



## Tasmanian Government Procurement

The Tasmanian Government is the largest consumer of ICT services in the State, consequently how government manages its procurement has a significant impact on the local industry, as well as Government's ability to attract the right vendors and the best solutions for its needs, be they local, national or international.

The purpose of this paper is to outline a number of issues that the ICT industry has with ICT procurement by Tasmanian Government, and TasICT's position on ways to improve procurement processes and arrangements. The purpose of these recommendations is to:

- Reduce unnecessary duplication of effort of Government and suppliers in ICT procurement
- Reduce barriers to entry for new or smaller suppliers
- Reduce the cost of the procurement process and compliance for both Government and suppliers.
- Foster a culture that provides more scope for innovative solutions and sharing of intellectual property
- Understand and manage risk between suppliers and Government
- Build capability in the local market to grow the ICT sector and hence provide a more capable supplier base to Government.

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# WoG ICT Services Panel

Unlike other state jurisdictions, Tasmania has no centralised or Whole of Government ICT services panel. While this provides a degree of flexibility to agencies and other government entities in developing their own specialist procurement and panel arrangements, it has a number of significant issues:

- A number of Tasmanian agencies have previously established their own panels, often with largely overlapping requirements. This has a twofold effect of requiring suppliers to spend more time applying for panels with no guarantee of work, as well as government duplicating effort running multiple tender panel processes in different agencies, but with largely the same outcome. This is inefficient for both government and suppliers, and can also result in inconsistent terms and conditions between otherwise similar panels.
- Agencies without tender panels, generally the smaller agencies, are disadvantaged as they are forced to utilise the default procurement guidelines and issue RFQs or full RFTs. Both of these processes are significantly more complex for vendors to respond to and require more time and effort from government to conduct the procurement process. This slows down Government's ability to deliver services and increases the burden on suppliers.
- Lack of central control and guidance creates opportunity for large variance in the minimum requirements. Agencies asking for the same resource or solution often set vastly different insurance and warranty requirements, which is frustrating for vendors and ultimately raises the barriers and cost of tendering for government business.

TasICT would like to see a Whole of Government ICT services panel established, in a similar model as the new Victorian eServices Register or the South Australian eProjects Panel. Both are rolling panels, with low barrier to entry for vendors and have mandated use for all inner budget agencies. Use is not mandated for state owned companies, government business enterprises and statutory authorities, but is encouraged. Councils and other government entities should also be welcome to use the panel if it suits their needs. These panels also have suitable delegation thresholds to allow agencies to avoid full tender processes.

Victoria consulted very closely with the AIIA and industry during the design and establishment of their new eServices Register, and made Department of State Development, Business and Innovation Victoria the lead agency for the management of the panel. TasICT would ask the Tasmanian Government engage with TasICT and industry in designing and establishing a similar WoG ICT services panel.

It should be noted that the recent ICT Software Services Panel run by the Department of Economic Development, Tourism and the Arts goes a long way to addressing these issues, and TasICT supports this panel and its intentions. However over the life of this panel, TasICT would like to see further development of the panel process to include non-participating agencies and to address the recommendations above. TasICT acknowledges that a rolling panel also requires more resource from Government to manage, so a panel with a regular "application period" for new vendors is also a suitable outcome.

# Insurance and Liability

Over the past decade, the Federal Government has undertaken a number of studies on the effects of excessive levels of insurance in ICT procurement, including both in the Gershon Report<sup>1</sup> and a number of papers by the Department of Industry<sup>2</sup>.

The effects of excessive levels of insurance are:

- **Increased cost to Government.** Suppliers increase the cost of their proposals to cover their increased business costs or liability risks. This ultimately increases the cost of government procurement and the compliance burden on both suppliers and government.
- **Barrier to entry.** Smaller organisations do not have the levels of insurance required to tender for government business, and the cost of attaining that insurance, even when required only if successful in their bid, is often prohibitive. This stops smaller companies tendering for and winning government work, and consequently reduces competition.
- **Reduces Innovation.** Companies are less willing to engage in innovative solutions where the customer is not willing to accept some of the risk or sets excessive insurance constraints on the supplier.

Within Tasmanian ICT procurement there are a number of additional issues:

- **Minimums and Variance.** While the GITC provides a default of \$5m for public liability insurance, there is no minimum for professional indemnity, and there is no framework to assist agencies setting appropriate insurance levels. This leads to large variance between agencies and projects on insurance levels.
- **Scope.** The GITC covers a wide range of ICT procurement, and GITC official orders can be for as little as \$10k. In some instances, such as providing an onsite consultant for a low value engagement, \$5m public liability insurance is excessive and in some cases unnecessary as it would be covered under the agencies own public liability insurance.

A number of other state jurisdictions and federal organisations have moved away from minimum insurance levels on their panel arrangements. Instead they set insurance levels on a per-project basis, using a realistic risk management approach to minimise the insurance requirements.

TasICT's position is that Tasmanian Government should:

- Review the minimum levels of insurance required in the GITC head agreement, noting that the GITC is a very broad agreement and the current \$5m of public liability insurance when supplying certain goods or services is unnecessary.
- Develop a formal framework and guidance to agencies on appropriate levels of insurance based on a range of factors, not just project value.
- A central body, with ICT risk management expertise, should audit compliance of the framework (to stop large deviation), and provide advice should the agencies require assistance. This will help to reduce some of the risk adversity if agencies can consult with experts and utilise a formal framework. It should be noted, however, that the Crown Solicitor's Office, in their role of assisting with contract development, is not necessarily the best entity to provide financial risk advice on ICT projects.

