



Australian Government
Department of Finance



**Commonwealth Contracting Suite (CCS)
Change Record – September 2022
Commonwealth Approach to Market Terms**



Commonwealth Approach to Market (ATM) Terms

Marked-up Clause	Explanation
A.B.1 Background	
<u>1.1</u> Some terms in this document have been given a special meaning. The meanings are set out either in the Commonwealth Contracting Suite Glossary <u>and Interpretation</u> , the <u>CCS ATM</u> or the <u>draft Commonwealth Contract</u> .	Change in wording for clarity.
<u>1.2</u> Any queries <u>or complaints</u> regarding this ATM should <u>must</u> be directed <u>to the Customer's relevant contact officer listed in the Statement of Requirement, as set out in Clause A.A.5 [Customer's Contact Officer]</u> .	Change in wording for clarity. Removal of reference to A.A.5 for flexibility where the Customer does not issue a CCS ATM.
<u>1.3</u> The Customer may: a) 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 prior to the Closing Time, or b) At any time prior to contract execution, the Customer may suspend the ATM process or issue a Public Interest Certificate <u>prior to Contract execution</u> , by issuing an addendum to the ATM in the same manner as the original ATM was distributed <u>or, where this is not possible, issuing a notice to all Potential Suppliers</u> .	Change in wording for clarity.
Where the ATM has been issued via AusTender, any amendments, clarifications, addenda or suspension notifications related to this ATM will be notified via AusTender.	Clauses relating to the issuing of amendments to the ATM removed due to being covered by the Commonwealth Procurement Rules.
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.	
<u>1.4</u> No Contract <u>will be formed exist</u> until <u>the Contract is</u> executed by the Customer. The Customer, acting in good faith, may discontinue this ATM; decline to accept any Response to this ATM; or decline to issue any contract; or satisfy its requirements separately from this ATM process.	Change in wording for clarity.
<u>1.5</u> Participation in any stage of the this process is at the Potential Supplier's sole risk and cost.	Change in wording for clarity.
A.B.2 InconsistenciesPrecedence of Documents	
<u>2.1</u> If there is inconsistency between any of the parts of this ATM, the following order of precedence shall <u>will</u> apply: a) <u>CCS ATM – Statement of Requirement</u> b) <u>CCS ATM Response Form</u> c) <u>CCS ATM Annexes (if any)</u> b)d) Commonwealth ATM Terms e)e) Additional Contract Terms (if any) f)f) Commonwealth Contract Terms e)g) <u>draft Commonwealth Contract (if any)</u> , and f)h) <u>Commonwealth Contracting Suite</u> CCS Glossary <u>and Interpretation</u> , so that the provision in the higher ranked document will prevail to the extent of the inconsistency.	Amended to clarify the priority of those documents that form part of an ATM.

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A.B.3 Customer and Referenced Material	
<u>3.1</u> The Customer will make available the Customer’s material (if any) specified <u>referenced</u> in clause A.A.2(g) [Customer Material] <u>this ATM</u> . <u>Potential Suppliers are responsible for obtaining all other Referenced Material (if any).</u>	Amended to clarify responsibilities of the Parties and for consistency with other CCS documents.
<u>3.2</u> If this ATM references any other materials, including but not limited to, reports, plans, drawings, samples or other reference material, the the Potential Suppliers is <u>are</u> responsible for obtaining the referenced material and considering <u>Referenced Material</u> it in framing their Response.	‘Referenced Material’ defined in the Glossary and Interpretation. Change in wording for clarity and for consistency with other CCS documents.
A.B.4 Lodging a Response	
<u>4.1</u> By lodging a Response, Potential Suppliers agree: <u>a) that their Responses are</u> is subject to these Commonwealth ATM Terms g)b) that the Response will remain open for acceptance for sixty (60) working <u>ninety (90) calendar days</u> from the date set out at ATM Closing Time in clause A.A.1 [Key Dates and Times] , and h)c) if successful, to sign a Contract which incorporates the Commonwealth Contract Terms.	Change from working days to calendar days for ease of calculation. Removal of reference to A.A.5 for flexibility where the Customer does not issue a CCS ATM. Other changes in wording for clarity and for consistency with other CCS documents.
Responses are subject to these Commonwealth ATM Terms.	Moved to A.B.4.1.a to better align clause with process.
<u>4.2</u> <u>When lodging a Response, Potential Suppliers must:</u> <u>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</u> <u>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</u> <u>c) ensure the Response is in English, and</u> <u>d) ensure that prices quoted:</u> <u>i. are in Australian currency</u> <u>ii. show the GST exclusive price, the GST component (if any) and the GST inclusive price</u> <u>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</u> <u>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.</u>	Lodgement requirements combined into one clause for clarity.
Potential Suppliers must submit Responses using the Response to the ATM form provided (with all details in English and prices quoted in Australian currency).	Removed because requirement now included in A.B.4.2.

