ITS 2573 – Prequalified Order Form

Revision record

Please note significant document changes with a version increment of 1.0. Minor administrative changes, where the meaning or intention of the document is not altered should increase by an increment of 0.1.

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| **Version** | **Date** | **Author** | **Summary of changes** |
| 2.0 | May 2013 |  |  |
| 2.1 | 20 June 2016 | Cathy Hansen | Updated into new template |
| 2.2 | 21 May 2021 | Hemal Gohel | Updated to NSW Department of Customer Service and added a field for MSA Number |

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# Guidance and instructions

The Prequalified Order Form needs to be completed for every high risk or over $150,000 transaction under the ITS 2573 Prequalification Scheme, as you will need to engage suppliers in the ITS 2573 Prequalified Supplier List. Set out below are instructions as to how to complete each Item in the Prequalified Order Form.

Where you are buying off a supplier which has entered into an ITS 2573 Master Services Agreement (MSA) with the NSW Department of Customer Service, it is important that you compete this Order Form to bring the purchase within the scope of the MSA. Otherwise, the purchase will not be made under a "Supply Contract" entered into under the MSA, and there is a risk that you will be purchasing under the supplier's standard terms, which will be much less favourable to the customer agency. Note, however, that you can agree a shortened general order form with the supplier for use in purchasing goods or services from the Supplier – please refer to clause 3.14 of the MSA for more guidance on this.

The Order Form does NOT give you or the supplier the opportunity to agree variations to or deviations from the terms of the MSA (most of which are incorporated into the Supply Contract). Further, no Supplier document (eg. delivery docket, shipment terms etc) which the Supplier may provide varies or forms part of the Supply Contract. The only 'variable' from a legal perspective is the liability cap which, in exceptional circumstances (where the Supply Contract is over $20M, or the Supply Contract deliverables are for certain high risk "Prescribed Uses") is increased by agreement with the Supplier and set out in the Purchase Order documents.

