

State Procurement



Procure IT User Guide

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Introduction

Procure IT is the newest Government Agreement for the procurement of Information Technology and Communications products and services. Over time, Procure IT will replace the Government Information Technology Conditions Version 2 (GITC v.2). As each existing panel contract comes up for renewal or a new contract needs to be put in place, a tender will be released by State Procurement attaching Procure IT as the standard terms and conditions of contract. Because some contracts have only recently been established under the GITC v2, this process, of moving all existing Agreements over to Procure IT, will take about four years. Customers should monitor the Procure IT website for information on which contracts are under Procure IT and which are under GITC v2 at:

<http://www.supply.dpws.nsw.gov.au/Procure+IT/Procure+IT.htm>

Overview

In NSW, the State Contracts Control Board usually establishes standing offer panel arrangements after the market has been tested through a widely advertised tender request. The resulting Agreement between the Contract Authority and the Contractor is established for the benefit of a range of eligible entities (Customers) and sets the terms for the procurement of products and services listed in Schedule 3 of the Agreement, through the placement of Orders, whereby a Contract is created.

It is a common misconception that Contracts under panel arrangements can be arranged to suit the Customer and the Contractor without reference to the Agreement terms. This is not so as the Contract Authority as the Party to the Agreement which enables Contracts to be created must consent in every instance to any variation to the Agreement terms.

Various references in the Agreement to details that must be completed in the Order by the Customer and the Contractor. These afford the Customer and the Contractor a degree of latitude in tailoring the Contract to their respective needs. Any Additional Conditions attached to the Order that are contrary to the Contract Authority's terms must have the Contract Authority's prior written consent. Otherwise these additions are void and of no legal effect.

Prior to completing and placing the Order Customers should ascertain what the Agreement terms are. State Procurement officers will prepare all relevant Order forms and include all information relevant to the Order that has been pre-agreed by the Contract Authority and the Contractor under the heading "Minimum Conditions Agreed to by the Contractor and Contract Authority" in the Order form.

Procure IT aims to provide the tools for all parties to an IT transaction to be fully and equally aware of the terms and conditions and pricing framework related to the procurement of that IT product or service.

Outline of the Procure IT framework

The Procure IT framework contains standard terms and conditions, agreed between the Contract Authority and the Contractor, which apply to each Order placed by a Customer under the Agreement and Contract thereby created.

The Procure IT framework is made up of:

- Part 1 – Standard Terms and Conditions
- Part 2 – Dictionary
- Part 3 – Schedules
- Part 4 – Modules
- Part 5 – Order Forms
- Part 6 – Service Level Agreement

These Parts are explained in detail below.

Summary of the Procure IT framework

The various parts of the Procure IT framework are used as follows:

The **Agreement** between the Contract Authority with the Contractor contains:

- Part 1 – the Standard Terms and Conditions of the Agreement
- Part 2 – the Dictionary
- Part 3 – All Schedules relevant to the Agreement
- Part 4 – any Modules to the Agreement specified to apply in Schedule 1.

The **Contract** between the Customer and the Contractor contains:

- All of Parts 1 to 4 of the Agreement as set out above
- Part 5 - The Order Details
- The Service Level Agreement (SLA) if one has been agreed
- Any Additional Conditions the parties have agreed in accordance with the Agreement.

Part 1: Standard Terms and Conditions

This part contains all the terms and conditions agreed to between the Contract Authority and the Contractor, to apply:

- during the Term of the Agreement as between the Contract Authority and the Contractor, and
- during the term of any Contract as between the Contractor and the Customer when a Customer places an Order.

Part 2: Dictionary of Terms

Part 2 contains a Dictionary of defined terms that feature in the documentation and an interpretation section.

Specific terms used in only one or two modules are defined in those particular modules.

Part 3 – Schedules

The Schedules incorporate various forms that add to or complement the arrangements between the Parties.

As a minimum, the Contract Authority and Contractor must complete Schedules 1,2 3. Schedules 1,2,3, 5 and 10 apply to every Agreement whereas Schedules 4, 6 to 9 and 11 to 13 may be incorporated as necessary by the Contract Authority or the Customer.

The Schedules are:

| Schedule | Contents |
|------------------------|---|
| 1. Agreement Details | The Parties must complete these details, which form part of the Agreement. Those Agreement Details that are relevant to the Order are included in the Order form under the heading “Minimum conditions required by the Contract Authority”. These Agreement Details form part of any Contract established under the Agreement. |
| 2. Agreement Documents | Schedule 2 sets out any supplemental terms or documents (if any) that are to be incorporated from the Request for Tender, the Tender or any other communications between the Parties. These are contractual terms that are agreed by the Contract Authority and the Contractor which are additional to the standard terms and conditions in Part 1. |

| Schedule | Contents |
|--|---|
| 3. Product and Services Details | Schedule 3 is a list of all the Products and Services tendered for supply by the Contractor and agreed by the Contract Authority. This schedule also contains the price, licence fee and charge details, specific price variation mechanism and any other relevant information agreed in respect of the product and services. |
| 4. Statutory Declaration by Approved Party or Sub-contractor | This declaration ensures that the Approved Party or the Sub-contractor adopt and comply with the terms of the Agreement in fulfilling obligations on behalf the Contractor under the Contract. |
| 5. Expert Determination Procedure | This schedule provides a process for the determination of an issue in dispute between the Parties by an expert where amicable resolution has not been achieved. |
| 6. Confirmation of Insurances | This schedule is a statement of the insurances held by the Contractor. It can be used during the initial stages of an Agreement as well as throughout the course of a Contract. |
| 7. Financial Security | This is a Deed of Agreement setting out the terms upon which a Financial Security is provided and may be called upon by the Customer. |
| 8. Performance Guarantee | This is a Deed of Agreement setting out the terms upon which a Performance Guarantee is provided and may be called upon by the Customer |
| 9. Deed of Confidentiality | This is a Deed of Agreement setting the terms for the preservation of confidentiality in certain information identified by the Parties. |
| 10. Privacy | This schedule contains the contractor's privacy obligations. |
| 11. Escrow Agreement | This is a Deed of Agreement between the Contractor, Customer and the escrow agent to place source code of a Product into escrow, which the Customer may have released in certain circumstances to continue to maintain or support the Product, or the Customer's system, which is dependent on the Product. |

| Schedule | Contents |
|--------------------------|---|
| 12. Variation Procedures | This schedule provides a document-based process for managing changes to the operational requirements of a project or variations to the Contract terms. The procedures may be used for either purpose. The record so created provides a useful means of ascertaining the actual nature of the Contract at any given time especially when the Contract is subject to audit or there is an issue in dispute. |
| 13. Risk Management | This schedule contains the format of the risk management plan, which provides an outline of the plan to be completed by the Customer and Contractor for the purposes of clause 8.6, Liability, of Part 1. |

Part 4 – Modules

The Modules contain additional terms and conditions of the Agreement that are specific to particular Products and Services offered by the Contractor. Each panel arrangement will include only those Modules that are relevant.

The Modules are colour coded for easy reference into the broad “groupings” of IT products and services that may be procured, as follows:

MODULE 1 – Hardware Acquisition and Installation

MODULE 2 – Hardware Maintenance Services

MODULE 3 – Licensed Software

MODULE 4 – Development Services

MODULE 5 – Software Support Services

MODULE 6 – IT Personnel

MODULE 7 – Professional Services

MODULE 8 - Data Management

MODULE 9 – Telecommunications Services

MODULE 10 – Web Services

MODULE 11 – Managed Services

MODULE 12 – Systems Integration Services

While the Modules are colour coded, it is not required that each Module of the same colour be incorporated into a particular Agreement or Contract. See Appendix A for a cursory guide as to which Modules should be incorporated into State Procurement IT Agreements.

Part 5 – Order Forms

The Agreement requires a number of details to be specified in the Order. The Order forms have been created to provide Customers with a ready reference guide as to the contractual details to be completed by the Customer and the Contractor. The Order forms will also for the Customer's assistance include Agreement Details that are relevant to the Order, which the Customer may at its option rely on or add additional requirements to, for the Contractor to fulfil.

As part of the Procure IT framework, Pro-Forma Order Forms have been developed for each high-level type of IT procurement.

The Order Form contains three parts:

Part A – General Order Details (containing general information about the Contract)

Part B – Order Details (common to all Orders placed under the Procure IT framework, and covering terms and conditions in Part 1)

Part C – Module Details (specific to each Module under the Procure IT framework)

Part 6 – Service Level Agreement

The Service Level Agreement (SLA) is a template that provides a series of prompts in relation to performance issues such as the benchmarks, KPIs, methodology for performance measurement and so on, that the Parties should consider in relation to the Contract. The Parties should agree the key performance indicators to be met in relation to particular Deliverables, and the remedies that the Customer may rely on should the Contractor not meet those KPIs.

How will Customers use Procure IT?

All arrangements are to have a pro-forma Order form and a contract specific User Guide, prepared by the relevant officers within State Procurement.

These will be able to be sourced from the Department of Commerce website and in hard copy.

Customers will finalise the Order as required for their procurement, select any relevant Schedules from Part 3, and forward to the relevant Contractor. The next section details preparation of the Order forms by the Customer.

Guide for Customers – How to Prepare the Order

Customers are advised that for all NSW standing offer panel arrangements set up under Procure IT, officers of State Procurement will prepare template Order forms for their assistance. There are a number of important provisions of Contract relevant to the Order that are agreed between the Contract Authority and the Contractor which are incorporated into the Commerce provided Order forms. These include:

- Caps on liability, if appropriate;
- Levels of insurance;
- Financial Securities, if appropriate;
- Performance Guarantees, if appropriate.

If Customers wish to prepare their own Order forms or use forms provided by the Contractor, then Customers should ascertain whether there are Contract Authority approved arrangements in relation to the above matters and take those into account in preparing the Order. In particular, Customers should note the minimum conditions agreed between the Contractor and Contract Authority in the template Order form and should not deviate from these in an alternative Order form. Customers should also note on the Order form that the Order is placed under the terms and conditions of the relevant NSW Agreement.

The Order Form is made up of three parts, Part A, Part B and Part C. This user guide provides information as to how to fill out Part A of the Order Form (see below), Part B (pages 11 to 31 of this guide) and Part C of the Order Form (page 55 to 103 of this guide).

Part A Order Details

Essentially, this is a cover sheet for the Order. This part of the Order form requires the Parties to include:

- Name and service address information;
- Details of authorised representatives;
- Relevant Agreement number.;
- Relevant Modules under which Products are being ordered (note that Customers should only choose from those modules which have been included at Schedule 1 by the Contract Authority);
- Authorisation of Order;
- Any attachments; and
- The Contractor's form of execution.

Part B Order Details (common to all Orders placed under the Procure IT framework, and covering terms and conditions in Part 1)

This section of the User Guide covers the completion of Part B of the Order Details. The Order Form requirements and a list of resources for filling out that section of the Order Form are listed under each section of the Part B Order Form sections (Part B1 to Part B14) below, in addition to information that may be of assistance to you in the completion of each of these sections.

Note: You will need to append a Statement of Requirements to Part B of the Order

Clause 12 of the Agreement requires the Customer to annex a Statement of Requirements to the Order as relevant. The Statement of Requirements may in some instances simply be additional instructions that the Customer has in relation to Products ordered or a more detailed specification of the requirements the Customer expects the Contractor to fulfil under the Contract. Please note the definition of "Statement of Requirements" in the Dictionary in Part 2.

If the statement is in the nature of a specification then the Customer should note in the Order that these are intended to form part of the Contract Specifications and be a point of reference for the measurement of the Contractor's performance.

The definition of Contract Specifications includes an order of precedence, whereby the Customer's Statement of Requirements will be subordinate to any specification subsequently developed by the Parties and/or approved by the Customer. A design specification for instance would take precedence over the initial Statement of Requirements by the Customer.

Part B1

Risk Management (clause 8.1)

Resources:

[Department of Commerce: Government Guidelines: Goods & Services Procurement Publications](#)

NSW Government Procurement Manual includes a guideline on ‘Risk Management’. This guideline provides guidance, a template for a risk management plan and a checklist in relation to possible risks that may be encountered at each stage of the procurement process. Of particular relevance is the section on Contract Management in Attachment 1 of the guideline, which identifies a number of risks that may require preventative or recovery action during the life of the Contract.

Office of Information Technology and Communications [Guideline Menu](#)

[Project Risk Management Guideline](#)

Office of Information Technology and Communications - Information Security Risk Management at <http://www.oit.nsw.gov.au/pdf/4.4.16.IS1.pdf>

[Better Practice Guide - Contract Management](#)

<http://www.standards.com.au/>

[Risk Management: A Standards Australia portal](#)

Procure IT requires a risk assessment to be completed only in respect of capping liability. Customers are encouraged to undertake a risk assessment in relation to all complex procurements even where liability capping is not the issue. A risk assessment will be useful in establishing the following:

- The nature and level of insurances required;
- Whether to apply liquidated damages/rebates/time of the essence provisions;
- Whether to “top up” (where the Contract Authority has already required Financial Security (FS) or Performance Guarantees (PG)) an FS or a PG, or require an FS or PG where the Contract Authority has not requested one.

The risk assessment plan must be consistent with AS/NZ 4360:1999.

(a) Insurance Requirements

Insurance obtained by the Contractor under the Agreement (Contract Authority to include):

Customer to specify any additional insurance that it requires to the insurance the Contractor must have in place under the Agreement:

(i) Specify type of insurance required by the Customer:

(ii) Specify the term:

(iii) Specify the amount of insurance:

Customers should review clause 8.1 of the Agreement, which constitutes a useful checklist of issues relating to the Contractor’s insurance obligations under the Contract.

Customers should note that the Contract Authority has in most instances already agreed with the Contractor the insurance cover that should apply to any Contracts formed under the Agreement. Customers may, if they consider the insurances agreed under the Agreement are inadequate, specify in the Order the additional insurances the Customer requires.

The NSW Supply Guidelines on Insurance will assist the Customer to specify any additional insurances that the Customer requires including the:

- type of insurance;
- term;
- amount of insurance; and
- if the Customer is to be named as an additional insured.

The guidelines include consideration of the following questions which need to be considered in determining whether a Customer should require additional insurance to be provided under a Contract:

- What is/are the product or service that will be purchased?
- Who is likely to be injured or harmed?
- What property could be damaged and how severely?
- What are likely losses that might ensue as a result of product failure or incorrect professional advice?
- Is there a possible pollution exposure?
- Are crowds or bystanders/passers-by likely to be involved?
- Is the product inherently dangerous?

The application of risk management to the control of contracts involves:

- Ensuring that Contractors carry insurance that meets contract obligations
- Risks are being managed or controlled by appropriate and sufficient insurance.

The main categories of insurance requested are Public Liability insurance, Products Liability insurance, and Professional Indemnity insurance.

Public Liability insurance covers the legal liability to pay damages resulting from personal injury. This includes bodily or mental injury, illness or disease contracted by any other person, other than the employees of the Contractor, or the loss of or damage to their property, which was caused by the Contractor, or results from an occurrence in connection with the Contract.

Public Liability policies, unlike Product Liability policies, will ordinarily pay the “Limit of Indemnity” for multiple occurrences in the same year. This means that if the limit is \$10 million in the policy, each claim for the period of cover can access that insurance limit, regardless of the number of claims over the period.

Products Liability insurance covers the liability of Contractors for bodily injury or property damage caused by a “defective” product. It also covers the liability of a Contractor for damages incurred as a result of improperly performed work (also known as Completed Operations insurance), after the Contractor has completed the job. In the main, Product Liability losses fall into the following categories:

- Negligent design;

- Failure to adequately test;
- Failure to provide adequate instructions, warnings and labels;
- Failure to issue an adequate recall notice.

Product Liability insurance coverage is ordinarily limited to an aggregate limit. This means that if the limit is \$10 million in any one year, one claim can exhaust the entire sum, which could then leave the Contractor uninsured for the remainder of the Period of Insurance, and the Government exposed. Products Liability insurance is important where the Contractor is the manufacturer, importer, Contractor or just the distributor of the goods.

Professional Indemnity insurance (PI) covers a person or body of people for damages that may arise from the advice or expertise they have given on which another party is dependent, for which payment or a fee is received. Professional Indemnity insurance would be of relevance in procuring services under the following Modules:

- Development Services
- Data Management
- Professional Services
- Managed Services
- Systems Integration Services

This insurance is different to other liability policies in that it is almost always a “Claims Made” policy. That is, it is the date the claim is made by the insured that is covered, rather than the date of the occurrence. For example, if the omission or error leading to damage takes place on the 1/4/01/03, but the Contractor on 30/7/03 receives a claim, the claim belongs to the period of insurance for the years 2003-2004.

A policy thus must be in place for that year for cover to exist. The practical import of that peculiarity is that a contractor should be expected to continue PI cover for some time after the completion of a contract, say, 2-6 years. This is called “Run-off cover”.

So if you require a contractor to have additional Professional Indemnity Insurance, over and above that negotiated as part of the terms and conditions of the Agreement, you need to expressly stipulate this in your Order, and you need to stipulate for how long you want them to hold the insurance AFTER the completion of the contract.

Broad Form Liability insurance: This form of insurance “combines” policies, and usually automatically includes Products and Public Liability Insurance. However care should be taken not to assume that these types of insurance are necessarily covered, as policyholders may sometimes exclude particular types of standard cover in Broad Form policies.

What is a cross liability clause? A cross liability clause essentially says that, although the policy is in joint names, the policy should be looked upon as if the insurers have issued a separate policy to the parties named as joint insured.

This enables one party to be given an indemnity under the policy in cases when the responsible party is one of the insureds.

In the absence of a cross liability clause, the Contractor may not be entitled to an indemnity because one of the standard exclusion clauses in liability policies exclude claims by one of the insured.

