



# ASC Approach to Market (ATM) Terms

## 1. General

Responses are subject to these ASC ATM Terms.

Potential Suppliers must submit Responses complying with the RFQ and these ATM Terms (with all details provided in English and prices quoted in Australian currency).

The issue of an RFQ is an invitation to treat and is not to be taken to be or relied upon as a commitment by the ASC to create any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds, whether implied or otherwise.

No contract will be formed until executed by the ASC. The form of contract is stated in the RFQ.

The ASC 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.

## 2. Lodgment

The ASC 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 ASC may, in its sole and absolute discretion, consider any Responses received after the Closing Time.

The Response must be lodged as set out in the RFQ. Unless specifically advised otherwise in the RFQ, the Response must be lodged electronically to [procurement@ausport.gov.au](mailto:procurement@ausport.gov.au).

Unless otherwise stated in the RFQ, Potential Suppliers are free to choose the format of their Response provided that it meets the requirements and provides the information requested in the RFQ.

Except for referencing the terms "ASC", "Australian Institute of Sport" and/or "AIS" or unless otherwise stated in the RFQ, Potential Suppliers must not use or reproduce any, logo, trade mark or service mark associated with the ASC and/or AIS in their Response.

## 3. Potential Supplier Warranties

By lodging a Response to an RFQ, Potential Suppliers warrant that:

- i. they have examined the RFQ (including any variations or addenda) and any documents referenced in it, or other information made available to them or which is obtainable by making reasonable enquiries;
- ii. they are satisfied as to the correctness and sufficiency of their Response (including pricing);
- iii. they have made their own independent assessment of actual workload requirements under any resultant contract and the pricing included in the Response is representative of this workload;

- iv. their Response constitutes an offer to provide the requirements stated in the RFQ on the terms and conditions set out in the draft Contract, subject only to any exceptions regarding compliance included in the Response. Note, the ASC will not agree to exceptions regarding compliance with the draft Contract where the ASC Purchase Order Terms apply.

## 4. Validity

By lodging a Response Potential Suppliers agree that the Response will remain open for acceptance for three months from the Closing Time.

## 5. Alterations

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

## 6. Inconsistencies

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

- a. Request for Quote (RFQ) – Statement of Requirement;
- b. the Contract; and
- c. ASC ATM Terms;
- d. so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

## 7. Amendments and Queries

The ASC may amend, or clarify any aspect of this ATM, prior to the Closing Time by issuing a formal amendment to the ATM. Such amendments or clarifications will be issued simultaneously to all Potential Suppliers, as far as practicable.

All queries regarding this ATM should be directed to the ASC Contact Officer listed in the RFQ and must be in writing.

Unless specified in the RFQ, Potential Suppliers must only communicate with the ASC through the ASC Contact Officer and are prohibited from making any contact with ASC personnel or personnel, parties or contractors associated with the RFQ.

## 8. Clarification

The ASC 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 ASC will not allow any Potential Supplier to substantially tailor or amend their Response.



## 9. Alternatives

Potential Suppliers may submit Responses for alternative methods of addressing the ASC's Statement of Requirement described in this ATM, provided the Potential Supplier also submits a response that addresses the Statement of Requirement. Potential Suppliers are responsible for providing a sufficient level of detail about the alternative solution, including alternative pricing, to enable its evaluation.

## 10. ASC Material

The ASC will make available the ASC's material (if any) specified in the RFQ to the Successful Supplier.

## 11. Reference 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.

## 12. Price Basis

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 ASC under the Contract.

## 13. Evaluation

The ASC will evaluate Responses against the Evaluation Criteria set out in the RFQ to determine the Response, if any, that best represents a value for money outcome for the ASC.

In the absence of Evaluation Criteria being included in the RFQ, the following Evaluation Criteria will apply to determine the Response, if any, that best represents value for money for the ASC:

- i. The Potential Supplier's proposed methodology to deliver against the requirement;
- ii. The Potential Supplier's experience, technical expertise and past performance; and
- iii. The Potential Supplier's capacity to deliver against the requirement.

An overall value for money assessment will be undertaken taking into account the evaluation of the Potential Supplier's Response against the Evaluation Criteria, an assessment of the total cost to the ASC and an assessment of risk of the Potential Supplier's Response.

