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## Current Arrangements for the Procurement of Information Technology Goods and Services by the Commonwealth

by Anthony Willis

*This article is based on a paper delivered at a recent seminar entitled 'Strategic Aspects of Major Public Sector Acquisitions' organised by the Institute of Public Administration of Australia.*

### Introduction to the Commonwealth IT Procurement Environment

Procurement of Information Technology goods and services by Commonwealth Departments and agencies is subject to one of the most highly structured procurement environments imaginable. Little wonder that from time to time questions

are raised as to the complexity and cost of doing business with the Commonwealth.

In this brief paper I shall try to outline some of the principal matters which should be understood by both suppliers and acquirers of IT goods and services - adding only a few comments of my own derived from acting for a number of years for suppliers and, in recent years, for a number of acquirers.

Whilst most of what follows is only strictly applicable to Commonwealth agencies which are subject to the *Audit Act* and *Finance Regulations*, much of it is followed both

by budget independent agencies and some of it, such as use of the GITC, is followed by various State and Territory administrations. The topics to be covered are as follows:

- IT Procurement Contracts;
  - CUC
  - GITC (1.4 and 2.14)
  - GITC-SI
- Industry Development
  - PfD
  - FTA
  - Endorsed Supplier Approach
  - Industry Impact Statement and Two Envelope Tendering

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- SI Panel;
- Acquisition Councils;
- GOSIP;
- Other Commonwealth IT Procurement Policy; and
- General Commonwealth Procurement Policy

**IT Procurement Contracts**

With the aim of simplifying the legal basis for the supply of IT goods and services (which is not necessarily the same thing as making it fair) there are standard bases of contract which apply in the Commonwealth market. They are Common Use Contracts, GITC based contracts, and the GITC SI Conditions.

**CUC**

For standard items, DAS has arranged the CUC's. They provide what are effectively standing offers to supply goods or services according to pre-arranged terms and conditions (which are based on the GITC). When an order is placed, the details of the order merge with the pre-agreed conditions to provide a fresh contract on each occasion.

There is generally a panel of pre-qualified suppliers who have met certain financial, standards and other requirements imposed by DAS. They are listed in Buyers Guides which describe the various products on offer and set out pricing information, such as percentage discounts from regular list prices. Some of the PE panels are 'open' and may be added to at any time. Others are not and are subject to re-tender on their expiry. PE 50, which has recently expired, has just been extended until after the implementation of the ESA (discussed below) with 3 new companies being added to the panel.

The CUC's in the IT area include:

- PE 50 Small & Medium Computer Systems;

- PE 51 Maintenance of Small & Medium Computer Systems;
- PE 42 Supply & Maintenance of Mainframe Display Terminals and Assoc'd Services;
- PE 43 Supply, Installation & Maint. of Computer Storage Systems & Assoc'd Services;
- PE 54 Supply, Installation & Maint. of Voice/Data Comm's Equipment & Cabling;
- PE 46 Supply of Line Encryption Devices;
- PE 47 Supply, Installation & Maintenance of Large-Scale Computing Systems; and
- PE 49 SI Panel

*"Where goods or services are not available under a CUC, a specific contract will need to be prepared"*

**GITC**

Where goods or services are not available under a CUC, a specific contract will need to be prepared. In the Commonwealth public sector this will generally be done using the Government Information Technology Conditions or GITC as the starting point.

The version of the GITC which has been used to date (currently up to Version 1.4) was designed for the establishment of period contracts. It originally consisted of:

- Head Agreement, which regulated the administrative dealings between the Contract Authority (DAS) and the supplier;

- Appendix A - various specific details of the agreement;
- Appendix B - details of products, services, prices, fees and charges;
- Appendix C - Statutory Declaration concerning commission;
- Appendix D - Hardware supply conditions;
- Appendix E - Hardware maintenance conditions; and
- Appendix F - Software Licence and support.

A module dealing with consultancy services was added in October 1992.