(b) Unconditional Financial Undertaking (clause 8.2)

Financial Security provided by the Contractor under the Agreement (Contract Authority to include):

Customer is to specify any additional security that it requires in addition to the Financial Security the Contractor has provided under the Agreement including:

- (i) Specify the date by which required; and
- (ii) The maximum aggregate sum:

(c) Performance Guarantee (clause 8.3)

- (i) Any Performance Guarantee provided under the Agreement (Contract Authority to include):
- (ii) Customer to specify any additional Performance Guarantees it requires in addition to those provided under the Agreement.

Whether or not an Unconditional Financial Undertaking or Performance Guarantee should be required depends upon the Customer establishing that there are reasonable grounds for the requirement. These may include:

- The type of Product or Service to be procured and the level of complexity involved in the procurement;
- The Contractor’s experience in providing such Deliverables;
- The financial viability of the Contractor;
- The Contractor’s dependence on Specified Personnel, third parties or sub-contractors to fulfil the requirement; or
- The Contractor’s capacity and resources.

An *Unconditional Financial Undertaking* is a guarantee under which the Contractor arranges for a financial institution to give an independent guarantee to the Customer that it will make funds available to the Customer in the event the Contractor defaults on its contractual obligations. Financial Securities are limited to the amount stated in the guarantee document.

Under the Agreement the Contract Authority and the Contractor may set the Financial Security requirements for all Contracts created. Details of these arrangements will be included in the Order form under the heading “Minimum conditions required by the Contract Authority”. Considering the particular requirement of the Customer’s project, a Customer may require the Contractor to increase the value of the Financial Security and whereshould specify this in the Order.

If there are no such minimum conditions the Customer should specify in the Order what its Financial Security requirements are. Ideally, the Customer should indentify this requirement in its request for quotations documentation, but may under the terms of the Contract during the Contract Period when a particular risk presents itself, require the Contractor to provide a Financial Security at that tme.

A *Performance Guarantee* may be either:

- a guarantee by a related corporation (parent or ultimate holding company) to ensure that the Contractor will meet its contractual obligations. In this instance, if the Contractor defaults on its obligations under a contract, the related corporation (the guarantor) will complete the contract or else be liable for the consequences. Note that the liability and responsibilities of the guarantor in this case will be limited in accordance with any limit on the liability or responsibilities of the contractor under the contract; or
- a guarantee by the directors of a Contractor company to ensure that the Contractor will fulfil its obligations under a contract. This type of performance guarantee, otherwise known as a directors guarantee, is limited to a specific amount as stated in the guarantee documentation. Note, however, that these guarantees are joint and several. That is, each director of a company is liable for the total aggregate amount, together and as individuals. A customer wishing to invoke the conditions contained in the guarantee can sue one or more director severally, or all jointly.

Under the Agreement the Contract Authority and the Contractor may agree Performance Guarantee arrangements. These will be included in the Order form under the heading “Minimum Conditions Agreed to by the Contractor and Contract Authority”. Considering the particular requirement of the Customer’s project, a Customer may require the Contractor to increase the the number of Gurantors and should specify this in the Order.

If there are no such minimum conditions, the Customer should specify in the Order whether it requires a Performance Guarantee. Ideally, the Customer should identify this requirement in its request for quotations documentation, but may under the terms of the Contract during the Contract Period when a particular risk presents itself, require the Contractor to provide a Performance Guarantee at that time.

(d) Limitation of Liability (clause 8.6.1)

Insert Liability agreed by Contract Authority (if any).

Insert whether Customer requires increase in cap and amount:

Customer to specify if liability is to be capped under the Contract and the amount or method of determining the amount in accordance with clause 8.6.3:

Customer to annex risk management assessment plan.

Each panel contract will be governed by the following Liability arrangements:

- Contractor is in a Small to Medium Enterprise category under the Agreement – liability can be capped at the upper limit of insurance specified in B1(a) (per event);
- Contractor is offering telecommunications services under the Agreement which involve end-to-end multi-carrier networks without umbrella service level contracts and/or physical network assets which are in the public domain – liability can be capped at the upper limit of insurance specified in B1(a) (per event);
- Contractor is offering Products or Services under the Agreement which the Contract Authority has identified as suitable to have liability caps applied – liability can be capped at the level set by the Contract Authority and noted in the Order.

Customers should look to the “Minimum Conditions” column in the Part B Order Form to see the specific caps agreed by the Contract Authority (if any) for a particular panel arrangement. Customers

can then decide whether it is reasonable to agree to a further cap with the Contractor, in relation to a specific project and based on a risk assessment plan.

Uncapped common law liability is preferred in NSW Government contracts i.e. the liability of the parties is determined by the law applied in Australian courts, including any relevant statutory provisions, but having regard to the provisions of the Contract.

Liability may be capped in two instances:

- Where the Contract Authority has consented to a cap on liability in procurements (see above); or
- Where a risk assessment has been completed by the Customer and the Contractor demonstrating that a cap on liability is justified

Limiting or capping liability is achieved by placing an upper limit on the liability the Contractor would otherwise have under the Contract. The innocent Party will be responsible for some of the losses in the event that the limit of liability is exceeded. Customers will need to ensure that they cover this risk either with appropriate insurances or ensure that they are able to manage this risk appropriately under the terms of the Contract. Otherwise such risks if realised will be a liability that the Customer must bear under its allocated portfolio appropriations.

Capped Liability under Procure IT is subject to a number of exclusions under clause 8.6.5 unless the Contract Authority has consented otherwise to an arrangement put forward by the Customer and the Contractor following a Risk Assessment.

Part B2

Information Management (clause 9.1)

Customer to specify and or annex any information that the Contractor must treat as Confidential Information:

Contractor to specify any information that the Customer must treat as Confidential Information:

Specify if limited disclosure of Confidential Information is permitted by a party and set out the conditions of disclosure:

Resources:

[Circulars and Memoranda](#)

[Premier's Guideline M2000-11 Disclosure of information on government contracts with the private sector. See Appendix B.](#)

[Audit Report - The Use of Confidentiality Provisions in Commonwealth Contracts](#)

The general confidentiality obligations set out in Procure IT are subject to any prevailing government policy on confidentiality at the time of executing a Contract. Although not mandatory, the Customer may articulate the current government policy regarding the disclosure of information in the Contract Details.

Each Party will need to designate specifically any information that is subject to a non-disclosure requirement.

The Parties should establish a process for obtaining consent to use of Confidential Information so that a reasonable paper trail is established for contract auditing.

Confidential Information could include:

- information relating to the internal management and structure of the Party, or the personnel, policies and strategies of the Party;
- information of the Party to which the other Party has access that has any actual or potential commercial value to the first Party or to the person or corporation which supplied that information;
- in the case of the Customer, information relating to the policies, strategies, practices and procedures of the Government of [Commonwealth/State/Territory] and any information in the Contractor's possession relating to the [Commonwealth/State/Territory] Public Services; or
- information in the Party's possession relating to the other Party's clients or Contractors, and like information.

Part B3

Intellectual Property (clause 9.2)

If applicable the customer is to specify any deliverables that the Contractor will own and refer to any agreement in relation to royalties.

Customer to specify in the order if IP rights in deliverables shall vest in both the Customer and the Contractor:

Customer to specify any rights the Contractor has to use a Deliverables:

Resources:

<http://www.audit.nsw.gov.au/guides-bp/bpguide-version10.pdf>

[Intellectual Property Home Page](#)

[Moral Rights](#)

Unless stipulated to the contrary in the Order, ownership of copyright in materials developed for the Customer will vest in the Customer. While in most instances this would be the appropriate outcome, Customers should consider their reasons for acquiring ownership of IP rights in a developed product in preference to licencing rights to use it. It may be quite workable to allow ownership to remain with the developer so long as the Customer is licensed to do all the things that it wants to do. If for instance the developed software only represents a portion of a pre-existing product which is already owned by the Contractor there is not much purpose in the Customer acquiring the relevant IP ownership.

Conversely, it may not be essential for developers to own the IP rights in a developed product if they are licensed by the Customer to continue the development and commercial exploitation of that product independently. A royalty arrangement whereby the Customer benefits from future sales might also be considered here.

If IP is vested in the Customer, is a licence to use the IP to be provided to the Contractor? If this seems appropriate, the Customer should carefully consider the terms of the licence. For example, what is the extent of the rights granted to the Contractor?

A Customer should remember that any IP it owns is an asset, which must be inventoried and protected proactively from infringement.

Depending on the service to be provided by the Contractor, provision may need to be made in the Contract for circumstances where patents, registered designs, trademarks and other intellectual property are relevant. The Parties should always expressly agree which party is to own the particular intellectual property.

If the Parties wish to create an alternative intellectual property arrangement, a risk assessment is strongly encouraged. Legal advice should be sought on the drafting of any kind of alternative intellectual property agreement and any such agreement should be appended to the Order form.

When might a Customer consider a strategy for shared Intellectual Property ownership?

- The Contractor is delivering a custom-made solution, designed specifically to cater for the needs of my organization, but which may in the future be useful to other organisations, Government or non-Government, in Australia or elsewhere.
- New software is being developed to answer requirements that are unique and particular to my organisation no matter how small or minor.
- A new methodology or business process based uniquely on our requirements is being engineered that will be implemented either internally/within or to interface with my organisation and the Contractor.
- The Contractor is providing a standard solution, which sits at the heart of my organisation's operation.
- The Contractor is providing a standard solution upfront yet is intending to continually modify it through the course of the service to match my organisation's needs.
- My organisation is contemplating making modifications to the Contractor's solution.
- The services of the Contractor are complemented by valuable suite of documentation that is custom drafted for my organization.
- The Contractor will be gaining access to information, which is confidential to my organisation, particularly if the Contractor has clients who are our competitors.
- The Contractor has never done this work before and will be seeking to leverage its experience with my organisation to service other companies.

What sort of arrangements can the Parties agree to in order to manage their respective interests in the Intellectual Property?

- The intellectual property can be automatically assigned to the Customer either upon creation or termination or at some other agreed time.
- A cost-free licence may be obtained by the Customer for the on-going use of the intellectual property. If this option were chosen, it might be in conjunction with discounted development costs
- We may agree to jointly own the intellectual property and decide how revenue and territory or distribution will be divided.

- The intellectual property could vest with the Contractor, with a trade-off discount in development costs and to protect our interest the Contractor could enter into an Escrow Agreement so we may access the information if anything went wrong.
- A non-disclosure or confidentiality agreement may be required.
- We may combine the above options.

Part B4

Secrecy and Security (clause 10.3)

Customer to specify any secrecy or security requirements that the Contractor is to comply with during the Contract:

Resources:

[IM&T Blueprint Map](#)

[Information Security Resources](#)

[3.3 Security of Electronic Information Memorandum](#)

http://www.oit.nsw.gov.au/pdf/4.4.20.IM_Privacy.pdf

<http://www.records.nsw.gov.au/publicsector/rk/manual.htm>

[Department of Commerce: Government Guidelines: Goods & Services Procurement Publications](#)

The Customer's own documented procedures and practice requirements in relation to Secrecy and Security.

Secrecy and Security requirements are provided for in most Customer policy documentation and if relevant to the Contract they should be referenced in the Order.

Secrecy and Security issues may arise in relation to:

- Security of Personnel
- Security of Premises
- Security of Information Technology Systems
- Security of Data or other information
- Environmental Security

Policies and Standards applied in the Customer's business operations and which are relevant to the Contract should also be referenced in item B5 of the Order form B.

Part B5

Contractor's Obligations (clause 11)

(a) Quality Assurance Arrangements (clause 11.1.2)

Customer to specify any quality assurance and compliance arrangements that it requires:

Specify whether Deliverables are new or otherwise:

Resources:

[Guideline Menu](#)

<http://www.oit.nsw.gov.au/pdf/4.4.23.QM.pdf>

Quality Assurance (QA) arrangements should remain relevant and current for the Contract Period and should link back to defined expectations in the Customer's Statement of Requirements. The Contractor may have a QA methodology, which the Customer may utilise after appraisal and acceptance.

(b) Compliance with Laws, Standards and Codes (clause 11.4)

Customer is to specify:

Any codes, policies or guidelines the Contractor must comply with:

Any standards the Contractor must comply with

Resources:

[Department of Commerce: Government Guidelines: Goods & Services Procurement Publications](#)

<http://www.standards.com.au/Catalogue/Script/ICSBrowse.asp?MainPage=true>

In addition to any legislative or policy requirements that are relevant to the subject matter of the Contract, Customers should also reference those legislative and policy requirements to which the Customer is subject. Customers should remember that if they are required to comply with a code, policy or guideline, they will still be held to account regardless of whether those policies are relevant to an obligation that has been contracted out.

Standards can be used to benchmark performance expectations under the Contract and can be referenced in the Service Level Agreement as a measure of quality. Of greater importance is the warranty given by the Contractor under clause 7.3 that the Deliverables conform to the standards specified in the Order.

(c) Credit/Debit Card (clause 11.8)

Customer/Contractor to specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:

(d) CSI Costs (clause 11.9.1(d))

Insert CSI costs:

Consider whether there will be any charge for the use of Customer Supplied Items, and, if there will be charges, these are to be listed here.

(e) Reports (clause 11.10)

Specify reports required, (if any) time for provision and format:

Resources:

<http://www.oit.nsw.gov.au/pages/4.3.20-IM-Privacy.htm>

<http://www.records.nsw.gov.au/>

The Customer should specify here the type of the reports it requires - detailing the nature of the report content, the frequency of provision and the number of copies required. Reports can be of any type and level of complexity. For example, reports may be required in relation to security issues in respect of a system, progress of a project, data volumes, usage, trends, analysis and so on.

Part B6

Customer's Obligations

(a) CSI (clause 12.1)

Customer should provide a detailed Statement of Requirement or annex it to the Order and reference the relevant document here.

Customer to specify any CSI it is providing and any costs the Contractor is to pay to use it.

Customer to reference or attach any Contract Specifications relevant to the CSI:

The Customer should attach its Statement of Requirements here. See earlier comments.

If the Customer is providing materials (Customer Materials) to the Contractor for use in relation to the Deliverables, then these should be listed here to attract the protection of those materials afforded by clause 12. If there are any costs for the CSI, refer to Part B5(d) of the Order Form.

(b) Customer's Personnel (clause 12.2)

Customer to specify if it is making personnel available and their roles and responsibilities:

(c) Site preparation and maintenance (clause 12.3)

Specify the Party responsible:

In most instances the Customer would prepare the Site unless there are particular environmental requirements for the Deliverable, which the Customer is unable to provide. In which case, if appropriate, the Contractor should be noted here.

Part B7

Personnel (clause 13.2)

(a) Specified Personnel (clause 13.2.1)

Nominate the key Contractor's personnel (if any) who are to be dedicated to provide the Deliverables.

Key personnel may be integral to the project because of their particular skills and experience and their involvement or loss from the project may mean the difference between its success or failure. If that is the case then the Order should clearly identify those individuals so that the Contractor is obligated to use them to carry out the work on the project.

(b) Sub-contractors (clause 13.4.3)

Customer to specify if a statutory declaration from any sub-contractors, substantially in the form of schedule 4, is required.

Part B8

Performance of the Contract (clause 14)

(a) Delivery (clause 14.1 and 14.2)

Customer to specify the

- (i) nature of the Deliverable:
- (ii) volume of the Deliverable:
- (iii) date of delivery:
- (iv) Site to be delivered to:
- (v) hours of delivery:

Customers should make the Contractor aware of any difficulties that the latter may encounter when trying to deliver to the site in this section, and this should include specifying when there will not be any staff available to receive the Deliverables.

(b) Acceptance Testing (clause 14.5)

- (i) Specify if Acceptance Testing is required:
- (ii) specify Acceptance Notification Period:
- (iii) specify party to conduct Acceptance Tests and annex or detail information to be included in acceptance test plan:
- (iv) specify the commencement date for Acceptance Tests
- (v) specify the Acceptance Period
- (vi) specify the Acceptance Criteria
- (vii) if agreed, specify the number of hours on each normal working day for the running of the Acceptance Tests:
- (viii) If Acceptance Tests are not required, Customer to specify if the Actual Acceptance Date (AAD) will occur five business days or another number of days following the delivery of a Deliverable (clause 14.3.2).

Acceptance Testing is carried out to find errors in a solution that is being developed. Testing should be undertaken throughout all stages of the development cycle.

Acceptance Tests are critical in that they allow the Customer to determine whether the Product conforms with the Contract Specifications, works in the Customer's designated environment and meets the requirement needs of the Customer.

Examples of some Acceptance Tests and criteria are contained overleaf.

Examples of some of the Acceptance Tests that may be conducted and relevant criteria are:

| Acceptance Tests | Criteria |
|---|--|
| Business Function Tests representing all combinations of various business processing | <p>Confirm correct business processing</p> <p>Identify defective logic</p> <p>Discern missing functionality</p> |
| Environmental Tests in the area of restart/recovery, performance, stress testing, documentation | All operate as specified in the Technical Requirements |
| Inventory Tests | All equipment, documentation, support against the list of deliverables. |
| Documentation Tests | All forms of documentation match the system's behaviour |
| Training Tests | <p>Ensure training and training material is an accurate reflection of the system's behaviour and association documentation</p> <p>Technical Functionality</p> <p>Demonstrate that expected capabilities and performance of the system are present and operational.</p> |
| Security Tests | Ensure Security requirements are satisfied |
| Performance Tests | Test compliance with agreed performance criteria as per the Service Level Agreement |
| Recovery Tests | System is able to isolate failures to individual components and to recover components within business requirements and maintenance agreements |
| Data Conversion Tests | Test compliance with agreed performance criteria. |

(c) Documentation (clause 14.6)

Specify whether additional copies of the Documentation are required. The Agreement specifies at least one copy. If the Customer requires more than one, they must specify this in the Order.

