



Australian Government
Financial Reporting Council



Australian Government
Australian Accounting Standards Board

Request for Quotation (Approach to Market)
Post-Implementation Review of AASB 1049 *Whole of Government and General Government Sector Financial Reporting*

Statement of Requirement

A.A.1 Introduction

A.A. 1 (a) Project Purpose

The Financial Reporting Council (FRC) issued a strategic direction to the AASB in December 2002¹ to harmonise Government Finance Statistics (GFS) and Generally Accepted Accounting Principles (GAAP). The objective of that strategic direction was to develop an Australian Accounting Standard for a single set of Government reports which are auditable, comparable between jurisdictions, and in which the outcome statements are directly comparable with the relevant budget statement. AASB 1049 *Whole of Government and General Government Sector Financial Reporting* was developed in October 2007 (effective for annual periods on or after 1 July 2008) as the AASB's response to the FRC's strategic direction to harmonise GFS and GAAP.

The purpose of the project is, in respect of WoG and GGS financial statements, to:

- (a) evaluate the extent to which AASB 1049 (October 2007, as amended) and the budgetary disclosure requirements in AASB 1055 *Budgetary Reporting* (March 2013, as amended) have been successful in its harmonisation of GFS and GAAP reporting, such that the above FRC objective has been achieved;
- (b) develop improvements, if needed, to AASB 1049 to better achieve the objective of the FRC strategic direction and the objectives set out in AASB 1049;
- (c) evaluate the costs and benefits of applying AASB 1049 and the budgetary disclosure requirements in AASB 1055; and
- (d) reassess whether there is a need to have a specific Accounting Standard to harmonise GFS and GAAP.

The FRC has vested responsibility for the project in its Public Sector Working Group. Project management responsibility rests with the AASB.

A.A. 1 (b) Key Dates and Times

Event	Details
ATM Closing Date:	Friday, 29 January 2021
ATM Closing Time:	17:00 Melbourne local time
Submission email address	standard@aab.gov.au
Question Closing Date and Time:	Questions will be permitted up until 4pm Friday, 22 January 2021.
Expected Contract Execution Date:	Monday, 8 February 2021
Expected Contract End Date:	180 days after the contract awarded.
Contract Extension Option:	Any extension will be at the Commonwealth's discretion.
Contact Officer	Justin Williams, AASB Managing Director

¹ [FRC letter dated 18 December 2002](#), as modified by [FRC Bulletin 2003/1 11 April 2003](#)

A.A.2 Project Brief

A.A.2(a) Background

The last Post-implementation Review of AASB 1049 (October 2007, as amended) was conducted in 2011, which did not identify any major flaws in the Standard. At the time, the AASB identified a number of aspects of AASB 1049 where improvements could be made, and as a result, the AASB amended AASB 1049 to clarify some of the requirements in AASB 1049 as well as incorporating changes to facilitate the orderly adoption of changes to the ABS GFS Manual and related disclosures.

GFS is not generally updated as frequently as Accounting Standards and might not align with GAAP approaches; thus, divergence would likely to increase. In recent years, preparers and auditors of WoG and GGS financial statements provided feedback to the AASB that, as a result of new Accounting Standards, harmonisation differences have increased. For example, in order to comply with the disclosure requirements of AASB 1049, public sector entities may need to keep two sets of records to account for AASB 16 *Leases* – one under GAAP and one under GFS, which would be costly and onerous.

After considering stakeholders' feedback the Board amended AASB 1049 in 2018 and 2019 so that:

- the measurement requirement of certain transactions, such as concessionary leases, do not need to be measured at fair value under AASB 13 *Fair Value Measurement* to align with GFS; and
- WoG and GGS have an optional relief to disclose a narrative explanation, in lieu of preparing reconciliations, about the difference in the key fiscal aggregates measured in accordance with GFS compared with those measured in accordance with GAAP.

Additionally, because the budgetary disclosure requirements in AASB 1049 – that budgeted financial statement presented to parliament are presented and classified on the same basis as the corresponding financial statement prepared in accordance with Australian Accounting Standards – has been relocated to AASB 1055², it seems that the objective for the FRC's direction – to prepare a single set of Government reports in which the outcome statements are directly comparable with the relevant budget statement – is now met through two Standards AASB 1049 and AASB 1055.

Therefore, it would be important in this project to assess how effective is AASB 1049 (October 2007, as amended) and the budgetary disclosure requirements in AASB 1055 (March 2013, as amended) in achieving the objective of the FRC direction.

The implementation of AASB 1049 has been the subject of a number of academic research studies.