| **Item** | **Guidance and Instructions** |
| --- | --- |
|  | Set out:  - MSA Number (Request MSA Number from [ITS2573@customerservice.nsw.gov.au](mailto:ITS2573@customerservice.nsw.gov.au))  - Purchase Order Number (in accordance with usual internal guidelines or processes)  - date on which Purchase Order is created. |
|  | Set out the required details of the Supplier. Ordinarily, these should correspond to the Supplier's details under the MSA it has entered into with NSW DCS. |
|  | Set out the required details of the Customer (ie. your agency/government entity). |
|  | Set out contact details for the authorised representatives of the Customer and the Supplier. Note: authorised representatives for each party can be different for different Purchase Orders entered into with the same Supplier. |
|  | In relation to the address and person for each party to which legal notices must be sent, these should usually be as set out in the MSA (in which case the first box should be ticked). Otherwise, include alternative address and contact details. |
|  | Tick one or more boxes according to the Categories (Equipment, Infrastructure, Services) included in the scope of work for this Purchase Order. For example, if, under this Purchase Order, the Supplier will only provide Equipment, tick only the “Equipment Terms” box. |
|  | This box should be ticked, indicating that the Purchase Order is for a "standard order", where the purchase is of Equipment, Infrastructure or Services where the descriptions, specifications and pricing are set out in the MSA. In reality, this is likely to apply only to purchases of Services only, as Services pricing is set out in a Schedule to the MSA. In addition, please complete the table with details of the relevant purchase and price. If this Purchase Order is for a purchase of both 'commoditised' Services AND Equipment/Infrastructure, do not complete this section. Details of the purchase will be included in the 'Contract Specific Requirements' document (see 8 below) and Pricing and Payment Plan (see 10 below). In this case, or if no commoditised Services are being purchased, state "Not Applicable". |
|  | This box should be ticked where the purchase is NOT for commoditised services where all details can be obtained from the MSA. Additionally, tick boxes as appropriate to indicate which documents are being attached to the Purchase Order setting out the specific of this purchase and the relevant requirements. Note that this document will be incorporated into the Supply Contract formed by this Purchase Order. Not all documents on the list will be relevant or required for every Purchase Order. However, in most cases, you should include a Statement of Work, Customer Requirements or Specifications document.  If a support services agreement or description is included, state when Support Services will commence, on Acceptance, or not until expiry of Warranty Period.) |
|  | If the Supplier is to perform Services for a fixed period (such as managed services) set out the term for the provision of Services (eg. 6 months from Services Commencement Date). Otherwise state "Not Applicable". |
|  | If this Purchase Order is for a commoditised Services purchase, tick the first box. Otherwise, which will be most cases, tick the second box and attach the Pricing and Payment Plan (or equivalent document) to the Purchase Order. |
|  | Payments terms may differ from Purchase Order to Purchase Order (with the same Supplier). If payment is to be on Acceptance or on Delivery, tick the appropriate box. Otherwise, tick the third box and attach the Pricing and Payment Plan (or equivalent document) to the Purchase Order. |
|  | Under clause 26 of the MSA. a customer has the right to terminate a Supply Contract for convenience (ie. without cause). However, in such instances, the Supplier is likely to require termination charges to be paid by the customer. If this has been discussed and agreed with the Supplier, set out the amounts payable upon exercise of the termination for convenience right in this box. These amounts may vary depending on when the right to terminate for convenience is exercised. If no termination charges are payable upon the Supply Contract being terminated for convenience, state "Not Applicable." |
|  | This Item only relates to Purchase Orders under which Services will be performed by the Supplier. If no particular personnel are required, tick the "None" box. If specified personnel must be used to provide the Services, tick the "Yes, as follows" box and set out details of the names or roles of the relevant Supplier personnel. |
|  | The MSA states that the Supplier must obtain the Customer's approval to use subcontractors. However, this can be done prior to execution of the Purchase Order. If you have approved the use of any subcontractors by the Supplier in advance, set out details of the subcontractor in this box. Otherwise, state “Not Applicable”. |