Specify the Price for additional copies of the Documentation.

Resources:

<http://www.oit.nsw.gov.au/pages/4.2.4.Info-Mgt.htm>

<http://www.oit.nsw.gov.au/pages/4.3.14.a-IM-Framework.htm>

Documentation is a very important Deliverable to be provided by the Contractor. The Customer needs to ensure that the Contractor provides it with any user documentation such as user manuals, reference manuals or technical documentation that it requires to make full use of the Deliverable and to allow the Deliverable to be maintained.

Customers should specify the medium of the documentation to be provided in e.g. hard copy, disk etc. and who will own the Documentation.

(d) Escrow (clause 14.8)

Specify if Escrow arrangement is required:

Time for Escrow arrangement to endure:

Escrow is relevant where ownership of the product is retained by someone other than the Customer e.g. the Contractor or where the Customer is the owner of the product but wants the source code to be held by a third party, as part of a business contingency plan, for example.

If escrow is required, it is necessary to identify an independent third party to act as the agent. It is inappropriate for either the Contractor or the Customer (or its agents, such as its lawyers or accountants) to act in this capacity.

Part B9

Project Management (clause 15)

Resources:

[Guideline Menu](#)

http://www.oit.nsw.gov.au/pdf/4.4.21.P_M.pdf

<http://www.oit.nsw.gov.au/pages/13.1.9.Proj-Man.htm>

<http://www.projectmanagement.tas.gov.au/>

Note that the project management clauses under the Agreement do not apply unless they are specified in the Order to do so.

The following clauses establish processes for the practical management of the project:

(a) Management Committee (clause 15.2)

Specify if subclause 15.2.1 to 15.2.4 are to apply:

If subclauses 15.2.1 to 15.2.4 are to apply, specify the persons on the Management Committee and any additional functions they are to carry out:

Nominate each Party's respective project manager or Officer.

(b) Customer Contract Review Procedures (clause 15.4)

Specify if subclauses 15.4.1 to 15.4.2 are to apply:

Specify any specific time intervals for service and performance reviews:

Specify any other matters to be reviewed:

(c) Site preparation (clause 15.5)

Specify if subclause 15.5.1 is to apply and the Contractor is to provide a Site Specification:

(d) Implementation planning study (clause 15.6)

Specify if subclause 15.6 is to apply:

Insert IPS objectives and time for provision of study:

An Implementation Planning Study (IPS) is important for projects involving the purchase and implementation of software. The IPS is the first stage of the work a Contractor will undertake before implementing any software to be purchased. The IPS is a detailed quotation which covers all the implementation issues including, hardware configuration, systems integration, business process reengineering, training, project implementation and payment plan, deliverables plan, etc. just to name a few.

On completion of the Implementation Planning Study, the Contractor should make such amendments to the Project, Implementation and Payment Plan as the Customer may reasonably require, following which the Customer may approve the Project, Implementation and Payment Plan developed by the Contractor.

(e) Project Implementation and Payment Plan (clause 15.7)

Specify if clause 15.7 is to apply:

A number of the Modules include provisions, which could be used in finalising a Project, Implementation and Payment Plan (PIPP). The Parties should simply reference that they wish to adopt the process outlined noting the Module and clause reference.

However, the Parties may agree an alternative management strategy and should annex the Plan to the Order or reference the time and process for developing the PIPP in the Order.

(f) Staged Implementation and Right to Terminate (clause 15.8)

Specify if clause 15.8 is to apply:

(g) Time of the Essence (clause 15.10)

Specify if clause 15.10 to apply:

Due Date for performance and Milestones:

Method of calculation of Liquidated Damages (LDs):

No. of days LD is to be applied:

For this provision to apply, the Parties must specify in the Order or the PIPP the “Due Date” for the performance of certain obligations under the Contract.

If the time of the essence provisions are specified in the Order to apply, then Liquidated Damages (LDs) are payable by the Contractor to the Customer upon a delay in meeting a Due Date, provided that it has been notified by the Customer to do so.

LDs are a substitute for damages which might otherwise be awarded by a court in cases of delay. By agreeing LDs, the Parties agree at the outset the rate or how much damages will be payable upon the failure by the Contractor to meet a Due Date. To be enforceable LDs must be a genuine pre-estimate of the damage likely to be suffered. The method for calculation of LDs will be important in demonstrating that the damages claimed are based on a genuine pre-estimate. In calculating LDs, tangible costs in relation to project delay should be considered (eg. salaries, rents, daily revenue losses) and legal advice should be sought.

Working out LDs

The formulae should reflect damages such as:

- Cost of capital (loss flows from interest payment on loan funds over the extended period or delay in obtaining a return on capital invested);
- Intangible losses (eg. loss flows from delay in public use of a publicly funded facility);
- Contract administration and other recurrent direct costs.

Customers should consider:

- Cost of capital and intangible losses on the basis that projects are funded from the state’s revenue fund and have a benefit cost ratio of at least unity. In other words, if a project is delayed, the public suffers a loss of at least equal to the opportunity cost of the capital invested. The opportunity cost of capital to the state fluctuates from time to time.

Delay in meeting a Due Date will trigger the requirement to pay LDs. It will not be necessary to show actual loss or damage.

LDs are the sole remedy that can be applied in relation to the incident to which LDs are paid, so Customers should carefully consider whether it is in their benefit to use this tool. . Please see Appendix C – Liquidated Damages – Friends or Foes.

(h) Retention of Moneys (clause 15.11)

Customer to specify if percentage of Contract Price is to be retained by the Customer until AAD of a Deliverable:

The Parties may agree that the Customer can retain or withhold payment of a proportion of the payment for any Milestone, expressed as a percentage or a dollar amount, to secure the full and proper performance of the whole Contract. Upon satisfactory completion of the whole Contract the Customer must pay the Contractor the retained amount. If the Customer is not satisfied with the performance of the Contract or the Contractor disputes the basis upon which an amount is withheld, then the Parties should rely on the Issue Resolution provisions in clause 7.7.

(i) Business Contingency Plan (clause 15.12)

Specify if subclauses 15.12.1 to 15.12.4 are to apply:

Customer to specify the Business Contingency Services it requires and the period of the Services:

Customer to state the periods that the Business Contingency Plan must be updated by the Contractor:

Customer to specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:

Customer to specify any information to be included in the Business Contingency Plan (Part 2):

Resources:

[Guideline Menu](#)

[Business Continuity Planning](#)

[Standard on Counter Disaster Strategies for Records and Record keeping Systems - Table of Contents](#)

[Guidelines on Counter Disaster Strategies for Records and Record keeping Systems](#)

The plan should identify the type of risk events for which contingency arrangements are to be established including the process for recovery, any time considerations, the responsibilities of each Party, resource requirements and the consequences that are to apply should the Contractor not fulfill the requirements of the plan.

The risk events depend in each case on what the priorities of the Customer are and may be as simple as an ongoing obligation to back up data should a primary system suffer a totally disabling event. Similarly in relation to the recovery action required, it may be important for the Customer to preserve its records, but satisfactory for it to revert to manual systems while a disabling event continues or until the system is operational again, as inconvenient as that may sound.

Unless the Plan excuses the Contractor in some way, primary obligations under the Contract, such as warranties, will still apply to any affected Deliverables.

Any plan developed should be sufficiently comprehensive to deal with all the issues that may arise in any interruption to the Customer's business.

Part B10

Payment (clause 16)

Set out in the amounts and the times payment is due. (NB: if a Project, Implementation and Payment Plan exists refer to the PIPP for payment arrangements):

Specify whether the Contract Price is fixed. Note that some panel arrangements, in particular, Contract 2036, require fixed price contracts.

Ensure that the payment arrangements appropriately but sensibly remunerate Contractors for work done; final payments should ordinarily be reserved until final Delivery and Acceptance of the Deliverable.

Part B11

Contract Variations (clause 17.2)

Specify whether Schedule 12 is to apply.

Variations to the head Agreement terms in some circumstances require the Contract Authority's consent for enforceability. These circumstances are listed in clause 17.2.2. Even if consent of the Contract Authority for a particular variation is not required under clause 17.2.2, Customers are strongly encouraged to use the variation form at Schedule 12. Parties are encouraged to adopt the Contract Variation procedures in Schedule 12 to provide a detailed paper trail for auditing, contract management and dispute resolution purposes.

Part B12

Termination for convenience (clause 18.4.2)

Insert whether further compensation is payable and specify amount.

Under clause 18.4.2 the Customer will indemnify the Contractor against any liabilities or expenses which are reasonably and properly incurred by the Contractor in connection with the Contract to the extent that those liabilities or expenses were incurred as a result of termination or suspension of the Contract in accordance with clause 18.4. Unless otherwise specified in the Order, no further compensation will be payable to the Contractor in respect of a termination or suspension under clause 18.4.

Part B13

Expert Determination amount (Schedule 5)

Insert compensation amount:

Amounts are: \$250,000 for contracts valued at less than \$50m and \$1m for contracts valued at more than \$50m.

If the expert determines a compensation amount which exceeds the expert determination amount specified in the Order, then the Parties may commence proceedings in an appropriate court to obtain a judicial determination of the issue in dispute.

Part B14

Additional Conditions (clause 3.4)

Specify any additional conditions:

If the Parties consider that the Agreement does not cover a particular issue or does not cover the issue to the extent desired by the Parties, they may insert additional conditions into the Order. A proviso applies in that should the additional conditions be contrary to provisions under the Agreement, the Contract Authority must provide its prior written consent to the additional conditions for them to be valid and legally enforceable.

Appendix A – over page

Appendix A

| CONT. NO. | TITLE | PARTS | Part 4 MODULES | SCHEDULES |
|-----------|--|---|---|---|
| 841a | Apple Price Book | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance 3. Licensed software 5. Software Support | Standard + SLA for Hardware Maintenance and software maintenance |
| 846 | Mid Range Computing Systems | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance 3. Licensed software 5. Software Support | Standard + SLA for Hardware Maintenance and software maintenance |
| 864 | Geographic Information System (GIS) | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 4. Development Services (possibly) 5. Software Support 8. Data Management | Standard + SLA for Software Support |
| 881 | Information Technology Contracting Personnel | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 4. Development Services (possibly) 6. Temporary IT Personnel | Standard |
| 2000 | Fileservers, Desktop & Portable Computers | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 3. Licensed Software 5. Software Support | Standard + SLA for Software Maintenance |
| 2006 | Computer Peripherals | 1. Standard T&Cs | 1. Hardware Acquisition/Install | Standard + |

| | | | | |
|-------|---|---|---|---|
| | | 2. Dictionary 3. Schedules 5. Order Forms | 2. Hardware Maintenance | SLA for Hardware Maintenance |
| 2023a | Video Conferencing | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance | Standard + SLA for Hardware Maintenance |
| 2024 | Telephone Handsets, Answering Machines, Diverters & Associated Services | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance | Standard + SLA for Hardware Maintenance |
| 2025 | Mobile Cellular & Satellite Telephone Equipment | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance 9. Telecommunications | Standard + SLA for Hardware Maintenance and Telecommunications |
| 2025b | Mobile telephone use and monitoring - MUMS | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 9. Telecommunications | Standard + SLA for Telecommunications |
| 2027 | IBM Compatible Mainframe Equipment | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance 3. Licensed software 5. Software Support | Standard + SLA for Hardware Maintenance and Software maintenance |
| 2036 | Software Development Consultants (Fixed Price) | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 4. Development Services 5. Software Support 12. Systems Integration 8. Data Management + others as required | Standard + SLA for Software Support |
| 2043 | GSAS – Integrated Management Systems | 1. Standard T&Cs | 3. Licensed software | Standard + |

| | | | | | | | |
|------|--|-----------|--|--|---|---|---|
| | | | | | 2. Dictionary 3. Schedules 5. Order Forms | 4. Development Services 5. Software support 12. Systems Integration 8. Data Management 10. Web Services | SLA for Software Support Services |
| 2065 | Data Communications Equipment/Modems | LAN & WAN | | | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance 9. Telecommunications 10. Web Services | Standard + SLA for Hardware Maintenance, telecommunications and Internet Services |
| 2066 | Network Consultancy & Integration | | | | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 11. Managed Services 12. Systems Integration | Standard + + SLA for all appropriate modules Potentially all modules, depending on project. |
| 2067 | Site Telecommunications Cabling | | | | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 1. Hardware Acquisition/Install 2. Hardware Maintenance 9. Telecommunications | Standard + SLA for Hardware Maintenance and telecommunications |
| 2068 | Government Network Services | | | | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 9. Telecommunications | Standard + SLA for telecommunications |
| 2100 | Supply of Maintenance Services (Computers) | | | | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 2. Hardware Maintenance | Standard + SLA for Hardware Maintenance |
| 2101 | Software - Statistical Analysis | | | | 1. Standard T&Cs 2. Dictionary 3. Schedules | 3. Licensed software 5. Software support | Standard + SLA for software support |

| | | | | |
|------|---|---|---|--|
| 2150 | Webster Online Encyclopaedic & Reference Products | 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules | 3. Licensed software 5. Software support | Standard + SLA for software support |
| 2222 | IT Training Products and/or Services | 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules | 6. Temporary IT Personnel 7. Professional Services | Standard |
| 2302 | Supply of Paging Equipment, Support Services & Associated Accessories | 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules | 1. Hardware Acquisition/Install 2. Hardware Maintenance | Standard + SLA for Hardware Maintenance |
| 2304 | Provision of Teleservices (Call Centres) | 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules | 9. Telecommunications 7. Professional Services | Standard + SLA for Telecommunications |
| 2305 | Provision of Internet Services and Products | 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules | 9. Telecommunications 10. Web Services + others as required | Standard + SLA for Telecommunications, internet services and web hosting |
| 2306 | PABX & Key Telephone Systems | 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules | 1. Hardware Acquisition/Install 2. Hardware Maintenance 9. Telecommunications | Standard + SLA for Hardware Maintenance and Telecommunications |
| 2308 | Printers, Facsimiles and Related Consumables | 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules | 1. Hardware Acquisition/Install 2. Hardware Maintenance | Standard + SLA for Hardware Maintenance |

| | | | | |
|------|---------------------------------|---|---|--|
| 2310 | Common Use Software - Microsoft | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2311 | Common Use Software - Oracle | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2312 | Common Use Software - IBM | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2313 | Common Use Software - Novell | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2314 | Common Use Software - CAS | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2315 | Common Use Software - Sybase | 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2317 | ESS Support Services | 1. Standard T&Cs 2. Dictionary | 5. Software Support | Standard + SLA for Software Support |

| | | | | |
|------|--|---|---|---|
| 2319 | Information Security Services and Products | <ul style="list-style-type: none"> 3. Schedules 5. Order Forms 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 1. Hardware Acquisition/Install 2. Hardware Maintenance 3. Licensed Software 5. Software Support 6. Temporary IT Personnel 9. Telecommunications 7. Professional Services | <p>Standard + SLA for Hardware Maintenance, Software Support and Telecommunications</p> |
| 2321 | GSAS – Human Resource & Payroll Management Systems | <ul style="list-style-type: none"> 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 3. Licensed software 4. Development Services 5. Software support 12. Systems Integration 8. Data Management 10. Web Services | <p>Standard + SLA for Software Support and Internet Services</p> |
| 2322 | GSAS – Financial Management Systems | <ul style="list-style-type: none"> 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 3. Licensed software 4. Development Services 5. Software support 12. Systems Integration 8. Data Management 10. Web Services | <p>Standard + SLA for Software Support and internet services</p> |
| 2323 | GSAS – Records Management Systems | <ul style="list-style-type: none"> 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 3. Licensed software 4. Development Services 5. Software support 12. Systems Integration 8. Data Management 10. Web Services | <p>Standard + SLA for Software Support and internet services</p> |

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| 2327 | Expense Management Systems (STARTS JULY 1) | <ul style="list-style-type: none"> 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 3. Licensed software 4. Development Services 5. Software support 12. Systems Integration 8. Data Management 10. Web Services | Standard + SLA for Software Support and internet services |
| 2330 | Common Use Software – Sun (STARTS JUNE 1) | <ul style="list-style-type: none"> 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2331 | Citrix Common Use Software (STARTS JUNE 1) | <ul style="list-style-type: none"> 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 3. Licensed Software 5. Software Support | Standard + SLA for Software Support |
| 2573 | Two Way Radios (Mobile & Fixed) & Associated Antennas, Equipment & Services | <ul style="list-style-type: none"> 1. Standard T&Cs 2. Dictionary 3. Schedules 5. Order Forms | <ul style="list-style-type: none"> 1. Hardware Acquisition/Install 2. Hardware Maintenance | Standard + SLA for Hardware Maintenance |

Appendix B - Premier's Disclosure Memorandum (Please note references to Department of Public Works and Services or DPWS should now to be construed as meaning Department of Commerce).

A1012/17226
PROCEDURES CIRCULAR
NUMBER: 241

INDEX: DISCLOSURE OF CONTRACT INFORMATION

SUMMARY:

This circular deals with recent Government guidelines, which clarify information that must and must not be disclosed about Government contracts. It outlines the guideline requirements and specifies DPWS procedures requirements and tender conditions.

The specified information will be displayed on the DPWS Tenders website for contracts over \$100,000, and provided to enquirers on request for other contracts. This must be explained to Tenderers in Conditions of Tendering.

Background

Introduction

Premier's Memorandum 2000/11 issues guidelines clarifying what information relating to the Government's contractual arrangements with the private sector should, and should not, be made public after contract award.

The Government's commitment to the disclosure requirements was publicly announced by the Minister for Public Works and Services in a media release on 10 March 2000.

