Glossary; and
 - (i) Commonwealth Contract Terms.so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

D.B.3 Referenced Material

- 3.1 For the purpose of this clause, Referenced Material means any materials referenced in this ATM, including but not limited to, reports, plans, drawings or samples. Potential Suppliers are responsible for considering Referenced Material in framing their Response.
- 3.2 The Lead Customer may make available Referenced Material (if any) referenced in this ATM. Potential Suppliers are responsible for obtaining all other Referenced Material (if any).

D.B.4 Lodging a Response

- 4.1 By lodging a Response, Potential Suppliers agree:
 - (a) that the Response will remain open for acceptance for ninety (90) calendar days from the ATM Closing Date and Time
 - (b) if successful, to sign a DoSO which incorporates the Commonwealth DoSO Terms; and
 - (c) if successful, to offer to provide goods and services for the duration of the DoSO.
- 4.2 When lodging a Response, in addition to any Minimum Content and Format Requirements set out in D.A.1 [*Key Information and Dates*]:
 - (a) Potential suppliers agree Responses are subject to these Commonwealth DoSO ATM Terms;
 - (b) the Response must be lodged as set out in D.A.4 [Lodgement of Responses];
 - (c) Potential Suppliers must submit Responses using the Response to the ATM form provided without making any changes to the structure or formatting of the Response form;
 - (d) Potential Suppliers must submit all details in English;
 - (e) Pricing Rates must
 - i. be quoted in Australian currency
 - ii. show the GST exclusive price, the GST component, if any, and the GST inclusive price;
 - iii. be 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 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.

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- 4.5 The Lead Customer will only extend the ATM Closing Time noted at D.A.1 [*Key Information and Dates*], 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.
- 4.6 At any time 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 reserves the right to contact the Potential Supplier's referees, or any other relevant person, directly and without notifying the Potential Supplier.
- 5.6 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.

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 Official Order. 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 Potential Suppliers should note that if successful, parts of their Response may be included in a subsequent DoSO and made available to Potential Customers on AusTender.
- 7.2 Potential Suppliers should note that the Lead Customer will only agree to treat information as confidential if it meets the Australian Government's Confidentiality Test. Potential Suppliers must identify any aspects of their Response that they consider should be kept confidential, including reasons. In the absence of such an agreement, Potential Suppliers acknowledge that the Lead Customer has the right to publicly disclose the information.
- 7.3 The Potential Supplier agrees to provide the Lead Customer, or its nominee, relevant personal information relating to the Potential Supplier, its officers, employees, agents and/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, Potential Suppliers warrants that they will have obtained consent or provided reasonable notification in accordance with the *Privacy Act 1988* (Cth).

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).
- 8.2 The Potential Supplier must ensure that any intended subcontractors participating in the Potential Supplier's Response are aware of, and acknowledge the information in this clause.

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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 Supplier must provide evidence that it complies with its obligations, if any, under the WGE Act before commencement of the DoSO and annually thereafter for the duration of the Standing Offer Arrangement and any Contract under the DoSO.



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