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Prices quoted must show the GST exclusive price, the GST component, if any, and the GST inclusive price	Removed because requirement now included in A.B.4.2.
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.	Removed because requirement now included in A.B.4.2.
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	Removed because requirement now included in A.B.4.2.
4.3 The Customer may decline to consider a Response in which there are that is unable to be read or contains alterations, erasures, illegibility, ambiguity or incomplete details.	Change in wording for clarity.
4.4 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.	Change in wording for clarity.
The Response must be lodged as set out in clause A.A.4 [Lodgement Method].	Removed because requirement now included in A.B.4.2.
4.5 Potential Suppliers and their officers, employees, agents, and 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.	Obligations in relation to collusive and anti-competitive conduct extended to also apply to subcontractors.
4.6 The Customer will only agree to extensions to the extend the Closing Time in exceptional circumstances and, if approved 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.	Change in wording for clarity.
The Customer may decline to consider a Response in which there are alterations, erasures, illegibility, ambiguity or incomplete details.	Moved to A.B.4.3 to better align clause with process.
4.7 The Customer may, at any time pPrior 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 Responses. In doing so, the Customer will treat all Potential Suppliers equitably and not allow any Potential Supplier to substantially tailor or amend alter their Response.	Amendment so that when seeking clarification or additional information from Potential Suppliers, the Customer must treat all Potential Suppliers equitably.
4.8 If any Conflicts of Interest arise during the evaluation period. 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 issued by the Customer. As soon as practicable, any verbal advice should be followed by written confirmation. All communications must be confirmed in writing.	'Conflicts of Interest' defined in the Glossary and Interpretation. Change in wording for clarity and for consistency with other CCS documents.

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A.B.5 Evaluation	
<u>5.1</u> The Customer will evaluate Responses in accordance with the ATM and consistent with the <i>Commonwealth Procurement Rules</i> to determine the best value for money outcome for the Customer.	No change to text.
<u>5.2</u> The Customer will exclude from consideration any Response that does not meet the minimum content and format requirements and the Mandatory Conditions for Participation, (if any,) as set out in the Statement of Requirement .	Amendment so the Customer will also exclude any Response that does not meet minimum content and format requirements.
<u>5.3</u> The criteria for evaluation will encompass are the: a) extent to which the p Potential Supplier's Response meets the Customer's Requirement set out in this ATM b) extent to which the p extent to which the p Potential Supplier's demonstrates and its capability and capacity to provide the Requirement, and c) whole of life costs to be incurred by the Customer. Evaluation will take account Considerations will include both of the quoted price and any costs that the Customer will incur as a result of accepting the P potential Supplier's Response.	Change in wording for clarity. 'Potential Supplier' defined in the Glossary and Interpretation.
<u>5.4</u> Unless stated otherwise in the Approach to Market documentation, the above three (3) criteria for evaluation will be of equal importance.	No change to text.
<u>5.5</u> The Customer may at any time exclude a Response from consideration if the Customer considers that the Response is clearly not competitive.	No change to text.
Unless stated otherwise in the Approach to Market documentation, the above three (3) criteria for evaluation will be of equal importance.	Moved to A.B.5.4 to better align clause with process.
<u>5.6</u> Potential Suppliers should note that the Commonwealth's <i>Indigenous Procurement Policy</i> (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	No change to text.
<u>5.7</u> If requested by the Customer, the Potential Supplier must be able to demonstrate its ability to remain viable over for the duration of the Contract Term and must promptly provide the Customer with such information or documentation as the Customer reasonably requires.	Change in wording for clarity.
<u>5.8</u> The Customer reserves the right to contact the Potential Supplier's referees, or any other person, directly and without notifying the Potential Supplier.	No change to text.
<u>5.9</u> The Customer will notify all Potential Suppliers of the final decision and, if requested, will provide a debrief Potential Suppliers following award of the e Contract.	Change in wording for clarity.
A.B.6 Reporting Requirements	
<u>6.1</u> Potential Suppliers acknowledge that the Customer is subject to legislative and administrative accountability and transparency requirements including disclosure to Parliament and its Committees.	No change to text.

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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.	No change to text.
6.3 Potential Suppliers acknowledge that <u>The Customer may disclose the names of any</u> the <u>subcontractors engaged in respect of the Contract. Potential Suppliers should also note the requirements of the <i>Freedom of Information Act 1982</i> (Cth).</u>	Change in wording for clarity. ‘Subcontractors’ defined in the Glossary and Interpretation.
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 <u>and justify</u> any aspects of their Response or the proposed Contract that they consider should be kept confidential including reasons .	Change in wording for clarity.
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.	No change to text.
A.B.8 Criminal Code	
8.1 Potential Suppliers should be aware <u>acknowledge</u> that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the <i>Criminal Code Act 1995</i> (Cth).	Potential Suppliers provide an acknowledgement in relation to giving of false or misleading information being a serious offence.
8.2 The <u>Potential Suppliers</u> must ensure that any intended s <u>Subcontractors</u> participating in the Potential Supplier’s Response are aware of the information in this clause.	‘Subcontractors’ defined in the Glossary and Interpretation.
A.B.9 Personal Information	
9.1– <u>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 <i>Privacy Act 1988</i> (Cth).</u>	New obligations in relation to personal information provided to the Customer in circumstances involving fraud or security breaches.



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