This circular is organised in the following major sections

- Outline of Policy in Premier's Memorandum
- Compliance with existing DPWS Policy and Procedures
- Business Unit Authorities and Instructions
- Definitions and interpretations
- Compulsory Disclosure
- Non-compulsory Publication
- Requests for Disclosure other than under the Guidelines
- Informing Tenderers and Contractors.

Outline of Policy in Premier's Memorandum

Scope of Application

The requirements of the Premier's Memorandum:

- apply to all contracts entered into by DPWS, including construction, infrastructure, property, goods and services, information technology, and other contracts;
- require disclosure of information about contracts awarded, and
- prevent information provided by unsuccessful Tenderers from being disclosed without the agreement or consent of Tenderers.

The identity of the enquirer or the reason for the enquiry are not relevant to the requirement for disclosure.

The Premier's Memorandum explicitly states what information must be disclosed, and what information must not be disclosed. It includes provisions for DPWS to negotiate with Tenderers about information to be kept in confidence.

Disclosure For All Contracts

The following information must be disclosed for all contracts:

- Details of contract (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the contract; the period of the contract);
- The full identity of the successful Tenderer including details of cross ownership of relevant companies;
- The price payable by the agency and the basis for future changes in this price;
- The significant evaluation criteria and the weightings used in tender assessment;
- Provisions for re-negotiation (where applicable).

Additional Disclosure for Large Complex Contracts

In addition to the information required for all contracts, the following items must be disclosed for contracts over \$5 million involving private sector financing, land swaps, asset transfers and similar arrangements:

- Details of future transfers of assets of significant value to Government at no or nominal cost and details of the right to receive the asset and the date of the future transfer;
- The identification and timing of any assets transferred to the Contractor by the agency;
- All operation and/or maintenance provisions in the contract;
- The basis for changes (price variation clauses) in the price payable by the agency;
- The results of cost-benefit analyses of the successful tender;
- The risk sharing in the construction and operational phases of the project, quantified in net present value terms (where possible) and specifying the major assumptions involved;
- Significant guarantees or undertakings between the parties, including loans entered into or agreed to be entered into;
- To the extent not covered above, the remaining key non-commercial-in-confidence elements of the contractual arrangements.

Disclosure about privately funded public infrastructure projects must also comply with the disclosure guidelines set out in the Guidelines for Private Sector Participation in the Provision of Public Infrastructure (first issued September 1995, revised October 1997 – Treasury Circular TC 95/15).

Contract Information Not To Be Disclosed

The Premier's Memorandum is intended to limit the extent of material that the Government will refrain from disclosing to very specific areas, which are exhaustively identified. The following information must not be disclosed unless the Contractor agrees, or disclosure is determined under the Freedom of Information Act 1989 or is otherwise legally required:

- The Contractor's financing arrangements;
- The Contractor's cost structure or profit margins;
- Items of the Contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
- Any other matters where disclosure would place the Contractor at a substantial commercial disadvantage with its competitors both at the time of entering into the contract and at any later date when there would be an effect on future competitive arrangements.

Additional Agreed Information Not To Be Disclosed

Tenderers may request DPWS not to disclose particular information included in their tender but must give the reasons for requesting this. DPWS must advise a Tenderer in contention for a contract what information it agrees not to disclose. Agreement must only be given within the requirement of the Premier's Memorandum that the extent of material agreed not to be disclosed must be very limited and specific. If agreement with a Tenderer cannot be reached, the business unit must obtain the advice of

the Group General Manager, Strategic Procurement Services (SPS) before finalising the award of the contract.

Methods of Disclosure

The required information about contracts must be disclosed as follows:

- for all contracts valued above \$100,000, or where Government transfers ownership of property over the value of \$100,000, the required information must be routinely published on public noticeboards, or Internet websites within 90 days of award of the contract;
- for other contracts the required information need not be routinely published, but must be released upon request.

Informing Tenderers - Conditions of Tender

The effective implementation of the Premier's Memorandum requires clear, explicit documentation of what will be, and what will not be disclosed. Tender documents must contain information about items to be disclosed and the disclosure process, including the opportunity for Tenderers to identify items they consider should not be disclosed and why.

Compliance with Existing DPWS Policy and Procedures

The guidelines apply only to the disclosure of contract information, and provisions in Conditions of Tendering. They do not require DPWS to make any changes to tender evaluation or other tender or contract administration procedures. They do not require DPWS to collect, or produce by analysis any information, which is not already collected or produced.

The guidelines make little change to the information DPWS is already required to disclose as shown below.

- The general description of the contract, its duration, basis for variations and options for renegotiation, are set out in the Tender Documents, which normally are publicly available and advertised on the DPWS Website before the tender is let.
- The Tendering Manual requires that:
 - names of all Tenderers must be published on Tender Office noticeboards at the time of Tender opening (Announcement of Tenders Received, p6.9); and
 - Further details of the identities of successful Contractors and Contract Sums must be advised to all Tenderers and, in some cases published on noticeboards (Announcing Tender Results, p8.3).
- Criteria for selection are also routinely included in Tender Documents.

For the normal sort of Contract that does not involve large, complex considerations, the only items which DPWS does not already disclose are:

- the relative significance or weightings of selection criteria, and
- details of cross ownership between companies associated with the tender.

Scoring and weighting is not necessarily applied to all tenders or selection criteria, and where they are not, significant criteria, without weighting will be published.

Ownership and control details are already a matter of public record through the Australian Security and Investment Commission database.

The only changes to DPWS existing practices, then, will be:

- two additional items about cross ownership and selection criteria weightings, where applicable will be additionally disclosed;
- details for contracts over \$100,000 will routinely be published on public noticeboards or the DPWS Tenders website;

- additional details for large complex contracts will be disclosed; and.
- disclosed details will be consolidated into a brief summary.

Procedures Requirements

Business Unit Authorities and Instructions

Disclosure of contract information in accordance with the guidelines is a business unit responsibility. Support for this function will be provided by SPS through the Contractor and Consultant Management System (CCMS) and the DPWS Tenders website.

Project and Contract Managers will normally be responsible for compilation and release for publication of contract information for contracts over \$100,000, and for responding to requests for disclosure of contract information for smaller contracts.

It is important for the effective implementation of the guidelines that all requests for information about contracts are efficiently met, with the enquirer being promptly provided with access to the information which is required to be disclosed. DPWS staff must not be seen as obstructive, delaying, or reluctant to disclose information, which is required to be disclosed.

Business unit managers must ensure that Project and Contract Managers are given appropriate instructions and authorities to enable them to compile and release information, which is required to be disclosed. All staff who may receive requests for contract information must be appropriately instructed in the requirements for prompt and helpful responses.

Interpretations

Contract Value to Determine Disclosure Requirements

The contract value to which the threshold criteria of \$100,000 for published disclosure and \$5m for additional details disclosure must be applied is normally the total GST inclusive contract price, or the total value of any asset transferred or work performed under the contract. For contracts which do not have an ascertainable value at the time of award, such as State Contracts Control Board period contracts involving a price per item but no ordered quantity, it is the price of a single item which may be procured under the contract.

Relevant Cross Ownership

The guidelines require the disclosure, for all contracts, of details of cross ownership of relevant companies. Relevant cross ownership means ownership or control relationships involving the Contractor and other entities which have tendered on the same project, and which are known to DPWS. The guidelines do not require DPWS to undertake any ownership and control investigations additional to those normally required, but any ownership and control information that is common knowledge or has received wide publicity, should be disclosed if it would have been relevant to the award of the contract. There may be ownership and control information that appears likely to have affected the award of the contract that was not taken into account. If this happens, a brief explanation, for example, that the information was not available at the time of awarding the contract, should be included in the disclosure.

Significant Evaluation Criteria

The guidelines require the disclosure, for all contracts, of the significant evaluation criteria and any weightings used in tender assessment.

In evaluating tenders DPWS invariably applies the criterion of value for money, and may apply some criteria which are absolute requirements and some criteria which may be scored and weighted. Scoring and weighting is not necessarily applied to all tenders or selection criteria.

Value for money must always be listed as a significant criteria.

All criteria which are rated and weighted are considered significant and must be listed, with their weightings in the disclosure.

Where criteria are not rated and weighted, only criteria whose application has affected the award of the contract need be considered significant. For example, if two tenders were passed over, one because the Tenderer had a record of unsatisfactory performance and another because the Tenderer demonstrated insufficient financial resources, then the significant criteria might be listed as:

- value for money,
- previous performance, and
- financial resources.

Basis of Future Changes in Price

The guidelines require the disclosure, for all contracts, of the basis of future changes in price. In addition to provisions specific to contracts, DPWS uses a number of standard price change mechanisms, which it may be appropriate to describe in contract disclosures as shown, or similarly to the following examples:

- Construction Contracts with Cost Adjustment:
Variations as instructed and valued by agreement or independently, and cost adjustments based on ABS indexes.
- Construction Contracts with no Cost Adjustment and Consultant Engagements:
Variations as instructed and valued by agreement or independently.
- Supply Contracts with Adjustments for CPI
Periodically adjusted for CPI.

Compulsory Disclosure

Disclosure on Request - Small Contracts up to \$100,000

The guidelines require that brief contract information must be disclosed on request for small contracts up to \$100,000. The identity of the enquirer or the reason for the enquiry is not relevant to the requirement for disclosure.

Business unit procedures may authorise Project or Contract Managers or other staff of business units to agree with enquirers on the form of disclosure of requested information, which may be:

- oral, by telephone or in person,
- by e-mail, or
- by letter or fax.

Where oral disclosure is agreed on, care should be taken that the relevant contract is accurately identified. The enquirer may agree that they do not want all the information which DPWS may be required to disclose, and the enquiry may be satisfied by disclosing only the information wanted. A note of the identity of the enquirer and the information disclosed should be made on the appropriate contract file. An enquirer who is dissatisfied with an oral disclosure may always request further information, either orally or in writing.

Where disclosure is in writing, it will usually be most convenient and reliable for all the information that DPWS is required to disclose to be included in the response. A sample form which may be used for this purpose is included at Appendix 1.

Information provided should be in succinct summary form. Standard contract clauses should not be quoted in full.

Disclosure responses must be prompt, in accordance with business unit standards for timely response to correspondence.

The CCMS Contract Disclosure screens may be used to prepare contract disclosure details which may then be printed out, cut and pasted to e-mail, or saved to file.

Automatic Publication - Contracts over \$100,000

General Requirements

The guidelines require that brief contract information for all contracts over \$100,000, and additional contract information for contracts over \$5 million involving private sector financing, land swaps, asset transfers and similar arrangements must be automatically published.

DPWS will meet its disclosure requirements by publishing contract information for contracts over \$100,000 on the internet, through CCMS and the DPWS Tenders website.

Project or Contract Managers responsible for contracts over \$100,000 must ensure that they or their staff have necessary access to CCMS to review and input contract information for disclosure. Arrangements for access to CCMS may be made by contacting Lynn Worsely, SPS, by cc:mail or telephone 9372 8925.

Method of Assembling Information

Information for disclosure for contracts over \$100,000 will be assembled using CCMS. CCMS already holds some details of all DPWS advertised contracts. All that is required is for Project or Contract Managers to fill in the information not already present in the appropriate Contract Disclosure screens of CCMS.

The basic layout of the CCMS screens for simple contracts will follow the example shown in Appendix 1.

Information provided should be in succinct summary form. Standard contract clauses should not be quoted in full.

Output Information into Web Format

After Project or Contract Managers have input information to CCMS and signified that release may proceed, CCMS will link to the Tenders website to identify contracts over \$100,000 and provide contract disclosure information for display.

Normal Time Frame and Time Limits

The guidelines require that contract information for contracts over \$100,000 must be published within 90 days of contract award. As the information required to be disclosed will be known at the time of award of the contract, lack of information will not be a source of delay. CCMS disclosure information should be completed and released within 14 days of award of contract.

Response to Enquiries

Telephone, personal, or written requests for disclosure of information about contracts over \$100,000 may be received. Where it is reasonably easy to satisfy enquirers by promptly disclosing all or part of the information, which DPWS may be required to disclose, this should be done directly, as well as referring them to the website. A note of the identity of the enquirer and the information disclosed should be made on the appropriate contract file.

When responding to a written request it will usually be most convenient and reliable to include a printout of the required information in the response as well as a reference to the website. The CCMS Contract Disclosure screens can be used to obtain this printout.

Disclosure responses must be prompt, in accordance with business unit standards for timely response to correspondence.

Additional Information for Large and Complex Contracts over \$5m

The guidelines require that additional contract information for contracts over \$5 million involving private sector financing, land swaps, asset transfers and similar arrangements must also be routinely published.

CCMS provides additional contract information screens for assembling and releasing this information. The additional details required are shown at Appendix 2.

Non-compulsory Publication

Some large-scale period contracts or common user supply contracts, while having any single line item requiring routine publication of contract information, may still be likely to attract public interest.

To forestall numerous requests for disclosure, reduce workloads in processing on-request disclosures, and provide added transparency and service to clients and the public, business units may use CCMS to publish contract information about these contracts.

For common user supply contracts and others with multiple Contractors and estimated values, the standard disclosure form should be adapted by, where applicable:

- listing all successful Contractors in the Identity of Contractor field; and
- stating the estimated total value for the whole of the supplies or services in the contracts in the Prices Payable field, annotated 'estimate total value for all contracts'.

Requests for Disclosure other than under the Guidelines

Non-Routine Disclosure, FOI or Voluntary Release

Any requests for information about tenders or contracts which appear not to be covered by the guidelines must be dealt with promptly and efficiently. The public has rights to obtain access to information held by the Government which is not 'exempt matter' under the Freedom of Information (FOI) Act 1989. The guidelines make it clear that contract information is not automatically exempt matter. DPWS should not refuse to disclose information unless refusal of access can be justified under the FOI Act. Where it is convenient and appropriate DPWS may voluntarily disclose information to enquirers without the formality of FOI procedures. While maintaining appropriate confidentiality, DPWS must not be seen to be obstructive or secretive in contracting matters.

Tender Information before Award of Contract

The guidelines apply only to information about contracts that have been awarded. Maintenance of confidentiality of information provided by Tenderers up to award of contract is essential to the probity of the tendering process.

DPWS has policies and procedures for release of Tenderers' details. These are contained in:

- Tendering Manual Release of Tendering Information (p5.4); and
- Tendering Manual Announcement of Tenders Received (p6.9).

Information other than that provided by Tenderers, which is contained in tender documents for tenders which have been advertised, is already in the public domain. Information in tender documents may be released, either by provision of the tender documents, free, or for payment of the required fee, or directly to enquirers where appropriate. No charge should be made for disclosure of tender document information that, under the guidelines, would be required to be disclosed once a contract was awarded.

Expressions of Interest

The selection of firms to be invited to tender following an Expression of Interest process does not form a Contract, and disclosure is not required under the guidelines. Information other than that publicly advertised for Expressions of Interest and the identities of tenderers released in accordance with the Tendering Manual, must not be disclosed before the subject Contract has been awarded. If information about Expressions of Interest is requested, DPWS will disclose the following details, after the subject Contract has been awarded:

- Details of contract (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the contract; the period of the contract);
- The identities of those expressing interest; and
- The significant evaluation criteria and the weightings used in assessment of the Expression of Interest.

The form at Appendix 1 with suitable omissions may be used when making this disclosure.

Contracts Without Disclosure Provision

Information about contracts which do not contain the Disclosure of Contract Information Condition of Tender included with this Circular, and to which no other specific agreement or undertaking about disclosure or non-disclosure of information applies should normally be disclosed in accordance with the guidelines. The information that the guidelines require to be disclosed for all contracts is already required to be disclosed by DPWS existing policies and procedures, except for cross ownership details and criteria weightings. Ownership and control details are already a matter of public record through the Australian Security and Investment Commission database and criteria weighting is a matter for DPWS alone.

There may be reason to believe that a Contractor may object to disclosure of contract information, for example, where the subject of the contract is publicly unpopular and disclosure of contract information is likely to have an unreasonable adverse effect on the business affairs of the Contractor. If this is the case, the consent of the Contractor should be obtained before disclosing information.

The information required by the guidelines for contracts over \$5 million involving private sector financing, land swaps, asset transfers and similar arrangements may be more commercially sensitive than the information required for all contracts. Particular care should be taken in considering this information for disclosure, and the Contractor's consent obtained where appropriate.

Contracts with Confidentiality Agreements

The information identified in the guidelines as not to be disclosed and information about contracts to which any specific agreement or undertaking about disclosure or non-disclosure applies should not be disclosed unless the Contractor agrees, or disclosure is determined under the Freedom of Information Act 1989 or is otherwise legally required. Contract information that would normally be required to be disclosed and that is not specifically subject to a confidentiality agreement, should be disclosed, and not withheld under cover of a confidentiality agreement.

Matters Not Normally to be Disclosed

The guidelines require that the following information must not be disclosed unless the Tenderer agrees, or release is determined under the Freedom of Information Act 1989 or is otherwise legally required:

- The Contractor's financing arrangements;
- The Contractor's cost structure or profit margins;
- Items of the Contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
- Any other matters where disclosure would place the Contractor at a substantial commercial disadvantage with its competitors both at the time of entering into the contract and at any later date when there would be an effect on future competitive arrangements.

Information which is the subject of a specific agreement or undertaking about disclosure or non-disclosure must not be disclosed contrary to that agreement.

Analysing Requests and Consultation with Contractor

Requests for disclosure may also be received involving other information that is not identified in the guidelines as either required to be disclosed, or required not to be disclosed.

When requests are received for contract information that the guidelines do not require to be disclosed the following matters should be considered:

- Does the information concern the business, professional, commercial, or financial affairs of any entity or person?
- Is there any specific agreement or undertaking about disclosure or non-disclosure of the information?
- Will the assembly and analysis of requested information be likely to be so time consuming as to justify forcing the enquirer to submit a formal FOI request?

