Medical Software Industry of Australia Submission

ICT Procurement Taskforce

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MSIA President – Emma Hossack

(07) 3292 0250 president@msia.com.au

MSIA Executive Officer – Jessica Abbey

eo@msia.com.au

Medical Software Industry Association – ICT Procurement Taskforce Submission

 Executive Summary - MSIA Profile

The Medical Software Industry Association (MSIA) represents interests of the medical software providers across the spectrum of Australian health care services. The vision of this Association which represents a sector that enable efficiencies and transformation of health services is to enable vibrant and innovative software organisations to achieve better health outcomes for all Australians.

The MSIA is a valuable stakeholder in Australian healthcare, and is frequently invited to submit its responses and offer suggestions in regard to many initiatives including the MyHealth Record, PBS Online, DHS Online PBS Authorities and the AMT

The MSIA has negotiated a range of important changes with government and other stakeholders having built a considerable profile with Commonwealth and jurisdictional Health Departments as the clearing house of communication between these organisations and the healthcare software providers.

As an organization, the MSIA has been awarded and successfully delivered a number of contracts with the Australian government for Project Services work and as such, has direct experience of the procurement processes being reviewed by the Taskforce.

The majority of MSIA members are Small and Medium Enterprises (SMEs) however large public Australian companies and international companies operating in Australia are also members. MSIA members frequently share their procurement experiences with the MSIA which provides it with further insight into existing procurement processes.

The MSIA welcomes the opportunity to provide the Taskforce with feedback on how to improve innovation in government through ICT Procurement.

Overview of the MSIA Position on ICT Procurement by the Australian Government

Gershon's review in 2008 of the Australian Government's use of Information and Communication Technology (ICT) found a model of weak governance of ICT at a whole-of government level and high agency autonomy resulted in sub-optimal outcomes in terms of financial returns and meeting the aims and objectives of Government[1].

Recommendations to improve the procurement process included (amongst other things) optimizing the use of ICT Panel arrangements, and Strengthening Agency Governance and ICT Procurement capability. While some welcome changes have been made to streamline processes and encourage a whole-of-government approach to ICT Procurement, our association believes further improvements can be made. Significant issues we address in the context of Rules, Culture and Capability which are the main focus of the Discussion Paper are as follows:

- Transparency and Level Market Playing Field and Panels
- Intellectual Property and the Government's attitude to IP acquisition

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[1] http://www.finance.gov.au/sites/default/files/Review-of-the-Australian-Governments-Use-of-Information-and-Communication-Technology_1.pdf

- Lack of accreditation framework for ICT procurement teams and consequent lack of capability to assess complex ICT project requirements and implementation

- Adversity to trying a new provider because it's 'safer' and "you never get sacked for buying IBM" attitude.[2]
- Focus on procedure over outcomes (which are rarely measured) and rigid adherence to process over results

Rules

Transparency & Level Market Playing Field

The MSIA supports the aim of the Commonwealth Procurement Rules in achieving "value for money" but the association also believes that transparency, integrity, fairness and supplier inclusiveness should underpin this objective.

The mandatory **Commonwealth Resource Management Framework** and **the Commonwealth Procurement Framework (**the "CPR" rules) and associated guidelines are complex but accessible online via the Department of Finance website[3]. The third tier of rules, which allows individual agencies to adapt, interpret, or claim exemption from the CPR rules to suit their own requirements, are not readily available. As a result, there is less transparency and an increased potential to make responding to tenders more complicated.

In its **"Guide for Business"** the Department of Finance (2014), acknowledges that the vast majority of private sector goods and services purchased by the Australian Government - not as part of a centralized single procurement market - but spread across approximately 120 government agencies, all making individual purchasing decisions and operating as separate markets [4]. This fragmentation makes tendering for government more complex.

The MSIA believes that overly complex or unclear Government rules, fragmentation and limited clarity often shut out SME's that could effectively deliver projects but lack the organizational resources and endurance to successfully navigate the selection process. Some MSIA members have described their experience of tendering to Government as:

> **"The work involved in responding to a request for a tender has sometimes appeared to have been as great as the work required in doing the job**…" MSIA Member 2017

And

> **"The process of responding to justify the tender that we were awarded was really painful, totally a waste of time and completely bureaucratic**…" MSIA Member 2017

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[2] http://www.rockstar-data.com/buying-ibm-getting-sacked-myths/

[3] https://www.finance.gov.au/resource-management/

[4] http://www.finance.gov.au/sites/default/files/A_guide_for_business.pdf?v=1

The increased use of Standardized forms and templates (such as the SourceIT Model Contracts) go some way to assist SMEs in becoming more familiar with Government contract requirements and processes and less intimidated by the perceived bureaucratic nature of tendering[5]. But the use of model contracts is not mandatory across Government and as such, the MSIA is concerned that their effectiveness in streamlining procurement may be inconsistent.

