

# Approach to Market (ATM) – Services



## Commonwealth of Australia

### Approach to Market

#### Reference ID: Member Appraisal Assessors

This Approach to Market (ATM) is for the provision of: External Contractors to Conduct Assessments that will inform Appraisals and Evaluations for AAT Members

The Commonwealth as represented by Administrative Appeals Tribunal (the Customer) is seeking submissions for the provision of the services (the Requirement) as described in this *Commonwealth Approach to Market*.

In submitting a response, Potential Suppliers are required to comply with all requirements set out in the *Commonwealth Approach to Market Terms*, and if successful, agree to enter into a contract which incorporates the *Commonwealth Contract Terms* available at <http://www.finance.gov.au/procurement/commonwealth-contracting-suite/>.

#### **Mandatory Conditions for Participation**

The Customer will exclude from consideration any Response that does not meet the following Mandatory Conditions for Participation:

## Statement of Requirement

### A.A.1 Key Dates and Times

Event	Details
Industry Briefing#:	Unless otherwise notified by an addendum, there are no industry briefing sessions for this ATM.
Site Inspection*:	Unless otherwise notified by an addendum, there are no site inspections for this ATM.
ATM Closing Date:	Friday 20 September
ATM Closing Time:	17:00 NSW local time
Question Closing Date and Time:	Questions will be permitted up until 5pm Thursday 19 September 2019.
Expected Contract Execution Date:	Friday 6 September
Contract Term:	The Contract will remain in force for a period of 12 Months from the date the Contract is entered into.
Contract Extension Option:	The Contract will include the following extension option(s): As required contracts may be extended for a further period of 6-12 months.

### A.A.2 The Requirement

#### A.A.2(a) Standards

The Supplier must ensure that any goods and services proposed comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Requirement. Potential Suppliers should note that they may be required to enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards.

#### Web Content Accessibility

The Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the Web Content Accessibility Guidelines available at:

<https://www.w3.org/WAI/intro/wcag>.

#### A.A.2(b) Security Requirements

#### A.A.2(c) Work Health and Safety

Prior to commencement of the Contract, the Customer's Contract Manager and the Supplier's Contract Manager will identify any potential Work Health and Safety issues anticipated to arise during the term of the contract and assign management of each issue identified to the party best able to manage it. The Supplier will provide the Customer with a plan for approval.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any Work Health and Safety issues that arise.

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### A.A.2(d) Delivery and Acceptance

The Customer must accept or reject any deliverables under the Contract in accordance with the Commonwealth Contract Terms [Clause C.C.11].

Milestone Description	Delivery Location	Due Date
Initial Contact with Member	Various	As per agreed schedule
Hearing Observation/s	Various	As per agreed schedule
Review of Written Decisions	Various	As per agreed schedule
Review of Caseload report	Various	As per agreed schedule
Draft Report Completed	Various	As per agreed schedule

### Reports

During the term of the Contract the Supplier must provide the Customer with reports as set out in the table below:

Report Type	Detailed Description	Due Date
Email	update on hearing observations, review of written information and meetings	As per agreed schedule
Final Assessment Report	A final assessment report taking into account activities for key milestones must be provided using the AAT templates	As per agreed schedule

### A.A.2(e) Meetings

The Supplier will be required to attend meetings as follows:

Meeting Type	Position Required	Frequency	Teleconference/ Onsite	Location
Pre Project Briefing	Participant	Once	Teleconference	n/a
Meeting with Senior Members and Practice Leaders	Participant	Once	Teleconference	n/a
Presentation of Draft Report	Participant	Multiple	Teleconference	n/a

### A.A.2(f) Facilities and Assistance Offered by the Customer

Individuals will be able to use AAT facilities whilst on site and will be given limited assistance where required.

### A.A.2(g) Customer Material

Individuals will be provided with detailed working documents on the AAT's appraisal scheme, its operation and the paperwork and forms that are required to be used.

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### A.A.2(h) Public Interest Disclosure

Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to information available at:

<http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.