If the information requested concerns the business, professional, commercial, or financial affairs of any entity or person, it must not be disclosed without the agreement of the entity or person concerned, or else, in accordance with the FOI Act s32, where the disclosure could not reasonably be expected to have an unreasonable adverse effect upon those affairs.

Where there is no apparent reason for the Contractor to object, a brief telephone enquiry, fax or e-mail, requesting the Contractor's agreement to disclosure may be used, and if agreement is forthcoming, the information may be disclosed, with necessary file records being made.

If the Contractor appears likely to object, but there are public interest grounds for disclosure, a more detailed e-mail, fax, or letter should be sent to the Contractor explaining the public interest grounds and seeking agreement. If there is no confidentiality agreement and DPWS is considering overriding the Contractor's objection, if any, the formal notice provisions of the FOI Act s32 may be commenced at this stage.

It may be that it appears that disclosure of the requested information could reasonably be expected to have an unreasonable adverse effect upon the business, professional, commercial, or financial affairs, or it is contrary to a specific confidentiality agreement, or there appear to be other grounds for DPWS to refuse to disclose it as exempt matter under the FOI Act. In this case the enquirer should be advised that DPWS does not believe that disclosure is appropriate, and the reasons for this. It may also save the enquirer from submitting a formal FOI request if advice is also given, where appropriate, that the matter was considered under the appropriate criteria of the FOI Act, and appears to be exempt matter which would not be disclosed.

If the assembly and analysis of requested information, and consultation with parties is likely to consume significant DPWS time and resources, enquirers should be advised and assisted to submit formal FOI requests.

Informing Tenderers and Contractors

The guidelines require that Tenderers must be clearly and explicitly advised of what contract information will and will not be disclosed, how disclosures will be made, and how Tenderers can pursue agreement with Principals about additional items they consider should not be disclosed.

The Conditions of Tendering Clause shown at Appendix 3 must be used in all DPWS procurement contracts where documentation is commenced after receipt of this circular.

The option provided in the conditions for non-disclosure of Tenderer's identities is only to be used in exceptional circumstances, where the identity of Tenderers must be kept confidential, for example, where the subject of the contract is publicly unpopular and disclosure of Tenderers' identities is likely to have unreasonable adverse effects. The approval of Group General Manager, SPS to use these paragraphs is required.

Additional Non-Disclosure Agreement

Non-Disclosure Proposals

The Conditions of Tendering provide that Tenderers may request that the Principal not disclose particular information included in their tender, supporting this request with reasons. Proposals by Tenderers, under this provision, may be classified as follows:

- more precise specification of information covered by the guideline on what will not be disclosed;
- information not covered by the guidelines; or
- information required to be disclosed by the guidelines.

Information not Required to be Disclosed

It is expected that most requests for non-disclosure will fit within the guideline on what is not to be disclosed, and Project or Contract Managers may agree to non-disclosure on that basis. In particular the last of the non-disclosure criteria, which includes any matters where disclosure would place the Contractor at a substantial commercial disadvantage with its competitors at the time of entering into the contract or at any later date when there would be an effect on future competitive arrangements, is capable of broad interpretation.

Where a Tenderer seeks non-disclosure of information not clearly covered by the guidelines, DPWS should not agree to withhold information unless refusal of access could be justified under the FOI Act (other than FOI Act Schedule 1 s13, which itself relates to confidentiality agreements). Common reasons for withholding contract information may be that:

- disclosure would adversely affect the business affairs of some person or entity (FOI Act Schedule 1 s6), although this will usually be covered by the non-disclosure guidelines; or
- disclosure would adversely affect the financial or property interests of the NSW Government or a government agency (FOI Act Schedule 1 s15).

Business unit managers may authorise Project or Contract Managers to agree with Tenderers on these bases, but particular care must be taken about the genuineness, substantialness and unreasonableness of the alleged adverse effects under consideration. Project or Contract Managers should refer to senior management for advice in any cases of doubt.

The Group General Manager, SPS is nominated in the guidelines as the final authority for advice on contract disclosure matters, and difficult cases may be referred to SPS for advice.

Non-Disclosure of Information Required to be Disclosed

Proposals from Tenderers for non-disclosure of information required to be disclosed by the guidelines should not normally be agreed to.

The exceptional circumstances option provided in the Conditions of Tendering for non-disclosure of Tenderer's identities is not intended to be applied to Contractors which are awarded contracts. These Contractors will have had the opportunity to assess the impact of any adverse effects of winning the contract, and price their tender and the contract accordingly.

If, after assessment, it is considered that there is merit in agreeing with a Contractor not to disclose any information required by the guidelines to be disclosed, the approval of the Group General Manager, SPS must be obtained before any agreement is made with the Contractor.

Documentation of Confidentiality Agreements

The guidelines require that the Principal must document with the Contractor what information not already specified in the Conditions of Tendering it agrees not to disclose before the contract is awarded. This may be done by exchange of e-mail, fax or letters. Formal deeds will only be required in exceptional circumstances, and should be prepared by Legal Services.

The documented agreement must be clear and specific. It must not contradict the requirements of the guidelines without proper approval.

Disputes and Disagreements

If the Project or Contract Manager and a Tenderer cannot agree about what should be disclosed advice may be sought from SPS. The Conditions of Tendering provide that if agreement cannot be reached on non-disclosure the Principal may make a final decision. Group General Managers, Divisional Directors, and business unit General Managers may authorise this decision in the event of a

disagreement, but they must first obtain the advice of the Group General Manager SPS or the Chair of the State Contracts Control Board if that position is occupied by some other person.

Conclusion

Amendments to Manuals and Existing Tender Documents

The Conditions of Tendering Clause shown at Appendix 3 must be used in all DPWS procurement contracts where documentation is commenced after receipt of this circular. They have been included in the current update of the Commercial Conditions Manuals for construction contracts and must be incorporated into future updates of other standard Conditions of Tendering documents.

Enquiries and further information

Enquires regarding this Circular should be directed to John Allan by cc:mail or on telephone (02) 9372 8823 or facsimile (02) 9372 8844.

Alan Griffin
GROUP GENERAL MANAGER
STRATEGIC PROCUREMENT SERVICES

- APPENDIX 1: CONTRACT INFORMATION DISCLOSURE**
- APPENDIX 2: ADDITIONAL CONTRACT INFORMATION**
- APPENDIX 3: CONDITIONS OF TENDERING**

CONTRACT INFORMATION DISCLOSURE

| Contract Number | Contract Name |
|------------------------|----------------------|
| | |

Contract Description (Work required, goods or services to be provided, or property transferred)

| Commencement Date or Date of Award | Period or Duration of Contract |
|---|---------------------------------------|
| | |

Identity of Contractor

Details of Cross-Ownership if any

Price Payable

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Basis of Future Changes in Price

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| Significant Evaluation Criteria | Weighting if Applicable |
|--|--------------------------------|
| Value for Money | |

Provisions for Renegotiation

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ADDITIONAL CONTRACT INFORMATION

Details of future transfers of assets of significant value to government at no or nominal cost, and details of the right to receive the asset and the date of the future transfer

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Identification and timing of any assets transferred to the contractor by government agencies

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All operation and / or maintenance provisions in the contract

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Results of cost-benefit analyses of the successful tender

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Risk sharing in the construction and operational phases of the project, quantified in net present value terms, where possible, together with the major assumptions involved

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Significant guarantees or undertakings between the parties, including loans entered into or agreed to be entered into

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Any remaining key elements of the contractual arrangements not subject to a specific confidentiality agreement

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CONDITIONS OF TENDERING

DISCLOSURE OF CONTRACT INFORMATION

In accordance with NSW Government Policy to publicly disclose details of its contracts, the Principal may publish the following information about a contract awarded under this tender:

- Details of contract (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the contract; the period of the contract);
- The full identity of the successful Tenderer including details of cross ownership of relevant companies;
- The price payable by the agency and the basis for future changes in this price;
- The significant evaluation criteria and the weightings used in tender assessment;
- Provisions for re-negotiation (where applicable).

IF THE CONTRACT INVOLVES PRIVATE SECTOR FINANCING, LAND SWAPS, ASSET TRANSFERS OR SIMILAR ARRANGEMENTS AND THE CONTRACT VALUE EXCEEDS \$5M, INSERT THE ADDITIONAL ITEMS OF INFORMATION SHOWN IN THE FOLLOWING DOT POINTS, OTHERWISE DELETE THEM

- Details of future transfers of assets of significant value to government at no or nominal cost and details of the right to receive the asset and the date of the future transfer;
- The identification and timing of any assets transferred to the Contractor by the agency;
- All operation and/or maintenance provisions in the contract;
- The basis for changes (price variation clauses) in the price payable by the agency;
- The results of cost-benefit analyses of the successful tender;
- The risk sharing in the construction and operational phases of the project, quantified in net present value terms (where possible) and specifying the major assumptions involved;
- Significant guarantees or undertakings between the parties, including loans entered into or agreed to be entered into;
- To the extent not covered above, the remaining key non-commercial-in-confidence elements of the contractual arrangements.

The Principal will not disclose the following information about any contract awarded under this tender unless the Tenderer agrees, or release is determined under the Freedom of Information Act 1989 or is otherwise legally required:

- The Contractor's financing arrangements;
- The Contractor's cost structure or profit margins;
- Items of the Contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
- Any other matters where disclosure would place the Contractor at a substantial commercial disadvantage with its competitors both at the time of entering into the contract and at any later date when there would be an effect on future competitive arrangements.

Tenderers may request that the Principal not disclose particular information included in their tender but must give the reasons for requesting this. The Principal will advise a Tenderer in contention for a contract what information it agrees not to disclose. If the Principal and a Tenderer cannot agree about what should be disclosed, the Principal will seek the advice of the Chair of the State Contracts Control Board. The Principal's decision is however final and is at the Principal's absolute discretion. Neither a decision by the Principal, nor a recommendation by the Chair of the State Contracts Control Board under this paragraph is a decision which falls within any dispute resolution procedures specified in the Contract being tendered for.

USE OPTION 1 FOR ALL NORMAL TENDERS. USE OPTION 2 ONLY IN EXCEPTIONAL CIRCUMSTANCES

OPTION 1

INCLUDE THESE TWO PARAGRAPHS FOR ALL NORMAL TENDERS AND DELETE OPTION 2.

The Principal may publish the identities of all Tenderers, but will not disclose other information included in an unsuccessful tender unless the Tenderer agrees, or release is determined under the Freedom of Information Act 1989 or is otherwise legally required.

For contracts valued over \$100,000, the Principal will normally publish the names of Tenderers when tenders close, and the other information about the contract specified above, on the internet, within 90 days after award of the contract. For other contracts the Principal will disclose the specified information on request.

OPTION 2

IN EXCEPTIONAL CIRCUMSTANCES, WHERE THE IDENTITY OF TENDERERS MUST BE KEPT CONFIDENTIAL, OBTAIN THE APPROVAL OF GROUP GENERAL MANAGER, STRATEGIC PROCUREMENT SERVICES TO INCLUDE THESE ALTERNATIVE PARAGRAPHS AND DELETE THE TWO OPTION 1 PARAGRAPHS

The Principal will not disclose the identities of Tenderers or any other information included in an unsuccessful tender unless the Tenderer agrees, or release is determined under the Freedom of Information Act 1989 or is otherwise legally required.

For contracts valued over \$100,000, the Principal will normally publish the information about the contract specified above, on the internet, within 90 days after award of the contract. For other contracts the Principal will disclose the specified information on request.

Appendix C

ARE LIQUIDATED DAMAGES FRIENDS OR FOES?

Even though liquidated damages clauses are commonly found in IT contracts with public sector entities, there are fundamental misconceptions about these damages and how they work.

By agreeing liquidated damages, the parties agree at the outset on how much – or the rate at which – damages will be payable when a specified occurrence happens – but the occurrence must be one which would normally cause damage to the party in whose favour the liquidated damages apply.

The classic application of liquidated damages in an IT contract is for late completion – and the liquidated damages are expressed at a stipulated rate per day or per week if late completion occurs and liquidated damages become applicable, it's irrelevant whether the entitled party has actually suffered.

Similarly, it's irrelevant if the damage suffered far exceeds, or is much less than, the liquidated damages stipulated in the contract.

At law however penalties which are written into contracts – in whatever form – are unenforceable. Accordingly, if a court holds that a liquidated damages clause in a contract is in fact a penalty, the clause is unenforceable.

A provision which requires one party to pay money if it breaches the contract is a penalty if its purpose is not to compensate the innocent party for its loss, but to unduly punish the offending party for failing to perform its contractual obligations.

Generally, the test applied by the courts to determine whether a liquidated damages clause is acceptable, rather than a penalty, is to see if the liquidated damages are a genuine pre-estimate of the damage that is likely to be suffered if the event occurs.

Ultimately, it does not matter whether this pre-estimate turns out to be wrong. Typically, the courts refer to a number of factors or principles in determining whether a clause is a penalty or a genuine pre-estimate of the loss likely to be suffered. Some of these factors are:

- whether the obligation has been forced on the weaker party for disciplinary purposes,
- whether the sum to be paid is extravagant and unconscionable compared with the greatest conceivable loss that could be anticipated at the time the contract is entered into,
- whether the obligation to pay may arise arbitrarily or in inappropriate circumstances, such as trivial breaches as well as major ones. If the same amount of liquidated damages is prescribed for different breaches which would, on their face, give rise to different levels of damage, the clause is more likely to be considered a penalty,
- the courts also look at how the liquidated damages are expressed. A provision which calls for payment of damages as a percentage of the contract sum for example, is more likely to be held as a penalty than those expressed at a dollar rate for period.

Because liquidated damages are a substitute for damages which might otherwise be available by court assessment, the common provision of Government contracts that the customer may also seek general law damages is plainly unenforceable and makes the liquidated damages clause a penalty.

Liquidated damages are often seen by suppliers as being inserted for the benefit of customers. Although this is generally the case, liquidated damages can work for the benefit of suppliers. The

reason for this is that they operate effectively as a ceiling for the damages for which a supplier can be found liable. In some circumstances it may be that the actual damage suffered by a customer exceeds the liquidated damages. Obviously, if that is the case, the supplier is better off with the liquidated damages provision which at least limits the damages for which it may be liable.

In summary, the important factors which are quite often misunderstood in relation to liquidated damages are that:

- to be enforceable, the liquidated damages must be a genuine pre-estimate of the damage likely to be suffered and *not* a penalty.
- it is not necessary to establish any actual loss or damage for liquidated damages to be payable. The entitlement arises upon the occurrence of the triggering event.
- liquidated damages represent both the floor and the ceiling to the level of damages.

Appendix D

Guide for Contract Officers in a Centralised Agency

How to create a Standing Offer arrangement with Procure IT

To establish new or renewed standing offer arrangements

A. Pre-Tender actions

Each new or renewed standing offer arrangement to be established by State Procurement will use the Procure IT documentation, in addition to the Conditions of Tender and Tender Response templates.

Contract Officers are to complete the following actions:

Part 1 – Standard Terms and Conditions. Review to ensure that they are all appropriate for the proposed procurement. Part 2 – Select and append the Dictionary.

Part 3 – Complete, as much as possible, Schedules 1, 2, 3 and all other relevant Schedules. In particular, details for Schedule 1, such as the rate of Management Fee, insurances, liability caps and broad financial guarantee requirements should be completed and distributed with the tender document.

Part 4 – select and append the Modules that are relevant to the goods and/or services to be procured. The Modules are discussed further in Section 6 of this document.

Part 5 – pre-complete the Order form to the extent possible.

B: Post-Tender actions

Contract Officers are to prepare documentation for execution by State Procurement and the successful tenderer by:

- completing Schedule 1, Agreement Details.
- appending any relevant communications between the parties and parts of the tender to Schedule 2, Agreement Documents.
- appending any product and service information to Schedule 3, Products and Services.
- preparing the execution page.
- completing other Schedules as necessary including obtaining any required statutory declarations, guarantees, or certificates of currency. Many of the remaining schedules will need to be arranged, as needed, by the Customer and Contractor, at the Order stage.
- completing and maintain pro-forma Order forms for use by SCCB customer agencies, and ensure their currency during the term of the agreement.
- establishing a specific User Guide for their agreement/s.
- assisting customers in completing their Order Form if required.
- Following up with Contractors, on placement of the first Order, the required financial guarantee etc.

MODULES

This section of the User Guide provides information about the individual modules that a Customer may choose to include in its Order. Each module is listed below, with a list of the NSW Government panel contracts currently in place for that specific type of IT procurement. Information is also provided on filling out the Order Form requirements for each Module, contained in Part C of the Order Form.