A new version of the GITC Term Agreement - Version 2.14 - has been prepared and seems likely to be finalised and approved shortly. It is divided into 11 Parts:

1. Interpretation.
2. Head Agreement and substantive parts of the old Appendix B. The remainder of the pricing information is now in Schedule 2. Enables the Contract Authority to impose a global limitation of liability for some transactions.
3. Contains the clauses which were common to more than one module.

Enables Customers to negotiate security and escrow arrangements.

Incorporates some of the Contract Management provisions from the SI conditions.

Contains revised provisions on Acceptance Testing which may be activated.

Revises the Intellectual Property provisions - Contract Material is divided into New and Existing. Ownership of New IP is to be transferred to the Customer whilst, in relation to Existing an appropriate licence is sought.

Staged implementation has been included with the right to terminate after a Stage.

A dispute resolution clause is included.

4. Hardware Acquisition.
5. Hardware Maintenance.

Hardware maintenance services are now classified into comprehensive, preventative and remedial and may be acquired from OEM's or Third Parties.

Remedial maintenance now includes T&M, Pick-up and Delivery and Return to Depot maintenance.

A priority response time scheme has been included.

Reductions to charges for failures to reach system or hardware availability levels are specified.

6. Software Licensing.
7. IT Consultancy - mostly included in Part 3.
8. Software Development and Modification - based on SI Conditions.
9. Software Support.
10. Systems Integration.
11. Data Conversion and Migration.

It is reported that a 'plain English' user's guide to the GITC is being prepared. One can only speculate on what it may contain and what length it might be.

### *GITC-SI*

In October 1992 specific SI conditions were also released for use on a stand alone basis. They have provided the base of the contract for substantial systems integrations. Once Version 2.14 of the GITC has been adopted, it is intended to revise the SI conditions to bring them into line with that document.

### *Industry Development*

A number of industry development measures are applicable in the IT sector. They are neither mutually exclusive nor completely complementary. They may be briefly described as follows:

#### *Partnerships for Development - PFD*

Intended for international companies with annual IT sales to government in excess of \$40M. Encourages strategic business activities with benefits to Australia over a 7 year period, including Australian based R&D and exports and, in some cases, capital investments and/or venture capital fund investments. Partners are

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required to establish a business plan charting their Australian industry support programme and to sign a Memorandum of Understanding with the Australian government.

#### *Fixed Term Arrangements - FTA*

Intended for international companies with annual IT sales to government of up to \$40M. Encourages strategic business activities with benefits to Australia over a 4 year period, including Australian based R&D and exports and, in some cases, capital investments and/or venture capital fund investments. FTA signatories are required to establish a business plan charting their Australian industry support programme and to sign

a Memorandum of Understanding with the Australian government.

Following the recent Working Nation white paper, Australian companies may now enter into FTA's.

Also as a consequence of the Working Nation white paper, steps are being taken with the aim of doing more to support local industry. It is intended that the focus of the third fundamental requirement for government procurement (after 'value for money' and 'open and effective competition') shift from 'maximising opportunities for ANZ suppliers' to 'maximising ANZ content'. Two measures in particular are in the course of being introduced:

#### *Endorsed Supplier Approach - ESA*

Firstly, in addition to the current PFD and FTA programmes, there is to be an 'Endorsed Supplier Approach' (ESA). Under the ESA suppliers to government will be certified as having demonstrated a commitment to long term ANZ activities (such as employment, investment, R&D, export) as well as compliance with government policies, such as quality assurance. This is intended as a system of prequalifying suppliers in order that industry development criteria need not be demonstrated when tendering to government. It is intended to be a precondition to entering into any new CUC's.

#### *Industry Impact Statements (IIS) and 'Two Envelope' Tendering*

Secondly, for IT contracts with a total worth in excess of \$10M which are not conducted through the CUC's:

- agencies will be required to develop Industry Impact Statements (IIS) addressing potential industry development initiatives which might arise in the pro-

posed project and to notify tenderers of industry development opportunities which they may care to address in their tender; and

- tenderers must outline in their tenders, in a 'second envelope', their current activities, or new proposals, for development of ANZ industry.