|  | Specify details of Project Governance, e.g. monthly meetings, etc.  Otherwise state “Not Applicable”. |
|  | Specify details of the reports to be provided by the Supplier, their content and frequency / timing, e.g. service level reports, progress reports, etc. Otherwise state “Not Applicable”. |
|  | The default position under the MSA is the IP in New Material produced by the Supplier under the Supply Contract will be owned by the Supplier and licensed to the Customer. However, in certain, rare circumstances, the Customer may need to own this IP, as provided for in clause 14.10 of the MSA. If this is the case, and this has been agreed with the Supplier, tick the "Yes" box. Otherwise, which should be in the majority of cases, tick the "No" box. |
|  | Liquidated Damages (LDs) constitute an optional remedy for late completion of certain obligations under the MSA. If you have agreed with the Supplier that LDs will apply under the Supply Contract, tick the "Yes" box, and set out details of the relevant obligations (late completion of which triggers the LDs payment), the amount of LDs and the period during which they are payable. Otherwise, tick the "No" box. |
|  | A performance guarantee is an optional remedy under the MSA through which the Supplier's parent company guarantees the performance obligations of the Supplier under the Supply Contract. If you have agreed with the Supplier that a performance guarantee will be given, tick the "Yes" box and get the Supplier to arrange for a guarantor approved in writing by you to enter into a guarantee which is substantially in the form of Schedule 9 to the MSA. You may need assistance from NSW Telco in completing the guarantee agreement. Otherwise, tick the "No" box. |
|  | A financial security (also called a 'bank guarantee') is an optional remedy under the MSA. If you have agreed with the Supplier that a financial security will be provided, tick the "Yes" box, state the amount of the Financial Security, and get the Supplier to provide the Financial Security substantially in the form of Schedule 10 to the MSA or in the standard form that is usually provided by the issuing entity You may need assistance from NSW Telco in completing the Financial Security. Otherwise, tick the "No" box. |
|  | An 'Approved Agent' is an entity that is authorised in writing by the Supplier to act as the Supplier’s legal agent for the purpose of supplying Equipment, Infrastructure or Services to the Customer under a Supply Contract, e.g. a reseller. If items are to be supplied under the Purchase Order through an Approved Agent of the Supplier, set out details here. Otherwise, state "Not Applicable". |
|  | Under the MSA, the default Warranty Period for Deliverables is 12 months (either from Acceptance if the Deliverables has been acceptance tested, or otherwise from delivery). If this is appropriate (in terms of the Supplier's policies and the relevant Deliverables), tick the "As per MSA" box. Otherwise, tick the "As set out below" box and provide details of the different Warranty Period (note that there may be different Warranty Periods for different deliverables). |
|  | Under the MSA, a "Management Committee" can be established. If you have agreed with the Supplier that there will be a Management Committee for this project, tick the "Yes, details below" box and set out details of the Management Committee's members, frequency of meetings, and any additional functions. Otherwise, tick the "No" box. |
|  | Under the MSA, "Test Items" are Equipment, Infrastructure or Services which will be subject to Acceptance Tests in accordance with the MSA. If you have agreed with the Supplier that the relevant items will be subject to Acceptance Tests-  tick the first "Yes" box, and then tick the appropriate box depending on whether an Acceptance Test Plan is able to be attached to the Purchase Order or will be produced by the supplier later.  If the items being purchased are not Test Items, tick the "No" box. |
|  | This Item is only relevant where Construction Services (as described in Schedule 5 of the MSA) are being provided by the Supplier. If the Supplier is providing Construction Services, and you have agreed with the Supplier that it is being engaged as the 'principal contractor' for work health and safety purposes, which will mean it has primary WHS responsibility for the construction site or location at which these services are being provided (Construction Site), tick the "Yes" box and attach a site plan detailing the Construction Site in respect of which the Supplier is the WHS Principal Contractor. If the Supplier is not being engaged as the WHS Principal Contractor, tick the "No" box. |