MODULE 1 – HARDWARE ACQUISITION AND INSTALLATION

NSW Government Hardware contracts Customers may choose to order under:

| NSW Government Panel Contract | Contract No. |
|-------------------------------|--------------|
|-------------------------------|--------------|

Current panel contracts for Hardware products, as are established by the Dept of Commerce from time to time:

- Computers Fileservers Desktops and Portables Contract 2000
- Apple Pricebook Contract 841a
- Computer Peripherals and Associated equipment Contract 2006
- IBM Compatible Mainframe Equipment Contract 2027
- Printers, Facsimiles and Related Consumables Contract 2308
- Unix Equipment Contract 846
- Mid Range Computing Systems Contract 846
- Video Conferencing Contract 2023a
- Telephone Handsets, Answering Machines, Diverters Contract 2024

& Associated Services

- Mobile Cellular & Satellite Telephone Equipment Contract 2025
- Data Communications LAN & WAN Equipment/Modems Contract 2065
- Site Telecommunications Cabling Contract 2067
- Supply of Paging Equipment, Support Services Contract 2302

& Associated Accessories

- PABX & Key Telephone Systems Contract 2306
- Information Security Services and Products Contract 2319
- Two Way Radios (Mobile & Fixed), Contract 2573

Associated Antennas, Equipment & Services

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor's approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 1 Hardware Acquisition and Installation | Comments |
|------|--|--|
| C1.1 | <p>Hardware being Ordered (clause 1.2)</p> <p>Specify the Hardware to be provided:</p> | <p>It is important that the Customer accurately describe the Products that it is ordering and any associated firmware. If a written specification has been developed for a quotation process, it should be attached here.</p> |
| C1.2 | <p>Delivery and Installation (clause 2.1)</p> <p>Specify if the Contractor is to install the Hardware:</p> <p>Specify if the Contractor is to remove all packing materials:</p> <p>Specify if the Contractor is required to demonstrate the use of the Hardware:</p> <p>Specify any additional costs for installation and demonstration:</p> <p>Specify any additional costs for removal of packaging:</p> <p>Contractor's Specifications (clause 2.1)</p> <p>Annex or reference the Contract Specifications:</p> | <p>The Customer must ensure that the components of the Hardware are adequately specified and annex its Statement of Requirements and the Contractor's Specifications that are to apply.</p> <p>The Customer should ensure that the Order does not reference specifications that are lower than the minimum configurations set by the Contract Authority.</p> |
| C1.3 | <p>Integration and Training (clause 3.1)</p> <p>Specify any integration services the Contractor is to carry out:</p> <p>Specify any training to be carried out by the Contractor and</p> | <p>Detail the specific training the Customer requires to be conducted including timeframes.</p> |

| No. | Details to be included from Module 1 Hardware Acquisition and Installation | Comments |
|------|--|---|
| | any additional costs: Specify any training materials the Contractor is to provide: | Specify any training materials or manuals the Contractor is to provide and ownership of these will pass to the Customer once they are developed. |
| C1.4 | Warranty Period (clause 4.1) Specify if the Warranty Period is to be greater than 365 days from the AAD: | <p>The Agreement under which the Order is placed may specify a minimum warranty which is different from that offered under the Contract. If an extended warranty is offered and depending on the product ordered, consider whether there are additional warranty issues that should be covered by additional conditions. Examples of warranty issues include:</p> <ul style="list-style-type: none"> ■ Is this extended warranty “on site” or “back to depot” manufacturer’s warranty? ■ Is this extended warranty “on site parts and labour”? ■ Is telephone support included? ■ Is there replacement of parts such as keyboard and mouse by express delivery (24 hour turn around)? ■ Does the “on site” service scale down after the first or second year or after another nominated period to simply removal to an authorised depot for repair? ■ Does the Contractor undertake the warranty repairs or are these subcontracted out to the Contractor’s authorised service provider? ■ Are there any exclusions to the warranty regarding for example misuse, flood or electrical damage? ■ Does the extended warranty cover any of the issues dealt with in Module 2 and therefore does the extended warranty remove the need to place an Order under Module 2 for Hardware Support Services? <p>Note any Additional Conditions, if contrary to the Agreement terms, require the prior written consent of the Contract Authority. Customers should email the relevant Dept. of Commerce contact officer with the relevant details.</p> |

| No. | Details to be included from Module 1 Hardware Acquisition and Installation | Comments |
|------|---|---|
| C1.5 | <p>Contract Price</p> <p>Specify prices for Hardware:</p> | <p>Schedule 3 contains the Contract Authority-obtained Prices for the Hardware. Customers should note that the listed prices in the Schedule are the maximum prices and may be able to be reduced. For example, Customers should check the volume purchase discounts that the Contractor has offered.</p> |

MODULE 2 – HARDWARE MAINTENANCE SERVICES

NSW Government Hardware Maintenance Services Contracts Customers may choose to order under:

| NSW Government Panel Contract | Contract No. |
|-------------------------------|--------------|
|-------------------------------|--------------|

- Computer Maintenance Services Contract 2100

This Contract provides for a number of approved contractors to supply maintenance services specified in Table 2.1 for mainframes, midrange, file servers, personal computers, notebooks and peripherals.

Table 2.1

| Range of Maintenance Services under Contract 2100 | Optional Services under Contract 2100 |
|---|--|
| Preventative Maintenance | On site maintenance |
| Remedial Maintenance | Remote monitoring and maintenance |
| Equipment Performance Monitoring and Prognostic Maintenance | Return to depot maintenance |
| Operating System Maintenance | Collect, fix, return and install |
| Management of Maintenance | De-install malfunctioning equipment and install functioning equipment |
| Maintenance of other equipment on which the system depends | Time plus materials maintenance on site Time plus materials maintenance return to depot |

- Mid Range Computing Systems Contract 846
- Apple Price Book Contract 841a
- Computer Peripherals and Associated equipment Contract 2006

- Video Conferencing Contract 2023a
- Telephone Handsets, Answering Machines,
Diverters & Associated Services Contract 2024
- Mobile Cellular & Satellite Telephone Equipment Contract 2025
- IBM Compatible Mainframe Equipment Contract 2027
- Data Communications LAN & WAN Equipment/Modems Contract 2065
- Site Telecommunications Cabling Contract 2067
- Supply of Maintenance Services (Computers) Contract 2100
- Supply of Paging Equipment, Support Services
& Associated Accessories Contract 2302
- PABX & Key Telephone Systems Contract 2306
- Printers, Facsimiles and Related Consumables Contract 2308
- Information Security Services and Products Contract 2319
- Two Way Radios (Mobile & Fixed), Associated Antennas,
Equipment & Services Contract 2573

Approved Parties

Customers are authorised to place Orders with the Contractor or the Contractor's approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 2 | Comments |
|------|--|--|
| | <p>Hardware Maintenance</p> <p>Annex or reference the SLA (clause 3.1), if any:</p> <p>NB – Include response times for rectification of Defects in the SLA or in this section of the Order.</p> | |
| C2.4 | <p>Site (clause 3.2)</p> <p>Specify the Site at which the Hardware Maintenance Services are to be performed:</p> <p>Specify any other facilities that the Customer is to provide to enable the Contractor to provide the Hardware Maintenance Services:</p> | <p>Insert Details</p> <p>Insert Details</p> |
| C2.5 | <p>Preventative Maintenance (Clause 4.1)</p> <p>Specify the times Preventative Maintenance Services are to be performed, if any:</p> <p>Annex or reference if applicable the Preventative Maintenance schedule:</p> | <p>Detail the routine checks to be performed by the Contractor to keep the Hardware in good operating condition, and the times for the performance of these services.</p> <p>The parties may agree to include a timetable for Preventative Maintenance.</p> <p>Specify if time is of the essence in relation to Preventative Maintenance services.</p> |
| C2.6 | <p>Remedial Maintenance (clause 5.1)</p> <p>Specify the Remedial Maintenance Services:</p> <p>Specify the times Remedial Maintenance Services are to be performed:</p> | <p>Specify the ordinary Remedial Maintenance services and emergency Remedial Maintenance services to be provided.</p> <p>Specify any response times that are to be met by the Contractor.</p> <p>Insert Details.</p> |

| No. | Details to be included from Module 2 | Comments |
|------|---|--|
| | Hardware Maintenance Specify the charge payable for any Remedial Maintenance Services performed outside the maintenance period: | |
| C2.7 | Contract Price Specify prices for Hardware Maintenance Services: | As specified above in C2.1, the level of service the Customer specifies will affect the Price. |

MODULE 3 – LICENSED SOFTWARE

NSW Government Licensed Software contracts that Customers may choose to order under:

| NSW Government Contract | Description |
|---|--|
| Common Use Software: Microsoft Contract 2310 | Supply of Microsoft Software Licences through Open Government (no minimum Order size) and Enterprise Agreement minimum 250 licences. |
| Common Use Software: Oracle Contract 2311 | This Contract has been set up for the provision of common use software by Oracle, including database applications, business applications that run on the internet, server applications and data warehousing, CRM, HR and Payroll and financial systems products. |
| Common Use Software: IBM Contract 2312 | This Contract has been set up for the supply of IBM's common use software that it offers in Schedule 3. |
| 2310 - Common Use Software – Microsoft 2311 - Common Use Software - Oracle 2312 - Common Use Software - IBM 2313 -Common Use Software - Novell 2314 -Common Use Software - Computer Associates 2315 - Common Use Software - Sybase Australia | The range of Software products offered by these suppliers will appear in Schedule 3 of Procure IT for each particular panel arrangement. |
| 2034 - Document Management Services Contract | This contract offers customers a "total solution" based approach to their document production needs. |
| 2036 - Software Development Contractors (Fixed Price) | Services covering all aspects of the lifecycle of software development |
| 2065 - Data Communications LAN and WAN Equipment | This contract includes the supply and installation of active network equipment. Also included are various network software products, eg. software to provide network virus detection; network asset reporting/ management; network performance measurement, management, monitoring, etc. |
| 2101 - Statistical Analysis Software | Comprehensive statistical analysis software, products capable of accessing and manipulating from simple to complex data and providing a full range of statistical and analytical routines and methods. |
| 2150 - Encyclopaedic and Reference Products | Subscription to WebsterWorld Online and CD ROM Encyclopaedic and Reference Products which include Australian reference and encyclopaedic content, |

| NSW Government Contract | Description |
|--|---|
| 2222 - IT Training Products and Services | Training products and services that deal exclusively with Information Technology (IT) subjects. For example word-processing, IT skills, programming or database administration. |
| 2305 - Internet Services and Products 2321 - Software: Human Resource and Payroll Management Systems 2323 - Records and Information Management Systems 2327 - Expense Management Software (EMS) | |

Approved Parties

Customers are authorised to place Orders with the Contractor or the Contractor's approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No | Order details to be included from Module 3 – Licensed Software | Comments |
|------|--|---|
| C3.1 | <p>Licensed Software (clause 1.2)</p> <p>Specify the Licensed Software to be provided:</p> | <p>Customer to describe the Licensed Software that is to be ordered. If a written specification has been developed for a quotation process, it should be attached here.</p> <p>Customers should note that the Prices established by the Contract Authority under a panel arrangement are the <i>maximum</i> prices and Customers may be able in the Order for volume purchases to negotiate a lower price. For example, Customers should check the volume purchase discounts that the Contractors have offered. The Price of a Licence to use the software for a term, offered may be expressed as a percentage of the Price offered by the Contractor.</p> |
| C3.2 | <p>Licence Period (clause 1.2)</p> <p>Specify if the Licence is not to be a perpetual licence and specify the term of the Licence:</p> <p>Attach Contractor’s Specifications for the Licensed Software:</p> | <p>If no term is specified in the Order then the licence will be perpetual. A perpetual license is the most secure type of license that a Customer may procure.</p> <p>The Contractor should supply the Customer with the Contractor’s Specifications for the Licensed Software. These should detail the operational characteristics of the software; the operating environment and the equipment the software may be used on.</p> |
| C3.3 | <p>Class of Licence (clause 2.1)</p> <p>Specify the Class of Licence:</p> | <p>Classes of Licence that the Customer may be granted include but are not limited to:</p> <p>a. Single User Licence which gives a Customer the right to</p> |

| No | Order details to be included from Module 3 – Licensed Software | Comments |
|------|--|---|
| | Specify the number of copies of the Licensed Software to be provided: | <p>install the Licensed Software on one computer;</p> <ul style="list-style-type: none"> b. Site Licence which allows Customers to install the Licensed Software on any or all computers at the nominated site; c. Multi User licences specify the number of users that can access the Licensed Software at any one time at the site; d. Concurrent User Licence allows the Licensed Software to be installed on a server and accessed over a network by a specified number of users; <p>(Note: Transactions for Open source licences are not able to be included under this Module. Separate terms and conditions should be developed by the Parties for open source software licenses).</p> <p>Specify the medium on which each copy of the Licensed Software is to be supplied and if multiple copies are to be regarded as the subject of a single licence (otherwise each copy is taken to operate under a separate licence);</p> |
| C3.4 | <p>Licence Rights (clause 4.1)</p> <p>Specify any additional licence rights that the Customer requires:</p> | Specify any additional licence rights the Customer requires such as exclusive rights or the option to transfer the licence to other parties. |

| No | Order details to be included from Module 3 – Licensed Software | Comments |
|------|--|--|
| C3.5 | <p>Warranty Period (clause 5)</p> <p>Specify if Warranty Period is greater than 90 days from the AAD:</p> | <p>Note that 90 days from the Actual Acceptance Date (AAD) is the minimum Warranty Period negotiated for the Customer by the Contract Authority under NSW Government Panel contracts.</p> |
| C3.6 | <p>Protection and Security of the Licensed Software (clause 6)</p> <p>Specify if the Customer must maintain records of the location of all copies of the Licensed Software:</p> | <p>Insert details</p> |
| C3.7 | <p>Updates and New Releases (clause 7)</p> <p>Training (clause 7.2) Specify any training the Contractor is to provide and the costs (if any) to enable the Customer and its Personnel to operate an Update or New Release:</p> <p>Installation (clause 7.5) Specify any installation costs: Time and materials rates to be listed:</p> <p>Updates and New Releases (clause 7.5) Specify any costs for New Releases:</p> <p>Specify if the Contractor is to supply Updates and New Releases during any Software Support Services and the costs (if any):</p> <p>Additional Software (clause 7.5)</p> | <p>Insert details, if any, regarding training.</p> <p>Insert details, if any, regarding installation and costs</p> <p>Consider whether you want the Contractor to supply Updates and New Releases during any Software Support Services but note that ordinarily there will be a separate cost attached to this requirement. Determine as far as possible with the Contractor what Updates and New Releases will be developed over the period of Software Support Services and what impact this will have on your purchase.</p> <p>Insert details, if any</p> |

| No | Order details to be included from Module 3 – Licensed Software | Comments |
|-------|--|--|
| | Specify any additional software that is not an Update or New Release and its cost: | |
| C3.8 | <p>Designated Equipment and Location (clause 8)</p> <p>Specify if the use of the Licensed Software is restricted to any Designated Equipment:</p> <p>Specify if the Licensed Software may only be operated at specific locations:</p> | |
| C3.9 | <p>Consequences of termination (clause 10)</p> <p>Specify if the Customer is to destroy or return to the Contractor all copies of the Licensed Software and all related Documentation after the termination of the Licence:</p> <p>Specify if the use of the Licensed Software for archival purposes will be subject to any restrictions:</p> | |
| C3.10 | <p>Reverse Engineering (clause 12)</p> <p>Specify any specific rights the Customer has to reverse assemble or reverse compile the Licensed Software in addition to any rights the Customer may have under the Copyright Act 1968 (Cth):</p> | <p>Under Division 4A of the Copyright Act 1968 the Customer may in limited circumstances undertake the following:</p> <ul style="list-style-type: none"> <u>47B.</u> Reproduction for normal use or study of computer programs <u>47C.</u> Back-up copy of computer programs <u>47D.</u> Reproducing computer programs to make interoperable products <u>47E.</u> Reproducing computer programs to correct errors <u>47F.</u> Reproducing computer programs for security testing <u>47G.</u> Unauthorised use of copies or information <u>47H.</u> Agreements excluding operation of certain provisions <p>We recommend that the NSW Government Customer seek the advice of State Procurement or of its own legal officers prior to taking such action,</p> |

| No | Order details to be included from Module 3 – Licensed Software | Comments |
|-------|--|--|
| | | regardless of the exceptions to the Copyright Act 1068 listed above. |
| C3.11 | Contract Price Specify prices for Licensed Software: | |

MODULE 4 – DEVELOPMENT SERVICES

NSW Government Development Services contracts that Customers may choose to order under:

| NSW Government Panel Contract | Contract No. |
|---|---------------|
| ▪ Geographic Information Systems (GIS) | Contract 864 |
| ▪ Information Technology Contracting Personnel | Contract 881 |
| ▪ Software Development Consultants (Fixed Price) | Contract 2036 |
| ▪ GSAS - Integrated Management Systems | Contract 2043 |
| ▪ GSAS – Human Resource & Payroll Management Systems | Contract 2321 |
| ▪ GSAS – Financial Management Systems | Contract 2322 |
| ▪ GSAS –Records Management Systems | Contract 2323 |
| ▪ Expense Management Systems | Contract 2327 |

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No | Details to be included from Module 4 Development Services | Comments |
|-------|---|--|
| C 4.1 | <p>Development Services (clause 1.2)</p> <p>Specify the Services the Contractor is to perform to develop the Software Solution:</p> <p>Annex the implementation planning study (clause 4):</p> <p>Annex the Project, Implementation and Payment Plan (PIPP)(clause 5) specifying the Development Services the Contractor is to perform:</p> <p>Specify any additional Development Services the Contractor is to provide other than those detailed in the PIPP:</p> | <p>Specify in the most comprehensive manner the Services to be performed to minimise any future disagreements between the Parties and to arrive at an appropriate Price for the Services. Note that the level of service the Customer specifies will affect the Price.</p> <p>Attach any Implementation Planning Study</p> <p>While undertaking a PIPP is recommended the parties can specify different requirements including adopting the Contractors standard methodology.</p> <p>The Stages to be included in the PIPP are detailed in clause 5.2 of this Module.</p> <p>Insert details, if any.</p> |
| C4.2 | <p>Software Solution (clause 1.2)</p> <p>Specify the Software Solution or Product to be created by the Contractor:</p> | <p>The Software Solution should be comprehensively detailed and appropriate references should be made to relevant documents, for example, the Customer’s statement of requirements in an RFQ or RFP and the Contractor’s accepted proposal.</p> |
| | <p>Designated Operating Environment (clause 1.2)</p> | <p>Specify in detail the hardware and software environment in which the</p> |

| No | Details to be included from Module 4 Development Services | Comments |
|------|---|--|
| C4.3 | Specify the Designated Operating Environment in which the Software Solution is designed to be used: | Software is designed to be used if this is not included in the Project, Implementation and Payment Plan, in order to ensure the maximum functionality of the Software Solution. |
| C4.4 | Contract Period (clause 2.1) Specify the Contract Period for the Development Services: | |
| C4.5 | Methodology for Software Development Procedure (clause 8) Specify any additional methodologies or any other requirements to those specified in clause 8, to be adhered to by the Contractor: | Insert any additional methodologies the Contractor must adhere to other than those specified in clause 7 of this Module. |
| C4.6 | Source Code (clause 9) Specify if the source code of Software Solution is to be placed in escrow: Specify if the Contractor must deliver to the Customer all the source code for software tools used in the development of the Software Solution required by the Customer to operate and support the Software Solution: Specify if the Contractor grants a licence to the Customer to use software tools, object libraries and other devices or methodologies for the purpose of maintaining and enhancing the Software Solution: | Escrow may be essential to the future of support of the Software Solution if the supplier becomes insolvent, defaults or a natural disaster occurs. Customers should carefully consider the circumstances under which it requires the escrow to be released to it and ensure that these requirements are included in the escrow agreement. Specify any fee to be paid for the source code to be placed in escrow and who is to pay the fee. Ordinarily, the Parties jointly incur the fee. |

| No | Details to be included from Module 4 Development Services | Comments |
|------|---|----------|
| C4.7 | <p>Warranty Period for Software Solution (clause 1.2 and 11)</p> <p>Specify if the Warranty Period for the Software Solution is to be greater than the first 365 days after the AAD:</p> <p>Updates and New Releases (clause 12) Specify any costs for Updates and New Releases:</p> <p>Specify if the Contractor is to install Updates and New Releases during any Software Support Services and the costs (if any): (Time and Materials rates to be specified)</p> | |
| C4.8 | <p>Contract Price</p> <p>Specify prices for Development Services:</p> | |