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<sup>1</sup> <http://www.finance.gov.au/publications/ICT-Review/docs/Review-of-the-Australian-Governments-Use-of-Information-and-Communication-Technology.pdf>

<sup>2</sup> <http://www.innovation.gov.au/INDUSTRY/INFORMATIONANDCOMMUNICATIONSTECHNOLOGIES/Pages/GuideToLimitingSupplierLiabilityinICTContractswithAustralianGovernmentAgencies.aspx>

# Intellectual Property

Under the default provisions of the GITC Head Agreement, any new intellectual property developed during the course of a project is owned by the Crown. While the GITC contains clauses for the co-ownership of IP between parties or direct ownership by the supplier, these must be specifically referenced when constructing the Official Order, and consequently are rarely used. Furthermore, it is often difficult at the beginning of a project to articulate all IP that may be developed over a long running project.

The Crown is not in the business of commercialising its IP. Only in rare, and likely opportunistic scenarios, would it seek to gain financial return, or “cost recover” some of the value that was invested in that IP.

The policy of a number of jurisdictions in Australia is that the intellectual property developed during an ICT project either resides with the supplier, or is co-owned between parties. This allows the supplier the opportunity to reuse the IP, and potentially seek commercial opportunities for that IP. This fosters innovation and provides opportunity for suppliers to co-invest during the project, resulting in potentially superior solutions for the client when they know they have the ability to extend the IP to seek other opportunities.

TasICT’s position is that the GITC be amended so by default IP ownership is either shared or is retained by the supplier. New Official Orders should not require changes from the template or listing of IP in clauses in order to achieve this default position, as is currently required.

# Environmental Sustainability

All Tasmanian Government tenders, regardless of whether procuring services, assets or infrastructure, have 5% of the evaluation criteria allocated towards environmental sustainability. Notwithstanding the importance of environmental sustainability in itself, demonstrating this is significantly different when building physical infrastructure compared with providing professional services or implementing a software system.

In some cases, demonstrating environmental sustainability for ICT projects disadvantages local or smaller suppliers. Often the only way to demonstrate environmental sustainability for ICT services is in the infrastructure or practises of the business (office buildings, printing, business processes and overheads), not the project itself. Tasmania has a very limited supply of 5 or 6 star energy rated buildings, and small businesses do not have the economies of scale to compete with larger businesses in terms of process optimisation or efficient infrastructure.

TasICT’s position is the mandatory 5% weighting to environmental sustainability be removed for ICT tenders, and applied selectively based on the project scale. Environmental sustainability can be addressed in the overall conditions of compliance or methodologies for delivering the project, without prejudicing the overall evaluation criteria, which should focus on suitability and value for money for Government.

# Tasmanian Government Project Management Guidelines

The Tasmanian Government has a formal set of project management guidelines, as defined and published by DPaC<sup>3</sup>. The use of these guidelines is applied selectively by agencies for ICT projects, with no consistency across project or engagement types.

The ICT industry has numerous industry standard project management methodologies, such as Prince2, PMBOK and SCRUM, as well as methodologies adapted from these by vendors such as Microsoft or SAP for their platform implementations.

While the Tasmanian Government project management guidelines are based on PMBOK, and provide a high quality set of templates that aid in the delivery of project management, the lack of consistency in their use undermines the otherwise correct approach to standardise the methodology and increase project management expertise in Tasmanian Government.

TasICT's position is to:

- **Standardise.** Government should set one or two industry standard project management frameworks as the preferred frameworks across ICT projects in government, and promote their use. This will allow for vendors and government staff to conduct training and certification against industry standard methodologies. Strongly encourage the agencies to adopt these methodologies, and incorporate the requirements for suitably certified project managers into the project risk requirements. In some cases other methodologies will be appropriate, so their use should not necessarily be mandated.
- **Branding.** Remove the branding of the Tasmanian Government project management guidelines, and instead adopt industry standard names to avoid confusion. Maintain and enhance any Tasmanian Government templates against these chosen methodologies. There is an important distinction between "Tasmanian Government Project Management Guidelines" and "Tasmanian Government Guidelines and Templates for PMBOK".
- **Training.** Both suppliers and purchasers need to manage the other party during implementations. Government requires its own skilled project managers for successful delivery of projects, and should invest in training for its staff to increase success. ICT project management is a professional discipline, taking business staff or subject matter experts, and then labelling them as ICT project managers, often leads to significant issues or failure.

# Contract Size and Scope

For larger projects, Government procurement often seeks a single vendor to undertake and manage the implementation, to simplify the procurement and have the vendor assume delivery risk. Given the scale or solution sought for some of these projects, local vendors are not in a position to bid for the project, due to their smaller scale or lack of expertise in the solution sought.

As the successful vendors are often not based in Tasmania and do not have a local presence, they then often fly-in internal or contract resources. While it is necessary for these vendors to utilise their experts to deliver the project, in most cases local vendors are often in a position to provide some of the capability required of the overall project, for example business analysis, quality assurance or systems integration. However given the structure of the procurement process, it is often difficult for local suppliers to partner with or engage the large range of potential respondents to such a tender.

TasICT's position is that:

- Where possible, agencies try to break larger projects into smaller parcels that can potentially be delivered by local vendors.
- Care should also be given to not “over engineer” requested solutions from the market, where it significantly increases the scope, cost and complexity of a solution. Trying for a single solution that meets all requirements does not always result in “economies of scale” in ICT projects, and often does not result in a “best of breed” approach.
- Include in the “buy local policy” or tender evaluation criteria, responses that encourage the prime vendor to detail how they may engage with local vendors to assist their project delivery.

The outcome is Government should be looking for ways to build local capability in their suppliers, so they can provide better support, rather than be dependent on expertise not available locally.