Value for money is a comprehensive assessment that takes into account capability, cost, quality and the value represented by the assessment of ability, in the context of the risk profile presented by each Potential Supplier.

Unless the ASC Purchase Order Terms apply to the provision of the goods and/or services, as stipulated in the RFQ, Potential Suppliers are to advise in their Response of any areas of non-compliance with the draft Contract.

The ASC may exclude from consideration any Response that does not meet these ASC ATM Terms. The ASC may, at its discretion, determine a shortlist of Responses and may exclude from further consideration those Responses that are not shortlisted.

The ASC will notify unsuccessful Potential Suppliers of the final decision and, if requested, will debrief Potential Suppliers following the award of a contract.

## 14. Financial information

If requested by the ASC, the Potential Supplier must be able to demonstrate both its financial stability and ability to remain viable over the term of any contract.

If requested by the ASC, the Potential Supplier must promptly provide such information or documentation reasonably required in order for the ASC to evaluate the Potential Supplier's financial stability.

## 15. Referees

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

## 16. Reporting Requirements

Potential Suppliers acknowledge that the ASC is subject to legislative and administrative accountability and transparency requirements, including disclosure to Parliament, its Committees and any requirements of the *Freedom of Information Act 1982* (Cth).

Without limiting its rights, the ASC may disclose the Supplier's name and value of the Contract, and the name of any subcontractors engaged in respect of the Contract, as per its reporting obligations, including, but not limited to, complying with the *Senate Order for Entity Contracts*.

## 17. Confidentiality of Potential Supplier's Information

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 ASC will only agree to treat information as confidential in cases that it considers appropriate. In the absence of such an agreement, Potential Suppliers acknowledge that the ASC has the right to publicly disclose the information.



## 18. Publicity

Potential Suppliers must not furnish any information, make any statement, or issue any document or other written or printed material, concerning either their participation in, or the acceptance of any Response relating to, this ATM for publication in any media without the prior written approval of the ASC.

## 19. Collusive Tendering and Unlawful Inducements

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.

## 20. Conflict of Interest

Potential Suppliers must notify the ASC 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).

Potential Suppliers must not, either for the preparation of a Response or, if successful, service delivery to the ASC, utilise a staff member that was previously employed by the ASC at any time in the three (3) months prior to the date of issue of the RFQ.

## 21. Criminal Code

Potential Suppliers should be aware that the giving of false or misleading information to the ASC 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.

## 22. Ownership of ATM and Responses

All copyright and other intellectual property rights in the ATM remain the property of the ASC and must only be used for the purposes of responding to the ATM.

Potential Suppliers, by submitting a Response, agree that all versions of the Response submitted to the ASC become the property of the ASC and that the ASC may make further copies of, and use, the Response for the purpose of conducting the ATM process, audit requirements, and complying with any governmental or parliamentary reporting requirements

## 23. Consortium and Joint Responses

A joint Response submitted on the basis that two or more people will be jointly and severally liable will not be considered.

A Response submitted by a consortium may only be considered if:

- a. It will contract with the ASC as one separate legal entity;
- b. The Response clearly specifies the details of all members of the consortium; and
- c. A single point of contact for the consortium is specified.

## 24. Glossary

In these ASC ATM Terms and RFQ:

**"ATM"** means Approach to Market

**"Closing Time"** means the closing time specified in the RFQ.

**"Contract"** means the documentation specified on the first page of the RFQ.

**"Contract Extension Option"** means an option of the ASC to extend a Contract for one or more additional time periods.

**"Contract Price"** means the total contract price specified in the Contract including any GST component payable, but does not include any simple interest payable on late payments.

**"Delivery and Acceptance"** means the process in which Goods and/or Services are delivered to the ASC and accepted by the ASC as meeting the terms specified in the Contract.

**"Goods and/or Services" means:**

- a. the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b. all such incidental Goods and Services that are reasonably required to achieve the purposes of the ASC as specified in the Contract.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"GST"** means a Commonwealth goods and services tax imposed by the GST Act.

**"Material"** means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

**"Specified Personnel"** means the personnel specified by position or qualification in the ATM.

**"Statement of Requirement"** means the section of the ATM with the heading 'Statement of Requirement'.

**"Supplier"** means a party specified in the Contract as a Supplier, Service Provider, Contractor or Consultant to the ASC or other like descriptor.