A.A.2(b) Key responsibilities and duties

The Key responsibilities and duties of the respondent will include (but not limited to):

- a) perform outreach to stakeholders, research and analysis in order to determine:

Information needs of users of WoG and GGS financial statements

1. Identify the key information needs of users of WoG and GGS financial statements in each jurisdiction.
2. Identify which specific requirements in AASB 1049 do users find most useful, and which do they find least useful. This includes identifying which key fiscal aggregates determined in

² In 2013, the AASB issued AASB 2013-1 *Amendments to AASB 1049 – Relocation of Budgetary Reporting Requirements* to relocate all budgetary disclosure requirements relating to WoG and GGS to AASB 1055, as part of its decision to specify budgetary reporting requirements for not-for-profit entities within the GGS in one topic-based Standard.

accordance with GFS users find most useful. In particular, but not limited to, identify the extent that the following requirements of AASB 1049 provide useful information to users:

- (a) measuring most assets and liabilities at fair value in accordance with AASB 13 to align with GFS;
 - (b) the key fiscal aggregates presented in accordance with AASB 1049;
 - (c) the reconciliation or explanations about the difference in the key fiscal aggregates measured in accordance with GFS compared with those measured in accordance with GAAP; and
 - (d) the budgetary disclosure requirements set out in AASB 1055.
3. Determine whether financial statements prepared in accordance with AASB 1055, in the absence of AASB 1049, would still provide sufficient information for users of WoG and GGS financial statements. That is, consider whether budget statements and the corresponding financial statements that are presented under the same measurement basis in accordance with Australian Accounting Standards – but might not necessarily be measured at fair value to align with GFS and do not provide key fiscal aggregates information – provide sufficient information for users.
 4. Identify what amendments to AASB 1049 would be necessary to provide the information users require and/or whether there may be alternative approaches to achieving the FRC Strategic Direction.
 5. In addition to 2(a) above, research on the extent that measuring non-financial assets held by public sector at fair value under AASB 13 provide useful information to users of financial statements. Identify whether the current values in financial statements is sufficient in meeting the objective stated in paragraph 1(b) of AASB 1049 to provide sufficient information to users about the performance and cash flows (as appropriate) of non-financial assets in each government.
 6. Assess whether and to what extent do the current WoG and GGS financial statements, prepared in accordance with AASB 1049, achieve the objectives outlined in paragraph 1 of AASB 1049, including whether financial statements:
 - provide users with information about the stewardship and accountability of each government; and
 - facilitate assessments of the macro-economic impact of each government and its sectors.
 7. Assess whether compliance with other applicable AASB Standards, without AASB 1049, could achieve the objectives outlined in paragraph 1 of AASB 1049. If not, identify which specific requirements in AASB 1049 would lead to better information for users in understanding the stewardship and accountability of each government and in assessing the macro-economic impact of each government and its sector.

Costs to comply with AASB 1049

8. Assess how costly is it to a jurisdiction to comply with the requirements in AASB 1049 – the Treasury Department in each jurisdiction is required to provide GFS reporting to the Australian Bureau of Statistics (ABS) as well as compile financial statements in the agreed format of the Uniform Presentation Framework (UPF)³, which is largely harmonised with key requirements of AASB 1049 to facilitate comparability among the jurisdictions.

³ Maintained by the Commonwealth Treasury and endorsed by National Cabinet.

9. In respect of 8 above, assess the cost savings to a jurisdiction for not having to keep a separate set of records and reports to provide GFS and UPF reporting, as a result of aligning GAAP and GFS in accordance with AASB 1049. Assess whether costs would change if jurisdictions were required to prepare financial statements under AAS without AASB 1049.
 10. Given that leases and service concession arrangements cannot be aligned with GFS under the current GFS Manual and ABS is able to make adjustments to the information in the financial statements of WoG and GGS to compute the required GFS information, assess the usefulness to ABS of the current financial statements of WoG and GGS being prepared under AASB 1049.
 11. Whether compliance and preparation costs could be reduced by changing the principles underlying AASB 1049 in whole or in part;
 12. Assess whether and to what extent does the benefit to users in having financial statements prepared in accordance with AASB 1049 outweigh the cost to a jurisdiction; and
- b) prepare a report to the FRC documenting the above research and outreach findings, their analysis and recommendations.

A.A.2(c) Outreach targets

The outreach will focus on the following key stakeholders:

- Public Accounts Committee
- Parliamentarians
- Rating agencies
- The Australian Bureau of Statistics
- International Monetary Fund
- Public sector economists and journalists
- Treasury offices
- Audit Offices

In some cases it may be necessary to engage with collective groups of the stakeholders, such as the Australasian Council of Auditors-General (ACAG) and the Heads of Treasuries Accounting and Reporting Advisory Committee (HoTARAC).

A.A.2(d) Fees

The fee for the project is to be quoted as a fixed price for the contract and will be paid on the completion of the contract, or on milestones as agreed with the successful supplier.