All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	Chris Sutton
Email Address:	Chris.Sutton@aat.gov.au
Telephone:	02 9276 5000

### A.A.2(i) Complaints Handling

In the first instance, complaints relating to this ATM should be directed to the Customer's Contact Officer or:

Name/Position:	Lauren Boyer, Manager Performance and Development
Email Address:	lauren.boyer@aat.gov.au
Telephone:	02 9276 5258

Please direct all complaints about this procurement, including those raised under [Government Procurement \(Judicial Review\) Act 2018](#) (GPJR Act) to the Customer's ATM Contact Officer or the Complaints contact specified above. Potential Suppliers are reminded that the GPJR Act places time limits on making applications under that Act.

For more information on the GPJR Act refer to the Government Procurement (Judicial Review) Act 2018 available at <https://www.legislation.gov.au/Details/C2018A00129>

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## A.A.3 ATM Distribution

### Email Distribution

Any questions relating to this ATM must be directed to the *Customer Contact Officer* at A.A.5. Updates to this ATM will be distributed via email.

## A.A.4 Lodgement Method

### Email

Responses should be lodged via the link provided, alternatively they can be email to [performance.development@aat.gov.au](mailto:performance.development@aat.gov.au) quoting reference Member Appraisal Assessors by the closing time specified above.

### Response File Format, Naming Convention and Size

The Customer will accept Responses lodged in the following formats:

- Word Doc (.docx)
- Word 97-2003 Doc (.doc)
- PDF (.pdf)

The Response file name/s should:

- a) incorporate the Potential Supplier's full legal organisation name; and
- b) reflect the various parts of the bid they represent (where the Response comprises multiple files).

Response files must not exceed a combined file size of 5 megabytes per email.

Responses must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

## A.A.5 Customer's Contact Officer

For all matters relating to this ATM, the Contact Officer is:

Name/Position: Lauren Boyer, Manager Performance and Development

Email Address: [lauren.boyer@aat.gov.au](mailto:lauren.boyer@aat.gov.au)

*Note: Question Closing Date and Time is set out at item A.A.1 [Key Dates and Times].*

## Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

### A.C.1 Intellectual Property

For the purposes of this clause, “Intellectual Property Rights” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are current or future or registered or capable of being registered, including without limitation in relation to, copyright, designs, trade marks (including unregistered marks), business and company names, domain names, database, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

The Customer owns the Intellectual Property Rights in the Material created under the Contract.

To the extent the Supplier or a third party holds any Intellectual Property Rights in any existing Material, the Supplier hereby agrees to licence the Customer to enable the Customer to exercise full rights and interests in the Intellectual Property Rights in any Material provided under the Contract. The Supplier agrees to create, execute or sign any documents and perform all acts which may be necessary to allow the use of those rights by the Customer for any purpose.

The Customer grants to the Supplier a non-exclusive, non-transferable, irrevocable, royalty-free licence for the Contract Term to exercise the Intellectual Property Rights in the Material for the sole purpose of fulfilling its obligations under the Contract. The licence in this clause is subject to any conditions or limitations of third parties that the Customer notifies to the Supplier.

Intellectual Property Rights in Goods provided under the Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of the Contract.

### A.C.2 Payment

The Customer must pay the amount of a Correctly Rendered Invoice to the Supplier within thirty (30) calendar days after receiving it, or if this day is not a business day, on the next business day.

### A.C.X Notifiable Data Breaches

**Eligible Data Breach** means an ‘Eligible Data Breach’ as defined in the *Privacy Act 1988* (Cth).

**Personal Information** means ‘Personal Information’ as defined in the *Privacy Act 1988* (Cth).

- a) If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract or its provision of the Goods and/or Services, the Supplier agrees to:
- (i) notify the Customer in writing as soon as possible, which must be no later than within three (3) days of becoming aware; and
  - (ii) unless otherwise directed by the Customer, carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- b) Where the Supplier is aware that there are reasonable grounds to believe there has been, or where the Customer notifies the Supplier that there has been, an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract or its provision of the Goods and/or Services, the Supplier must:
- (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
  - (ii) unless otherwise directed by the Customer, take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and

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(iii) take any other action as reasonably directed by the Customer.

### **A.C.X Payment for conduct of Appraisals**

Individuals will be paid a fee, up to a maximum set amount depending on if the assessment is for a formal appraisal or a period development evaluation. The fee will also take into account the complexity of the caseload and work required to make an informed assessment.

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## Commonwealth Approach to Market (ATM) Terms

### 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.



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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.

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) may 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 <http://www.dpmc.gov.au/resource-centre/government/commonwealth-indigenous-procurement-policy>.