### **SI Panel**

Following the March 1991 Industry Statement - *Building a Competitive Australia*, all agencies subject to the *Audit Act* and the *Finance Regulations* obtaining IT services costing more than \$1M and containing *SI services* were required to obtain those services from a company on the restricted Panel of Systems Integrators. The SI Panel was established in June 1992 with the aim of developing Australian companies to be competitive in the world IT services market.

'Systems Integration' is where the new project:

- will interact with existing applications;
- will involve more than one disparate platform; or
- will involve interaction with an IT system used by another organisation.

The SI Panellists are currently:

- Anderson Consulting/Navigator Consortium
- Aspect
- BHP IT
- Computer Power Group
- CSA
- Digital Equipment Corporation
- DMR
- Ferntree

- Fujitsu
- IBM
- Paxus
- PSICON
- Queensland Systems Integration
- Synercom
- Telecom
- Wang

The SI Panel is currently under review. In the course of that review, there has been much debate about whether the original aims of the Panel have been realised. Those aims included:

*"The SI Panel was established in June 1992 with the aim of developing Australian companies to be competitive in the world IT services market"*

- promoting a world class, world competitive, IT services sector; and
- simplifying the IT purchasing process.

A draft set of findings and recommendations were released for comment on 13 October. Relevant findings include:

- that it is too early to judge the Panel;
- the Panel is proving divisive in the industry between panellists and non-panellists;

- non-panellists were possibly being unfairly treated by Commonwealth acquirers;
- the panellists believe use of the Panel has not reduced the costs of tendering; and
- risk assessment practices used by acquirers do not appear to have improved.

The principal draft recommendation is that - due, in part, to changes on government policy focusing on access to government contracts for SME's - the SI Panel should be replaced by an IT Services Common Use Contract Panel.

Without commenting on whether the Panel as currently constituted is achieving, or is likely to achieve, the original aims of the SI Panel, it seems hard to understand how significantly increasing the size of the Panel will assist in achieving particularly the first of those aims.

### **Acquisition Councils**

An IT Acquisition Council must be established where an agency subject to the *Audit Act* and the *Finance Regulations* is making an IT acquisition costing over \$10M, or costing less if sensitive issues or high risks are involved.

'*Acquisitions*' include new facilities, upgrades, replacements or rationalisations of facilities.

'*Cost*' includes various 'hidden costs' such as leases, services, ongoing licence fees. It also includes any other expenditure in addition to current running costs which is needed to achieve the benefits contained in the cost/benefit analysis such as additional staff, consultants, training, maintenance, consumables or communications.

The steps which are followed are as follows:

(a) A Council is established comprising some or all of the following:

- the head of the acquiring agency (or deputy) as chair;
- one or two other representatives of that agency;
- a representative for the Minister of that agency;
- two representatives of DoF;
- generally one representative of each of DIST and DAS; and
- one independent person (from within or outside the APS).

Representatives of DIR, PM&C or other Departments, or other persons, may be invited to join if appropriate;

(b) The Council will evaluate the proposal and report to the head of the acquiring agency;

(c) A Schedule of Outcomes is prepared in conjunction with DoF;

(d) A submission seeking in-principle Cabinet support is then prepared including part of the report of the Council;

(e) Cabinet may give in-principle approval;

(f) Budget funding is sought;

(g) A procurement strategy is developed by the agency and considered by the Council including for compliance with government IT procurement policy;

(h) The Tender is run and evaluated by the agency and the Council assesses the Tender evaluation and may endorse the recommendation in its final report to the agency head; and

(i) The Council may then be disbanded.

Further detail as to the manner of operation of IT Acquisition Councils may be obtained from the Guidelines on that subject put out by DoF, as amended by Circulars.