# Prequalified Order Form

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Item** | **General Details** | | | | | | | |
| **1** | **Master Supply Agreement** | MSA Number: | |  | | | | |
| Purchase Order Number: | |  | | | | |
| Date Created: | |  | | | | |
| This is a Purchase Order made under the Master Supply Agreement with the Supplier and the NSW Department of Customer Service (**MSA**). Once signed by both parties, this Purchase Order forms a 'Supply Contract' for the purposes of the MSA. | | | | | | |
| **2** | **Supplier** | Name: | |  | | | | |
| ACN/ABN: | |  | | | | |
| Address:  (if different from MSA) | |  | | | | |
| **3** | **Customer** | Name: | |  | | | | |
| Address: | |  | | | | |
| **4** | **Authorised Representatives** | Supplier: | | Name | |  | | |
| Position | |  | | |
| Address | |  | | |
| Phone | |  | | |
| Fax | |  | | |
| email | |  | | |
| Customer: | | Name | |  | | |
| Position | |  | | |
| Address | |  | | |
| Phone | |  | | |
| Fax | |  | | |
| email | |  | | |
| **5** | **Address for Legal Notices** | Supplier: | | Notices should be sent: As per the details in the MSA 🞎 or as per the details below 🞎 | | | | |
|  | | Name | |  | | |
|  | | Position | |  | | |
|  | | Address | |  | | |
|  | | Fax | |  | | |
| Customer: | | Notices should be sent: To the Customer's Authorised Representative above 🞎 or as per the details below 🞎  *Note: If the Customer's Authorised Representative will receive notices, they must not be given by email.* | | | | |
|  | | Name | |  | | |
|  | | Position | |  | | |
|  | | Address | |  | | |
|  | | Fax | |  | | |
| **6** | **Additional Terms** | Tick one or more as applicable:  🞎 Equipment Terms  🞎 Infrastructure Terms  🞎 Services Terms | | | | | | |
| **Item** | **Details of Equipment, Infrastructure and/or Services to be Provided** | | | | | | | |
| **7** | **Standard Order**  Otherwise state “Not Applicable”. | 🞎 Purchase Order is for Equipment, Infrastructure or Services where the descriptions, specifications and pricing are contained in the MSA: | | | | | | |
| **Item** | **Item Reference No (if applicable)** | | **Quantity Ordered** | | **Unit Price**  **(ex GST)** | **Total Price for Item (ex GST)** |
|  |  | |  | |  |  |
|  |  | |  | |  |  |
|  |  | |  | |  |  |
| **Delivery Address** |  | | | | | |
| **Delivery Date** |  | | | | | |
| **Set out any special instructions such as delivery details:** | | | | | | |
| **8** | **Contract Specific Requirements** | 🞎 Purchase Order is for Equipment, Infrastructure and/or Services set out in the following Supply Contract documentation:  *Attach as appropriate:*  🞎 *Specifications*  🞎 *Statement of Work*  🞎 *Service Level Agreement*  🞎 *Support Services agreement/description*  🞎  *Customer Requirements*  🞎 *Drawings*  🞎  *Project Plan or milestones with milestone dates including any retentions*  🞎  *Customer Supplied Items*  🞎  *Other ...... specify:* | | | | | | |
| **9** | **Services Term** |  | | | | | | |
| **Item** | **Details of Pricing and Payment** | | | | | | | |
| **10** | **Pricing** | 🞎 As per Item 7 of this Purchase Order  🞎 As per attached Pricing and Payment Plan | | | | | | |
| **11** | **Payment** | 🞎 On Acceptance  🞎 On Delivery  🞎 As per the attached Pricing and Payment Plan | | | | | | |
| **12** | **Termination for Convenience Payments** |  | | | | | | |
| **Item** | **Performance Details** | | | | | | | |
| **13** | **Specified Personnel** | 🞎 None 🞎 Yes, as follows: | | | | | | |
| **14** | **Approved Subcontractors as at date of Purchase Order** |  | | | | | | |
| **15** | **Contract Management and Reviews** |  | | | | | | |
| **16** | **Reporting** |  | | | | | | |
| **17** | **IPR** | Is the Intellectual Property in New Material produced by Supplier under the Supply Contract to be owned by the Customer?    🞎 Yes 🞎 No | | | | | | |
| **18** | **Liquidated Damages** | Are liquidated damages payable for the late completion of an LD Obligation?  🞎 Yes, as set out below.  🞎 No | | | | | | |
| **19** | **Performance Guarantee** | 🞎 Yes 🞎 No | | | | | | |
| **20** | **Financial Security** | 🞎 Yes , for the amount of [***insert***]  🞎 No | | | | | | |
| **21** | **Approved Agents** |  | | | | | | |
| **22** | **Warranty Period** | 🞎 As per MSA  🞎 As set out below: | | | | | | |
| **23** | **Management Committee** | Is a Management Committee to be established?  🞎 Yes, details below 🞎 No | | | | | | |
| **24** | **Test Items** | Are Contracted Items Test Items?  🞎 Yes 🞎 No  If Yes, is an Acceptance Test Plan attached?  🞎 Yes 🞎 No, Plan to be produced by Supplier. | | | | | | |
| **25** | **WHS Principal Contractor** | Is the Supplier to be engaged as the 'principal contractor' for work health and safety purposes?  🞏 Yes – then clauses 15.15 and 15.16 of the Services Terms apply and the site plan detailing the Construction Site is as attached to, and forming part of, the Order Documents.  🞏 No – then clauses 15.15 and 15.16 of the Services Terms do not apply. | | | | | | |

**EXECUTED** as an agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed for and on behalf of [insert name of Customer]** by [insert name of Customer's Authorised Representative] but not so as to incur personal liability |  |  |  |
|  |  |  |  |
| Print Name |  | Signature of Customer Representative |  |
|  |  |  |  |
| Date |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed for and on behalf of [insert Supplier's name and ACN/ABN]** by [insert name of Supplier’s Authorised Representative] but not so as to incur personal liability |  |  |  |
|  |  |  |  |
| Print Name |  | Signature of Authorised Signatory |  |
|  |  |  |  |
| Date |  |  |  |