A.A.2(e) Delivery and Acceptance

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

The following milestones are indicative only and will be negotiated with the preferred Supplier.

Milestone Description	Expected completion date
Draft report to the FRC	June 2021
Final report to the FRC	July 2021

A.A.2(f) Working with the FRC and its agent (AASB)

A member of the AASB staff will provide necessary assistance to the Supplier. As the agent of the FRC, the AASB expects on-going and regular communication with the Supplier through the project.

You agree to:

- (a) Serve the FRC and its agent faithfully and diligently and exercise all due care and skill in performing the duties in accordance with the contract;
- (b) Perform your duties in accordance with the contract;
- (c) Refrain from acting or giving the appearance of acting contrary to the interests of the FRC.

A.A.2(g) Equipment

There will not be any equipment provided as part of this project. To enable effective information sharing the FRC or their agent may provide access to a secure file sharing environment where documents can be exchanged between Staff and the contractor.

A.A.2(h) Property in Documents

All documents and computer records which you create during this project with the FRC and their agent will belong to the FRC and you must immediately return them to the FRC together with any copies at the end of the contract or upon request from the FRC or their Agent.

A.A.2(i) Intellectual Property

You agree that any invention, discovery, novel design, copyright in any literary work, artwork and other copyright work created by you during and in the course of the contract with the FRC is the property of the FRC.

You irrevocably consent to the FRC using any work made or to be made by you in the course of this project, in a way which, but for this consent would infringe any moral right you may have in respect of such work.

A.A.2(j) Policies and Procedures

The FRC and their agent have policies and procedures that are formulated for the efficient and fair administration of matters relating to the conduct of its work. The FRC and their agent may vary, amend or withdraw any such policies or procedures from time to time. You agree to comply with any policies and procedures which the FRC has or may in the future adopt. You acknowledge that the policies and procedures are not incorporated as terms of this ATM and that they do not create any enforceable rights in your favour.

A.A.2(k) COVID-19

COVID-19 has the potential to materially and/or adversely affect the performance of the delivery of this project. Each party will co-operate with the other in implementing reasonable mitigation measures to limit the risk or potential impact related to COVID-19.

A.A.3 Lodgement Method

Responses must be lodged electronically directly with standard@asb.gov.au before the Closing Date and Time and in accordance with the Response lodgement procedures set out in this documentation.

The Closing Time will be 5pm (Australian Eastern Standard Time) on 29 January 2021. ALL RESPONSES must be received by this time – any responses after this time, may at the sole discretion of the FRC or its Agent (AASB), be deemed ineligible.

For the purposes of this ATM, the time that the document is received into the AASB “Standards” inbox will be taken as the definitive received time. All respondents to the ATM will be notified post-submission that their response has been received. However, this response should not constitute any form of contract or acceptance the response is in accordance with the terms listed within this proposal.

Response File Format, Naming Convention and Size

The AASB will accept Responses lodged in the following formats:

- Word Doc (.docx)
- Word 97-2003 Doc (.doc)
- Excel Workbook (.xlsx)
- Excel 97-2003 Workbook (.xls)
- 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 10 megabytes per upload.

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

Submission of a response does not create any implied or actual contract between the FRC, or its agent, with any Supplier. The FRC and its agent will undertake an evaluation process following the closure of the tender process. The evaluation process will include criteria including, but not limited to: experience, availability of expertise, referees reports and cost. Price is not the sole decision marking criteria. The decision to appoint a preferred supplier will be made by the FRC and will be publicly notified.

Respondents must include a statement in their response that they have no actual or perceived conflict of interest in undertaking this project. The FRC may terminate the project if a conflict of interest is subsequently identified.

A.A.4 FRC’s nominated Contact Officer

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

Justin Williams | Managing Director

Australian Accounting Standards Board

Podium Level 14, 530 Collins Street, Melbourne VIC 3000

Tel +61 3 9617 7629

Mobile 0409 450 369

jwilliams@asb.gov.au | www.asb.gov.au

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 AASB must pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a business day, on the next business day.

A.C.3 Invoicing

Finance requires that a correctly rendered Tax Invoice must include the Purchase Order Number and be delivered in pdf format (one invoice per PDF) to finance@asb.gov.au

Finance acknowledges that delivery as requested will be deemed receipt by Finance under the Contract.

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.

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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Commonwealth Contracting Suite (CCS) Glossary

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.

Commonwealth Contracting Suite (CCS) Glossary

“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.

Commonwealth Purchase Order Terms

C.C.1 Background:

The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the requirement.

Some terms used in these *Commonwealth Purchase Order Terms* have been given a special meaning. Their meanings are set out in the *Commonwealth Contracting Suite Glossary*.