### **GOSIP**

Departments and agencies subject to the *Audit Act* and *Finance Regulations and Directions* were, following the March 1991 *Industry Statement*, required by Finance Circular 1991, 11 to comply with the Government's Open Systems Interconnection Profile (GOSIP). That policy required agencies to:

- use OSI products conforming to the GOSIP for all new networks after 1 August 1991;
- develop a migration plan, as part of their IT strategy, to move from proprietary standards to OSI; and

*"For Departments or agencies subject to the Audit Act and Finance Regulations, many other policies specific to IT apply..."*

- require tenderers to bid GOSIP COMPLIANT products where appropriate in all Commonwealth tenders from 1 August 1994.

There has been some recent conjecture as to whether implementation of GOSIP has been embraced by the Commonwealth IT Strategic planning and procurement processes as rapidly as was originally envisaged.

### **Other Government IT Policy**

For Departments or agencies subject to the *Audit Act* and *Finance Regulations*, many other policies specific to IT apply including the following:

- Heads of agencies must certify that they have 'considered and satisfied' all aspects of government IT policy in their IT acquisitions;
- RFT's should be provided to industry for comment for at least one month;
- RFT's and RFI's should include requirements in the form of an appropriate functional specification and should include evaluation methodologies and priorities;
- The option of outsourcing IT service requirements should be considered where appropriate; and
- An IT Strategic Plan must be prepared every 3 years (or more frequently where appropriate) covering such matters as implementation of GOSIP and local industry development activities.

### **General Government Policy**

In addition to all of the above IT specific requirements, Commonwealth procurement officers must comply with the usual *general* requirements of government in relation to the entry into procurement contracts, such as:

- the need for proper authorisation to enter contracts (*Finance Direction 1*);
- the procedural requirements for approving contracts (*Finance Regulations 44A, 44B, 44D, 45 and 45A*); and
- the need for payments to be properly authorised (*Audit Act ss 32 and 34, Finance Regulations 45 and 56*).

There are also certain *specific* requirements which government procurement officers must keep in mind, including:

- the requirements in relation to insurance (*Finance Direction 21*);
- the requirements in relation to resolution of disputes (*Finance Direction 21/3*);
- the requirement to obtain 'value for money' (*Finance Regulation 44B* and *DAS Guideline 1*);
- the requirement for 'open and effective competition' (*Finance Regulation 43* and *DAS Guideline 2*);
- industry development obligations (As referred to above and *DAS Guideline 12*);
- other government policies which the government seeks to enforce, in part, through its purchasing requirements, such as policies relating to Yugoslavia, affirmative action, superannuation and the requirement for standards accreditation;
- further *DAS Procurement Guidelines* made under *Finance Regulation 42* including those relating to:
  - Planning Procurement
  - Using Staged Procurement

- Negotiation
- Managing Risk in Procurement
- Managing Performance
- Benchmarks for Procurement Decisions
- Know Your Market
- Contracting For Consultancy Services

*"It is suggested that those unfamiliar in this terrain should proceed with great caution..."*

#### **Conclusion**

As indicated at the outset, the area of procurement of IT goods and services by the Commonwealth is a place for neither the uninitiated nor the faint hearted. The procedures are complex and they change frequently. They are driven by government policies which come principally out of the Departments of Administrative Services, Industry Science and Technology, and Finance but which are further influenced by policies from

other Departments such as Prime Minister & Cabinet and Industrial Relations.

Those policies are not always headed in the same direction - as is shown by the current uncertainty over the SI Panel which arises from the lack of consensus among the relevant Ministers. It is also shown by the fact that this year has seen, in addition to the Bevis Report, the *Working Nation* white paper and the SI Panel review, the announcement of an IC enquiry into the Computer Industry, ongoing negotiations in relation to the GTC and the recent announcement by Minister Beazley of an enquiry sponsored by the Department of Finance.

It is suggested that those unfamiliar in this terrain should proceed with great caution - lest the best technical solution to a Commonwealth IT problem be unsuccessful due to lack of compliance with government policy or procedure. ♣

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