MODULE 5 – SOFTWARE SUPPORT SERVICES

NSW Government Software Support Service contracts that the Customer may choose to order under:

| NSW Government Panel Contract | Contract No. |
|--|---------------|
| ■ Computers Fileservers Desktops and Portables | Contract 2000 |
| ■ Apple Pricebook | Contract 841a |
| ■ IBM Compatible Mainframe Equipment | Contract 2027 |
| ■ Common Use Software – Microsoft | Contract 2310 |
| ■ Common Use Software – Oracle | Contract 2311 |
| ■ Common Use Software – IBM | Contract 2312 |
| ■ Common Use Software – Novell | Contract 2313 |
| ■ Common Use Software – CAS | Contract 2514 |
| ■ Common Use Software – Sybase | Contract 2315 |
| ■ Common Use Software – Sun | Contract 2330 |
| ■ Common Use Software – Citrix | Contract 2331 |
| ■ ESS Support Services | Contract 2317 |
| ■ Mid Range Computing Systems | Contract 846 |
| ■ Webster Online Encyclopaedic & Reference Products | Contract 2150 |
| ■ Software – Statistical Analysis | Contract 2101 |
| ■ Software Development Consultants (Fixed Price) | Contract 2036 |
| ■ GSAS - Integrated Management Systems | Contract 2043 |
| ■ GSAS – Human Resource & Payroll Management Systems | Contract 2321 |
| ■ GSAS – Financial Management Systems | Contract 2322 |
| ■ GSAS –Records Management Systems | Contract 2323 |
| ■ Information Security Services and Products | Contract 2319 |
| ■ Expense Management Systems | Contract 2327 |

- Geographic Information system (GIS)

Contract 864

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor's approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 5 - Software Support Services | Comments |
|------|---|--|
| C5.1 | <p>Software Support Services (clause 1.2)</p> <p>Specify the Software Support Services to be provided, these may include but are not limited to:</p> <ul style="list-style-type: none"> (a) telephone support; (b) e-mail and fax support; (c) web-based support; (d) on-site support. <p>Specify the support period:</p> <p>Specify the Support Service Fees:</p> <p>Specify Time and Materials rates for additional services:</p> <p>Specify the Supported Software to be supported:</p> <p>Annex the SLA (if any) that the Parties have agreed to in relation to the Software Support Services:</p> | <p>The Order should comprehensively specify the nature of the Software Support Services to be provided.</p> <p>The Customer will need to decide the period of support it requires. For example for critical systems the Customer may require maintenance and support 7 days a week, 24 hours per day.</p> <p>The level of Support that the Customer requires will affect the Price.</p> <p>In addition, the Customer and Contractor may agree to Time and Materials rates for additional services:</p> <p>The Customer must specify the software to be supported (including any third party applications).</p> |
| C5.2 | Designated Equipment (clause 1.2) | Designated Equipment means the equipment upon |

| No. | Details to be included from Module 5 - Software Support Services | Comments |
|------|---|---|
| | Specify the Designated Equipment on which the Supported Software is to be installed and/or used: | which the Supported Software is to be installed and/or used (if any). |
| C5.3 | Contract Period (clause 2) Specify the period of the Software Support Services: | The Order should accurately specify the period of Software Support Services and what options the Customer has to extend the Software Support Services. |
| C5.4 | Commencement Date (clause 2) Specify the Commencement Date of the Software Support Services: | The Software Support Services should be specified to commence at the expiry of the Warranty Period of the Supported Software. |
| C5.5 | Additional Services (clause 3.4) Specify any additional services to be provided that are not included in Software Support Services:(Time and Materials Rates to be specified) | |
| C5.6 | Service Levels (clause 7) Specify any performance rebates for not meeting Service Levels, or reference any relevant Service Level Agreement provision: | <p>The Customer and Contractor can specify in the Order or the SLA any performance rebates or performance credits that are to apply and how the adjustment shall be deducted or credited.</p> <p>Note: Performance rebates may accrue to the Customer on the Contractor's failure to achieve agreed Service Levels whereas performance credits may accrue to the Contractor if the contractor exceeds the minimum Service Levels.</p> |

| No. | Details to be included from Module 5 - Software Support Services | Comments |
|------------|---|--|
| | | The Order or SLA should specify if it is the Contractor's responsibility to detect any failure to provide the Software Support Services or to meet the Service Levels. |

MODULE 6 – IT PERSONNEL

NSW Government IT Personnel contracts Customers may choose to order under:

| NSW Government Panel Contract | Contract No. |
|--------------------------------------|---------------------|
|--------------------------------------|---------------------|

- Information Technology Contracting Personnel Contract 881
- IT Training Products and/or Services Contract 2222
- Information Security Services and Products Contract 2319

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 6 – IT Personnel | Comments |
|------|---|--|
| C6.1 | <p>IT Personnel Services (clause 1.2) Specify the IT Personnel Services:</p> <p><i>NB: this may entail the writing and placement of an ad, interviewing and preselection of IT Personnel candidates, forwarding IT Personnel candidate names and CVs, arranging interviews with the Customer.</i></p> <p>Specify the IT Personnel to be provided and detail their qualifications and experience:</p> | <p>As a guide for NSW Government Customers, ITS 881 covers Departments' and Agencies' requirements for contracting staff including programmers, analyst programmers, project leaders, technical writers, IT Specialists, IT Change Management Specialists, etc. Note that ITS 881 contractual terms are currently under GITC V2 and are not covered by Procure IT.</p> |
| C6.2 | <p>Services (clause 2) Specify the Services the IT Personnel are to perform:</p> | |
| C6.3 | <p>Contract Period (clause 6) Specify the Contract Period for the provision of IT Personnel:</p> | |
| C6.4 | <p>Price (clause 7) Detail applicable hourly rates:</p> | |

MODULE 7 – PROFESSIONAL SERVICES

NSW Government Professional Service contracts that the Customer may choose to order under:

| NSW Government Panel Contract | Contract No. |
|--------------------------------------|---------------------|
|--------------------------------------|---------------------|

- IT Training Products and/or Services Contract 2222
- Provision of Teleservices (Call Centres) Contract 2304
- Information Security Services and Products Contract 2319

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 7 – Professional Services | Comments |
|-------|---|---|
| C 7.1 | <p>Professional Services (clause 1.2)</p> <p>Specify the Professional Services:</p> | <p>Orders by NSW Government Customers for Software Development Contractors (Fixed Price) should be placed under ITS 2036.</p> <p>ITS 2036 includes services covering all aspects of the lifecycle of software development. Contractors are approved for one or more categories of specialisation which include:</p> <ul style="list-style-type: none"> • Business and Systems Analysis; • Establishment of Software Specialisation; • Software Development and Support; • Testing Services; • Documentation and Training; • Systems Integration; • Data Conversion and Migration. <p>Agencies may choose to use one or a combination of these services depending on their needs.</p> <p>If a professional service is not covered under ITS 2036 then the Customer should consult with Commerce to consider whether the service fall under ITS 881.</p> |
| C 7.2 | <p>Contract Period (clause 2)</p> <p>Specify the period of the Professional Services:</p> | <p>It is important to specify a period for Professional Services to ensure against creating an open-ended contract. Consider if it is appropriate to include an option to extend the Contract for Professional Services.</p> |
| C 7.3 | <p>Commencement Date (clause 2)</p> <p>Specify the Commencement Date of the Professional Services:</p> | |
| C 7.4 | <p>Specified Personnel (clause 3)</p> <p>Specify any Specified Personnel (key) to provide the</p> | <p>The Customer should specify any expertise, specialisations and qualifications it requires for the work to be carried out.</p> <p>The Customer should nominate any of the Contractor’s employees who</p> |

| No. | Details to be included from Module 7 – Professional Services | Comments |
|-------|--|--|
| | Professional Services and their roles or responsibilities: | are to be dedicated to the performance of the services. (NB ITS 2036 sets out service categories that Contractor's are approved to provide). |
| C 7.5 | Project Implementation and Payment Plan (clause 4) Annex the Project Implementation and Payment Plan (if any) that has been agreed to: | The Customer and Contractor may agree in the PIPP as to how the project is to be implemented and specify any deliverables payments are to be linked to. NB ITS 2036 sets out a detailed checklist for items to be included in the Project, Implementation and Payment Plan. |
| C 7.6 | Contract Price Specify prices for the Professional Services and all applicable Time and Material rates: | NSW Government Customers need to be familiar with any financial limits that have been set for ITS 2036. The current financial limits are set out in the User Guide for ITS 2036. |

MODULE 8 – DATA MANAGEMENT

NSW Government Data Management contracts that the Customer may choose to order under:

| NSW Government Panel Contract | Contract No. |
|--|---------------|
| <ul style="list-style-type: none"> ■ Software Development Consultants (Fixed Price) | Contract 2006 |
| <ul style="list-style-type: none"> ■ GSAS - Integrated Management Systems | Contract 2043 |
| <ul style="list-style-type: none"> ■ GSAS – Human Resource & Payroll Management Systems | Contract 2321 |
| <ul style="list-style-type: none"> ■ GSAS – Financial Management Systems | Contract 2322 |
| <ul style="list-style-type: none"> ■ GSAS –Records Management Systems | Contract 2323 |
| <ul style="list-style-type: none"> ■ Expense Management Systems | Contract 2327 |

(Customers should be aware that ITS 2036 covers data conversion and migration services and that Orders for these services can be made under ITS 2036).

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 8 – Data Management | Comments |
|------|--|---|
| C8.1 | <p>Data Management Services (clause 1.2)</p> <p>Specify the Services to be provided by the Contractor in respect of the Customer’s Data, which may include: Data Cleansing; Data Conversion and Migration; and Data Warehousing.</p> | <p>Customers should be as comprehensive as possible here about the types of Services to be performed by the Contractor.</p> |
| C8.2 | <p>Customer’s Data (clause 1.2)</p> <p>Specify the Customer’s Data:</p> | <p>Customers should clearly specify here the Data that the Contractor is to provide Data Management Services for.</p> |
| C8.3 | <p>Contract Period (clause 2)</p> <p>Specify the period of the Data Services:</p> | |
| C8.4 | <p>Commencement Date (clause 2)</p> <p>Specify the Commencement Date of the Data Services:</p> | |
| C8.5 | <p>Data Management Services (clause 3)</p> <p>Annex or reference (if any) the Contract Specifications and/or SLA:</p> | <p>Contractors may use software to provide Data Management Services.</p> <p>If the Contractor is licensing this software to the Customer an Order is to be placed using Module 3 (Licensed Software).</p> <p>Customers may annex or reference to the Order a SLA for the Data Management Services to ensure that the Data Management Services meet their minimum outcome requirements and Service Levels.</p> |

| No. | Details to be included from Module 8 – Data Management | Comments |
|------|--|--|
| | <p>Project, Implementation and Payment Plan (clause 4)</p> <p>Annex or reference the Project, Implementation and Payment Plan:</p> | <p>The Customer and Contractor can specify in the Order or the SLA any performance rebates or performance credits that are to apply and how any adjustments shall be deducted or credited.</p> <p>NB: Performance rebates may accrue to the Customer on the Contractor's failure to achieve agreed Service Levels whereas performance credits may accrue to the Contractor if the Contractor exceeds the minimum Service Levels.</p> <p>The Order or SLA should specify if it is the Contractor's responsibility to detect any failure to provide the Support Services or to meet the Service Levels.</p> <p>The Customer and Contractor may agree in the PIPP as to how the project is to be implemented and specify what deliverables payments are to be linked to.</p> <p>Note, for NSW Government Contractors, that ITS 2036 sets out a detailed checklist for items to be included in the Project, Implementation and Payment Plan.</p> |
| C8.6 | <p>Data Cleansing (clause 5)</p> <p>Specify if the Contractor must conduct an analysis of the Customer's Data:</p> <p>Specify any reports the Contractor is to provide to the Customer which may include a report of the trends within the Customer's</p> | <p>This section is designed to elicit as much information as possible about what the Contractor is required to do with regard to Data Cleansing. Specify clearly what will be required here against each item, and provide any further relevant information here.</p> |

| No. | Details to be included from Module 8 – Data Management | Comments |
|-------|--|---|
| | <p>business, industry and client base:</p> <p>Specify any accuracy or consistency requirements that the Contractor is to meet for the Data Cleansing:</p> <p>Specify any tasks or responsibilities the Customer is to perform for the Data Cleansing:</p> | |
| C8.7 | <p>Customer’s Data for Migration (clause 6)</p> <p>Specify if the Customer must extract and provide the Customer’s Data to the Contractor for Data Migration and Conversion in accordance with the PIPP:</p> | <p>The Customer is often responsible for the extraction and provision of the Customer’s Data; specify if this is the case here.</p> |
| C8.8 | <p>Contractor’s Tools and Methodologies (clause 8)</p> <p>Specify if the Contractor is required to provide the Customer with a licence to use tools, object libraries or other devices or methodologies for the purpose of maintaining and enhancing the Data Migration Software:</p> | |
| C8.9 | <p>Data Warehousing (clause 10)</p> <p>Specify any variations or additional requirements of the Customer in relation to Contractor’s Data Warehouse:</p> <p>Specify if the Contractor must provide management of the Data Warehouse in accordance with the PIPP:</p> | <p>Consider clause 10, Data Warehousing, in this module and determine whether there are any additional requirements here.</p> |
| C8.10 | <p>Contract Price</p> | |

| No. | Details to be included from Module 8 – Data Management | Comments |
|------------|---|-----------------|
| | Specify prices for Data Management Services | |

MODULE 9 – TELECOMMUNICATIONS SERVICES

NSW Government Telecommunications Services contracts that the Customer may choose to order under:

| NSW Government Panel Contract | Contract No. |
|---|----------------|
| ■ Mobile Cellular & Satellite Telephone Equipment | Contract 2025 |
| ■ Mobile Telephone Use and Monitoring - MUMS | Contract 2025b |
| ■ Data Communications LAN & WAN Equipment/Modems | Contract 2065 |
| ■ Site Telecommunications Cabling | Contract 2067 |
| ■ Government Network Services | Contract 2068 |
| ■ Provision of Teleservices (Call Centres) | Contract 2304 |
| ■ Provision of Internet Services and Products | Contract 2305 |
| ■ PABX & Key Telephone Systems | Contract 2306 |
| ■ Information Security Services and Products | Contract 2319 |