C.C.2 Relationship of the Parties:

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and cooperate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during fulfilment, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

C.C.4 Precedence of Documents:

The Parties' Contract is described in:

- (a) the Customer's Requirement;
- (b) *Commonwealth Purchase Order Terms*; and
- (c) *Commonwealth Contracting Suite Glossary*,

unless otherwise agreed in writing between the parties.

Together all three (3) documents comprise the "Contract".

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

C.C.5 Governing Law:

The laws of the Australian Capital Territory apply to the Contract.

C.C.6 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter.

Anything that occurred before the issue of the Contract shall be disregarded (unless incorporated in writing).

The Parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival:

Clauses C.C.14 [*Liability of the Supplier*], C.C.17 [*Supplier Payments*], C.C.20 [*Transition Out*], C.C.22 [*Compliance with Commonwealth Laws and Policies*], C.C.22(A) [*Access to Supplier's Premises and Records*], C.C.22(F) [*Fraud*], C.C.23 [*Intellectual Property*] survive termination or expiry of the Contract.

C.C.8 Notices:

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

C.C.9 Assignment:

The Supplier may not assign any rights under the Contract without the Customer's written consent.

C.C.10 Subcontracting:

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in the Contract (if any) perform that part of the Services. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer. The Customer's consent will not be unreasonably withheld.

The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.

C.C.11 Delivery and Acceptance:

The Supplier must provide the Goods and/or Services as specified in the Contract and meet any requirements and standard specified in the Contract.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified and advise the Customer when it will be able to so.

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Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the Contract.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery or such longer period specified in the Contract, if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).

If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

C.C.12 Licences Approvals and Warranties:

At no cost to the Customer, the Supplier must obtain and maintain all licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

C.C.13 Specified Personnel:

The Supplier must ensure that the Specified Personnel set out in the Contract (if any) perform the part of the Services specified. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel with personnel that are acceptable to the Customer.

C.C.14 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier's liability under this clause shall not exceed the maximum applicable amount that applies to the claim loss or damage under a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* (ACT), or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Supplier is a member of that scheme, and where that scheme applies to the Goods and/or Services delivered under the Contract.

The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

C.C.15 Termination or Reduction for Convenience:

In addition to any other rights either party has under the Contract,

- the Customer acting in good faith, may at any time; or
- the Supplier, acting in good faith, may notify that it wishes to, terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with clause C.C.11 [*Delivery and Acceptance*] before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

C.C.16 Termination for Cause:

The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:

- the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract;
- the Customer rejects the Goods and/or Services in accordance with clause C.C.11 [*Delivery and Acceptance*] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- the Supplier breaches a material term of the Contract and the breach is not capable of remedy;
- the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier; or

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- (e) subject to the Customer complying with any requirements in the *Corporations Act 2001* (Cth), the Supplier:
- (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth); or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966* (Cth).

Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

C.C.17 Supplier Payments:

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

Where the total contract value is under A\$10,000 (inclusive of GST and merchant service fees) and the Supplier can accept payment via a payment card, the Customer will promptly pay via a payment card.

Where the Customer and the Supplier both have the capability to deliver and receive e-Invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing), the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a business day, on the next business day.

In all other circumstances, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a business day, on the next business day.

If the Customer fails to make a payment to the Supplier by the business day it is due, the Customer will pay the unpaid amount plus interest on the unpaid amount provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate available on the Australian Taxation Office website as it applies on the day the amount was due and payable expressed as a daily rate.

C.C.18 Dispute Resolution:

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (c) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;

- (b) failing settlement within ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request. Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.
- (c) If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

The Supplier and the Customer will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to clause C.C.16 [*Termination for Cause*] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In:

The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out:

If the Contract expires or is terminated under clause C.C.16 [*Termination for Cause*] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

C.C.22 Compliance with Commonwealth Laws and Policies:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services.

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to G below, it must:

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. **Access to Supplier's Premises and Records:** The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

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The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's, or its Subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request.

The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.

- B. **Privacy Act 1988 (Cth) Requirements:** In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.
- C. **Confidential Information:** Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.

- D. **Security and Safety:** When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.

The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

- E. **Criminal Code:** The Supplier acknowledges 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 Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.

- F. **Fraud:** For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.

The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.

If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

- G. **Taxation:** The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

C.C.23 Intellectual Property Rights:

Intellectual Property Rights in the Goods provided under this Contract or pre-existing Intellectual Property Rights will not change as a result of this Contract.

The Supplier grants the Customer a licence in any such Intellectual Property Rights provided as part of the Goods and/or Services to allow the Commonwealth full use of the Goods and/or Services for their intended purpose.

Other than as set out above, the Customer owns the Intellectual Property Rights in any Material created under this Contract.



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