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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## Commonwealth Contracting Suite (CCS) Glossary

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### In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**;
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms** or the **Commonwealth Purchase Order Terms**, as the case may be.

**“Additional Contract Terms”** means the terms and conditions set out in the section of the Contract with the heading ‘Additional Contract Terms’.

**“Approach to Market or ATM”** means the notice inviting potential suppliers to participate in the procurement.

**“Closing Time”** means the closing time specified in clause A.A.1 [*Key Events and Dates*].

**“Contract”** means the documentation specified in clause C.C.4 [*Precedence of Documents*].

**“Contract Extension Option”** means an option of a Customer to extend the term of a Contract for one or more additional time periods.

**“Contract Manager”** means the contract manager for the Customer and/or Supplier (as relevant) specified in the Contract.

**“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.

**“Correctly Rendered Invoice”** means an invoice that:

- a) is correctly addressed and calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer’s Contract Manager;
- d) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- e) is a valid tax invoice in accordance with the GST Act.

**“Customer”** means a party specified in a Contract as a Customer.

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

**“General Interest Charge Rate”** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

**“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 Customer 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.

**“Intellectual Property Rights”** means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

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## Commonwealth Contracting Suite (CCS) Glossary

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“**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.

“**Moral Rights**” means the rights in *Part IX of the Copyright Act 1968 (Cth)*, including the right of attribution, the right against false attribution and the right of integrity.

“**Notice**” means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Contract or as notified from time to time.

“**Requirement**” means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading ‘Requirement’;
- b) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading ‘Requirement’;
- c) for the purposes of the Commonwealth Purchase Order Terms the document setting out the Goods and/or Services.

“**Specified Personnel**” means the personnel specified in the Contract or such other personnel who are accepted by the Customer in accordance with clause C.C.13 [*Specified Personnel*].

“**Statement of Requirement**” means the section of the Approach to Market with the heading ‘Statement of Requirement’.

“**Statement of Work**” means the section of the Contract, as the case may be, with the heading ‘Statement of Work’.

“**Supplier**” means a party specified in a Contract as a Supplier.

### RESPONSE

Responses to this Approach to Market are requested to be submitted via the AAT's recruitment system, which can be accessed from the AAT website.

**Specific questions** about this ATM should be directed to the *Customer's Contact Officer* [Item A.A.5].

If successful you will be offered a contract which includes the *Commonwealth Contract Terms*, available at: <http://www.finance.gov.au/procurement/commonwealth-contracting-suite/>. These terms are not negotiable.

**Do not submit a response if you cannot agree to these terms as you cannot be awarded the Contract.**

**Submit** the form as required in *Lodgement Method* [Item A.A.4].

Participation in this ATM is at your sole risk and cost. This is a competitive process, and you should note that your organisation may incur costs in responding, if you are unsuccessful you will be unable to recoup these costs.

Be as **concise** as possible while including all information that your organisation wants the evaluation team to consider. Do not assume that the evaluation team has any knowledge of your abilities or experience.

Before completing your Response read the Customer's Approach to Market (ATM) distributed with this Response form and decide whether you have the **necessary skills and experience** to meet the AAT's requirement.

You must clearly demonstrate that you meet the **Mandatory Conditions for Participation** (if any), as failure to do so **will** mean your response cannot be considered and you cannot be awarded the Contract.

If you are an **Individual** without an ABN and you do not meet the Australian Taxation Office's (ATO) definition of an independent contractor, we may not be able to contract with you. Before completing this Response Form notify the Customer's Contact Officer to enable them to seek advice. For further information, refer to the ATO website at: <https://www.ato.gov.au/business/employee-or-contractor/how-to-work-it-out--employee-or-contractor/>.

The AAT will evaluate all valid Responses received by the Closing Time [Item A.A.1] which meet the Mandatory Conditions for Participation (if any), to determine which Potential Individual has proposed the best outcome for the AAT.

In making this decision, the AAT will consider the criteria set out at Clause A.B.5 [*Evaluation*].

In preparation of this Response you should note the Commonwealth Indigenous Procurement Policy (IPP) available at: <https://www.dpmc.gov.au/resource-centre/government/commonwealth-indigenous-procurement-policy> may apply to the AAT in respect of this procurement. During evaluation of responses, the AAT may consider the Supplier's ability to assist the AAT to meet its IPP obligations.