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| | Details to be included from Module 9 – Telecommunications Services | Comments |
|------|---|--|
| C9.1 | <p>Telecommunication Services (clause 1.2)</p> <p>Specify the Telecommunications Services to be provided by the Contractor:</p> | <p>The DITM 2001 telecommunications contracts can broadly be described under the groups of fixed telephony, mobile telephony and data services. Information in relation to DITM contracts can be found at http://www.oict.nsw.gov.au/pages/7.2.4.available.htm</p> <p>The range of telecommunications services currently offered under DITM 2001 include:</p> <ul style="list-style-type: none"> • Access services-connecting the customer's network to a supplier's network; • Call services-calls made from landline and mobile telephones; • Connection services-directly connecting two or more customer sites in different locations; • Mobile services-exclusively mobile services that can include WAP, SMS and other related services; • Management services-expert telecommunications support to assist agencies identify their needs and provide solutions; • Data services-specifically data related services formerly described as the Government Network Services (GNS). |
| C9.2 | <p>Contract Period (clause 2.1)</p> <p>Specify the Contract Period for the Telecommunications Services:</p> <p>Specify the Commencement Date of the Telecommunications Services:</p> | |
| C9.3 | <p>Location (clause 3.1)</p> <p>Specify locations, if any, where the Telecommunications Services to be provided:</p> | |

| | Details to be included from Module 9 – Telecommunications Services | Comments |
|------|---|---|
| C9.4 | <p>Contractor’s Specifications and Service Level Agreement (clause 3.2)</p> <p>Annex or reference the Contract Specifications:</p> <p>Annex or reference the Service Level Agreement (if any):</p> | <p>The Customer and Contractor can specify in the Order or the SLA any Service Levels and any performance rebates or performance credits that are to apply and how the adjustments shall be deducted or credited.</p> <p>Note: Performance rebates may accrue to the Customer on the Contractor's failure to achieve agreed Service Levels whereas performance credits may accrue to the Contractor if the Contractor exceeds the minimum Service Levels</p> <p>The Order or SLA should specify if it is the Contractor’s responsibility to detect any failure to provide the Support Services or to meet the Service Levels.</p> |
| C9.5 | <p>Critical Services (clause 3.3)</p> <p>Specify any Telecommunications Services that are Critical Services:</p> <p>Include any additional terms and conditions under which the Critical Services are to be supplied:</p> | <p>A Critical Service is a service that has a high strategic, operational or commercial value. For example, certain Telecommunication Services that are linked to medical services may because of their potential to cause damage if the fail need to be classified as a Critical Service</p> |
| C9.6 | <p>Scalability (clause 4)</p> <p>Specify any adjustments to the capacity, availability and quality of the Telecommunication Services to be provided by the Contractor during the Contract Period, including the costs of such:</p> | <p>Scalability is an important issue for Telecommunication Services as usage needs may vary during the life of a contract.</p> <p>Because of this it is important for Customers to consider including in the Order how it may vary the services and the costs for such variations.</p> |

| | Details to be included from Module 9 – Telecommunications Services | Comments |
|------|--|---|
| C9.7 | <p>Contract Price (clause 7)</p> <p>Specify the Price to be paid for the Telecommunication Service:</p> <p>NB Establishment costs such as installation fees and set up fees should be separately identified in this section with the corresponding Price.</p> | <p>Suppliers can apply to add or delete services and to alter prices within categories for which they are approved. The prices offered under the DITM 2001 agreements represent maximum prices that are to be charged to Government for services, and under special conditions further discounts may be offered to purchasers.</p> |
| C9.8 | <p>Billing (clause 8)</p> <p>Billing details</p> <p>(i) Specify the billing period, if other than monthly;</p> <p>(ii) Specify the format of bill to be delivered;</p> <p>(iii) Specify the details for any aggregate or consolidated billing:</p> <p>Audits</p> <p>(iv) Default position for the number of audits a Customer may undertake is once per 6 months. Specify the required frequency, if other than this level:</p> <p>Back-Billing</p> <p>(v) Specify if Back-Billing Period is to be greater than 3 months:</p> | <p>It is important that the customer includes in the Order</p> <p>i) the billing period, if other than monthly;</p> <p>ii) the format of bill to be delivered;</p> <p>iii) the details for any aggregate or consolidated billing:</p> <p>The maximum period that Back billing period should be extended to is recommended to be 180 days.</p> |
| C9.9 | <p>Benchmarking (clause 11)</p> <p>Specify the type of benchmarking of the Telecommunication Services that may be conducted by the Customer:</p> <p>(ii) Specify remedies available if the Telecommunication Services fail the benchmarking:</p> | <p>The Customer is to include in the Order any benchmarking that it intends to conduct during the Contract and the purposes and goals of the benchmarking.</p> <p>The Customer and Contractor may also include in the Order any third party that they agree to conduct the benchmarking.</p> |

MODULE 10 – WEB SERVICES

NSW Government Web Services contracts that the Customer may choose to order under:

| NSW Government Panel Contract | Contract No. |
|--|---------------|
| ■ GSAS - Integrated Management Systems | Contract 2043 |
| ■ GSAS – Human Resource & Payroll Management Systems | Contract 2321 |
| ■ GSAS – Financial Management Systems | Contract 2322 |
| ■ GSAS –Records Management Systems | Contract 2323 |
| ■ Expense Management Systems | Contract 2327 |
| ■ Data Communications LAN & WAN Equipment/Modems | Contract 2065 |
| ■ Provision of Internet Services and Products | Contract 2305 |

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 10 – Web Services | Comments |
|--------|--|--|
| C 10.1 | <p>Internet, Filtering and Hosting Services (clause 1.2)</p> <p>Specify the Filtering Services, and the times the Filtering Services are to be performed:</p> <p>Specify the Web Services to be provided by the Contractor:</p> <p>Specify the Hosting Services to be provided by the Contractor:</p> | <p>Module 10 of Procure IT refers to Internet, Filtering and Hosting Services.</p> <p>NSW Government Customers should note that under ITS 2305 a wide range of approved services and products can be ordered under the following categories:</p> <ul style="list-style-type: none"> 1.1 General ISP Services 1.2 Specialist ISP Services 2.1 Web-site Hosting Services 2.2 Web-site Management Services 2.3 Electronic Commerce Interchange Services 3.1 Web-site Design and Content Specialists 3.2 Internet Application Integration Specialists 3.3 Internet Technical Specialists 3.4 Internet Business Analysts, Project Managers, and Consultants 4 Web Page Design and Authoring Tools 5 Web-site Content Management Systems 6 Internet Indexing, Search and Retrieval Systems 7 Internet Enterprise Portal Systems 8 Internet Application Development Products 9 Internet Application Server Products 10 Electronic Business Application Suites 11 Internet Gateway Infrastructure 12 Integrated Web-based Solutions <p>Internet Services: Items 1.1, 1.2 and 2.3 above of ITS 2305 fall under the Internet Services definition of Module 10.</p> <p>Hosting Services Items 2.1 and 2.2 above of ITS 2305 fall under the Hosting Services definition of Procure IT.</p> |

| No. | Details to be included from Module 10 – Web Services | Comments |
|--------|---|--|
| | | Filtering Services May be ordered in association with Internet or Hosting Services. |
| C 10.2 | <p>Contract Period (clause 2.1)</p> <p>Specify the Contract Period of the Web Services:</p> <p>Specify the Commencement Date of the Web Services:</p> | |
| C 10.3 | <p>Internet Services (clause 4.1)</p> <p>Annex or reference the Contract Specifications:</p> | |
| C10.4 | <p>Access (clause 4.1)</p> <p>Specify if the Customer is not to provide telephone lines, modems, computer hardware and software and all other equipment within the Customer Network necessary to enable Users to access the Internet Services:</p> <p>Specify any Remote Access Services the Contractor is to provide:</p> | |
| C 10.5 | <p>Directory Data (clause 6)</p> <p>Include information about the Customer’s database of User accounts (the Directory Data):</p> <p>Specify the structure of the levels of user access to the Internet Services required by the Customer:</p> | It is important to include information here about the Customer’s database of user accounts that will enable the Contractor to successfully provide the Services. |
| C 10.6 | <p>Scalability (clause 7)</p> | Scalability is an important issue particular for Internet Services because usage needs may vary during the life of a contract. |

| No. | Details to be included from Module 10 – Web Services | Comments |
|---------|---|--|
| | Specify any adjustments to the capacity, availability and quality of the Web Services to be provided by the Contractor during the Contract Period, including the costs of adjustments: | Because of this it is important for Customers to consider including in the Order how it may vary the services and the costs for such variations. |
| C 10.7 | <p>Hosting Services (clause 8)</p> <p>Specify if the Contractor is responsible for content maintenance:</p> | Customers may either maintain the content of the Website or require the Contractor or a third party to do so. Content maintenance usually includes updating content and ensuring that the Website looks professional. |
| C 10.8 | <p>Domain Names (clause 9)</p> <p>Specify if the Contractor is to secure a Domain Name on behalf of the Customer:</p> | It is not unusual for Customers to supply its Domain Name to the Contractor. Domain names are virtual addresses for businesses on the Internet. A Domain Name helps people find your agency quickly and easily on the web. |
| C 10.9 | <p>Intellectual Property Rights (clause 10)</p> <p>Specify if IP is not to immediately vest in Customer:</p> | It is recommended that any textual, graphical, audio and other material, including Customer’s Data provided by the Customer to be displayed on the Website should be stated in the Order to remain the property of the Customer. |
| C 10.10 | <p>Contract Price (clause 13)</p> <p>Specify the Contract Price to be paid for the Internet Service:</p> <p>NB Establishment costs such as installation fees and set up fees should be separately identified in this section with the corresponding Price:</p> | ITS 2305 sets out relevant maximum prices for Internet and Hosting Services. To get a competitive price it is recommended that a Customer seek a number of quotations. |
| C 10.11 | <p>Billing (clause 14)</p> <p>Billing details (clause 14)</p> <p>(i) Specify the billing period, if other than monthly:</p> <p>(ii) Specify the format of bill to be delivered:</p> | It is important that the Customer includes in the Order i) the billing period, if other than monthly: (ii) the format of bill to be delivered: (iii) the details for any aggregate or consolidated billing: |

| No. | Details to be included from Module 10 – Web Services | Comments |
|---------|--|---|
| | <p>(iii) Specify the details for any aggregate or consolidated billing:</p> <p>Audits (iv) Default position for the number of audits a Customer may undertake is once per 6 months. Specify the required frequency, if other than this level:</p> <p>Back-Billing Specify if Back-Billing Period is to be greater than 3 months:</p> | <p>The maximum period that Back billing period should be extended to is recommended to be 190 days.</p> |
| C 10.12 | <p>Service Levels (clause 16)</p> <p>Annex or reference the SLAs (if any):</p> <p>Specify any service level or rectification arrangements not required in the SLA:</p> <p>Specify any reports the Contractor is to provide to the Customer in relation to the Service Levels:</p> | <p>The Customer and Contractor may reference in the Order or include in the SLA any applicable Service Levels that are to apply.</p> <p>The Customer and Contractor can specify in the Order or the SLA any performance rebates or performance credits that are to apply and how the adjustment shall be deducted or credited.</p> <p>Note: Performance rebates may accrue to the Customer on the Contractor's failure to achieve agreed Service Levels whereas performance credits may accrue to the Contractor if the Contractor exceeds the minimum Service Levels.</p> <p>The Order or SLA should specify if it is the Contractor's responsibility to detect any failure to provide the Support Services or to meet the Service Levels.</p> |
| C 10.13 | <p>Benchmarking (clause 17)</p> <p>Specify the purpose and scope of the benchmarking of the</p> | <p>The Customer is to include in the Order any benchmarking that it intends to conduct during the Contract and the purposes and goals of the benchmarking.</p> |

| No. | Details to be included from Module 10 – Web Services | Comments |
|---------|--|---|
| | <p>Web Services that may be conducted by the Customer:</p> <p>NB. Such benchmarking reviews may compare the Services and Service Levels against similar services available in the Australian market, to ensure that the Services and Service Levels remain competitive within the industry during the term of the Contract.</p> <p>Specify remedies available if the Web Services fail the benchmarking:</p> | <p>The Customer and Contractor may also include in the Order any third party that they agree to conduct the benchmarking.</p> |
| C 10.14 | <p>Transition (clause 20)</p> <p>Annex transition plan (if any):</p> <p>Specify any additional transition in requirements of the Customer:</p> | |

MODULE 11 – MANAGED SERVICES

NSW Government Managed Services contracts that the Customer may choose to order under:

| NSW Government Panel Contract | Contract No. |
|--------------------------------------|---------------------|
|--------------------------------------|---------------------|

- Network Consultancy & Integration Contract 2066

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| | Details to be included from Module 11 – Managed Services | Comments |
|--------|---|--|
| C11.1 | <p>Managed Services (clause 1.2 and 3.1)</p> <p>Specify the Managed Services the Contractor is to provide:</p> | It is important the Customer accurately describe the Managed Services that it requires. If a written specification has been developed for a quotation, it should be attached here. |
| C 11.2 | <p>Contract Period (clause 2.1)</p> <p>Specify the Contract Period the Contractor is to provide the Managed Services for:</p> <p>Specify the Commencement Date of the Managed Services:</p> | Insert Details. |
| C 11.3 | <p>Contract Specifications and SLA (clause 3.2)</p> <p>Annex or reference the Contract Specifications:</p> <p>Annex or reference the SLA:</p> <p>Annex or reference the Transition in and Transition out plan:</p> | <p>Customers may annex or reference to the Order a SLA for the Managed Services to ensure that the Services meet their minimum outcome requirements and Service Levels.</p> <p>The Customer and Contractor can specify in the Order or the SLA any performance rebates or performance credits that are to apply and how any adjustments shall be deducted or credited.</p> <p>NB: Performance rebates may accrue to the Customer on the Contractor's failure to achieve agreed Service Levels whereas performance credits may accrue to the Contractor if the Contractor exceeds the minimum Service Levels.</p> <p>The Order or SLA should specify if it is the Contractor's responsibility to detect any failure to meet the Service Levels.</p> |

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| C11.4 | <p>Other Deliverables to be procured (clause 3.4)</p> <p>Specify if the Contractor is to procure any other Deliverables. List the Deliverables and indicate if the Contractor is to purchase these Deliverables as a Nominee Purchaser or the Customer or otherwise:</p> | |
| C 11.5 | <p>Transition In (clause 4)</p> <p>Specify additional obligations of the Contractor other than those specified in clause 4, if any:</p> <p>Specify the Contractor's obligations regarding the transfer or management of third party contracts:</p> <p>Specify any other items to be included in a procedures manual, other than those specified in clause 4(f), if any:</p> | |
| C 11.6 | <p>Transition Out Plan (clause 6)</p> <p>Specify the hourly rate Time and Materials for the Contractor to provide a transition out plan:</p> | |
| C 11.7 | <p>Transition Out (clause 7)</p> <p>Specify if the Contractor is not required to perform the transition out services specified in clause 7 and/or is to provide additional transition out services:</p> | |

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| C 11.8 | Contract Price Specify prices for Managed Services: | Schedule 3 contains the Prices for the Managed Services. Customers should note that the listed prices are the maximum prices and may be able to be reduced. The level of service the Customer requires will affect the price. The service level required should be relevant to the criticality of the project. In addition, the Customer and Contractor may agree to Time and Materials rates for additional services. |
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MODULE 12 – SYSTEM INTEGRATION SERVICES

NSW Government System Integration Services contracts that the Customer may choose to order under:

| NSW Government Panel Contract | Contract No. |
|--|---------------|
| ■ Software Development Consultants (Fixed Price) | Contract 2036 |
| ■ GSAS – Integrated Management Systems | Contract 2043 |
| ■ GSAS – Human Resource & Payroll Management Systems | Contract 2321 |
| ■ GSAS – Financial Management Systems | Contract 2322 |
| ■ GSAS – Records Management Systems | Contract 2323 |
| ■ Expense Management Systems | Contract 2327 |
| ■ Network Consultancy & Integration | Contract 2066 |

Approved Parties

Customers are advised to only place Orders with the Contractor or the Contractor’s approved agents for each panel arrangement, as relevant.

Module Details

Customers should carefully consider any terms and conditions that either Party wishes to include in the Order. The Customer must obtain the prior written consent of the Contract Authority to include terms or conditions in the Order that are contrary to any terms and conditions in the Agreement.

| No. | Details to be included from Module 12 – System Integration Services | Comments |
|--------|--|--|
| C 12.1 | <p>Systems Integration Services (clause 1.2)</p> <p>Specify the System Integration Services the Contractor is to provide:</p> <p>Specify the System the Contractor must provide after it has performed the System Integration Services:</p> | <p>It is important the Customer accurately describe the Systems Integration Services that it requires. If a written specification has been developed for a quotation, it should be attached here.</p> |
| C 12.2 | <p>Contract Period (clause 2)</p> <p>Specify the Contract Period of the Systems Integration Services:</p> <p>Specify the Commencement Date of the Systems Integration Services:</p> | |
| C 12.3 | <p>Implementation Planning Study (clause 5)</p> <p>Annex the implementation planning study:</p> | |
| C12.4 | <p>Project, Implementation and Payment Plan (clause 5)</p> <p>Annex or reference the Project, Implementation and Payment Plan:</p> | <p>The Customer and Contractor may agree in the PIPP as to how the project is to be implemented and specify what deliverables payments are to be linked to.</p> <p>NB ITS 2036 sets out a detailed checklist for items to be included in the Project, Implementation and Payment Plan.</p> |
| C 12.5 | <p>Statement of Requirements (clause 4)</p> <p>Annex or reference Customer’s Statement of Requirements</p> | |
| | | |

| No. | Details to be included from Module 12 – System Integration Services | Comments |
|--------|---|----------|
| C 12.6 | <p>CSI (clause 7)</p> <p>Specify any CSI to be supplied to the Contractor:</p> <p>Set out specification of CSI:</p> <p>Specify any costs to be borne by the Contractor:</p> | |
| C 12.7 | <p>Systems Integration Services (clause 4)</p> <p>Specify any additional services the Contractor is to perform that are not described in the PIPP:</p> <p>Specify if the Stages in clause 6 are to be varied or are not to be included:</p> <p>Specify which party will complete the Contract Specification for the Systems Integration:</p> | |
| C 12.8 | <p>Maintenance of Customer Supplied Items (clause 7)</p> <p>Specify if the Contractor is to manage any existing maintenance obligations in respect of the CSI:</p> | |
| C 12.9 | <p>Warranty Period (clause 9)</p> <p>Specify if the Warranty for System Integration Services is to be greater than 90 days after ADD:</p> <p>Annex or reference the Contract Specifications:</p> | |
| | | |

| No. | Details to be included from Module 12 – System Integration Services | Comments |
|---------|--|---|
| C 12.10 | <p>Transition Out Plan (clause 10)</p> <p>Specify the hourly (Time and Materials) rate for the Contractor to provide a transition out plan:</p> | |
| C 12.11 | <p>Transition Out (clause 11)</p> <p>Specify if the Contractor is not required to perform the transition out services specified in clause 12 and/or is to provide additional transition out services:</p> | |
| C 12.12 | <p>Contract Price</p> <p>Specify prices for Systems Integration Services:</p> | <p>Schedule 3 contains the Prices for the Services. Customers should note that the listed prices are the maximum prices and may be able to be reduced. The level of service the Customer requires will affect the price. The service level required should be relevant to the criticality of the project. In addition, the Customer and Contractor may agree to Time and Materials rates for additional services.</p> |