While the use of Standardized contracts may be helpful, MSIA members acknowledge that a "one size fits all" approach also has potential issues. Members have expressed concern that when model contracts are used, they are overly complex, wordy and intimidating. For example, the SourceIT Plus model contract is a document of 119 pages[6]. Simplification and streamlining of these documents by applying a more common sense approach would be helpful. The inclusion of conformance standards that are appropriate to the tender would also simplify the process.

While there is some merit in the use of Panels and Multi-use lists to streamline procurement, it can create a perception of a "closed shop" if panels and purchasing arrangements are for fixed, inflexible terms. Fixed panel terms prevent new providers entering and could potentially reduce competition and impact value for money in government procurement. Refreshing Panels mid-term (as in the case of the recent call for Tenders for Cloud Services[7]) offers new vendors the opportunity to participate, but this approach appears ad hoc and inconsistent.

In the United Kingdom (UK), the **House of Commons Committee of Public Accounts** report on improving government in 2013 found that despite the push for more centralized purchasing arrangements, individual agencies continued to avoid using consolidated processes[8].

The report also identified that many of the UK government's "*strategic ICT suppliers such as Microsoft and Accenture, are reportedly paying low levels of corporate tax in the UK*" (page 9). The report recommended that the UK Government use its substantial purchasing power to apply appropriate pressure on corporations to deliver a competitive price, but also pay their fair share of tax from income derived via government contracts. Similar concerns have been raised in Australia about tax minimization strategies used by major corporations[9] which are unavailable to SMEs whose bargaining power is therefore reduced by their inability to offer the pricing available to large corporations which have factored in their tax status.

The MSIA is supportive of Government reforms that level the playing field between all corporations – large and small – by ensuring that all corporations contribute fairly to public taxes, Australian jobs are supported and that SMEs are not unfairly disadvantaged.

Attempts by successive governments to provide increased support for SMEs in the procurement process by reducing red tape and increasing transparency (such as the appointment of an IT Supplier

[5] http://www.finance.gov.au/policy-guides-procurement/sourceit-model-contracts/
[6] http://www.finance.gov.au/sites/default/files/SourceIT_Plus_1.1_Final.pdf
[7] http://www.finance.gov.au/blog/2016/06/09/cloud-services-panel-refresh-request-for-tender-released/
[8] http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/137/137.pdf
[9] http://www.abc.net.au/news/2015-12-17/almost-600-companies-did-not-pay-tax-in-2013-14/7036324

Advocate from 2009-2014[10]; and the introduction of a Procurement Coordinator in 2013[11]) are encouraging, but many of our members have little understanding of or had any engagement with these services.

> **"I did not know there was a Procurement Coordinator!"** MSIA member 2017

Intellectual Property & Governments Position on IP Acquisition

The issue of intellectual property has been raised by our members as a potential barrier to Government tendering. Reports show that agencies often apply inconsistent and unconsidered approaches to Intellectual Property ownership[12].   *The Statement of IP Principles for Australian Government Agencies[13]* as updated [14] provides that Agencies allow the contractor to own IP in any software developed under an ICT contract as the default position. This applies to agencies e.g. Australian Digital Health Agency rather than Departments, However, the underlying rationale is sound and consistent with supporting innovation and productivity. Failure to do so not only discourages a level playing field and innovation, but it risks wasting IP as Government Departments do not enjoy a track record in maintaining and exploiting IP which they have acquired. It is recommended that this taskforce endorse such an approach.

A study into the relationship between Government's ICT and SME policies in 2009 suggested that problems identified by industry were related to shortfalls between policy and practice within Government, rather than the Procurement Framework itself[15]. Regarding intellectual property, the study (Page 10) acknowledged that agencies frequently "*propose unlimited liability in contract arrangements rather than conducting a thorough risk assessment process*".

Members have reported that these shortfalls between policy and practice persist.

> **"In 2016, the Department approached us to make some changes to the commercial software application we develop for our Australian General Practitioner customers. The changes would assist the Department in delivering a new service to Australian patients via our software. The contract provided by the Department had a clause saying that "all IP" – including any "commercial benefit" to our customers (however they'd measure that?) – would belong to the Commonwealth in perpetuity. This impasse involved considerable negotiation between us and the Department's legal advisors, sometimes tense, and cost us a lot in time, resources and legal advice. In the end the Department decided to remove that clause completely as I think they finally realized the potential benefit to the patients was the most important issue."** MSIA Member 2017

And:

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[10] http://www.itnews.com.au/news/it-supplier-advocate-backs-red-tape-reduction-271837
[11] https://www.finance.gov.au/procurement/procurement-coordinator/
[12] http://www.finance.gov.au/sites/default/files/Review-of-the-Australian-Governments-Use-of-Information-and-Communication-Technology_1.pdf
[13] https://www.communications.gov.au/policy/policy-listing/australian-government-intellectual-property-rules
[14] http://www.ags.gov.au/publications/express-law/el125.pdf
[15] https://www.finance.gov.au/files/2013/02/SME-Study-2009.rtf

"The whole IP thing is particularly irrelevant for "cloud" based services (SaaS, IaaS, etc.), which is what we provide, but some jurisdictions are taking a while to work this out." MSIA Member 2017

Government Capability & Capacity to Assess Project Requirements and Implementation

Federal and State Government agencies in Australia struggle to deliver successful innovative ICT projects as evidenced by several high profile government inquiries and the current discourse surrounding Centrelink's problematic debt recovery project.

The State Economic References Committee inquiry into the 2016 Census confirmed that the Australian Bureau of Statistics did not have the internal capabilities to deliver an in-house developed eCensus, and that the use of a limited tender process with a large international firm, tight timeframes and inadequate project oversight, contributed to the failure of this major digital initiative [16].   The inquiry into the Queensland Health Payroll Software issues clearly identified that the department lacked the appropriate structure and skills required to deliver the project[17].

Some MSIA members are concerned that many of the public servants who are responsible for ICT projects, lack industry knowledge (ICT or Health) and appear to have limited understanding of software development life cycles and processes.

> **"We get given a set of specs by the Department and are told the job needs to be done in "x" number of weeks. But they don't seem to understand the size of the project and that with testing etc. the job will take longer to complete"** MSIA Member 2017

There is a perception amongst MSIA members that communication between government and industry is disrupted when internal departmental staff changes or movements occur.   A lack of effective communication often causes confusion about project outcomes and deliverables.

> The MSIA believes its members would also benefit from a better understanding of Government processes. As a service to members the MSIA delivers regular e-newsletters and facilitates webinars providing information and updates on a whole range of topics. If relevant government agencies consider this may be an option to engage better with our members about the procurement process and new initiatives such as the Digital Marketplace, the MSIA would be happy to discuss this further.

Government Culture

Feedback from MSIA members suggests a perception that most public service agencies tend to focus more on compliance than on performance or outcomes.

"I was required to ensure that the spreadsheet exactly matched the amount that we quoted to the extent that I had to fudge taxi fares, people's hours all that sort of thing" MSIA member 2017

In his review of why government projects fail, Professor Peter Shergold identified the need for government to create a positive risk culture within the public service that was more forward

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[16] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/2016Census/Report
[17] http://www.healthpayrollinquiry.qld.gov.au/

facing.[18] In recent ICT Taskforce Roundtables this has been referred to as *"smart risk taking"* which appears to have worked well in some large public companies. Shergold also identified that governments and the public service often underestimate the impact of policy as they often lack the understanding and awareness of the complex relationships within a particular industry.

The lack of effective communication, engagement and consultation between government agencies and medical software providers represents a significant concern to our members. This in turn translates to less than optimal procurement and implementation of healthcare software which is vital in providing better health outcomes and efficiencies to Australians.

Major government ICT projects, such as the Personally Controlled Electronic Health Record (renamed My Health Record in 2014) are compromised when agencies do not work in partnership with industry on issues relation to design, implementation and user experience[19].

Feedback from MSIA members highlights the perception that Government has a bias towards large, multi-national suppliers:

> **"The Commonwealth (and the States) still generally purchase from the big end of town and ignore Australian SMEs."** MSIA Member 2017

This is in stark contrast to the Government's objective to support innovation and productivity in Australia's digital economy:

> **"The Australia of the future has to be a nation that is agile, that is innovative, and that is creative… We have to recognise that the disruption that we see driven by technology, that volatility in change is our friend if we are agile and smart enough to take advantage of it."**[20]

The Hon. PM Malcom Turnbull

Vendor "lock-in" relationships and the lack of appropriate market scan (as identified in the review of the ABS eCensus project) increase the risk of complacency in project management and contributed to the failure of the project[21].

The MSIA is concerned that if an agency has limited understanding of an industry and limited ability to develop an effective solution internally, it is likely that they will lack the capacity to oversee, question and challenge a contractor employed to develop a solution. It has been suggested in the ICT Taskforce roundtables that an accreditation framework be established for the training of government procurement teams.

One of the recommendations made in the **2008 Review of the Australian Government's use of ICT** was to improve the efficiency and effectiveness of the ICT marketplace by developing client and supplier codes of conduct[22]. Our association is not aware of any industry consultation about this issue or whether such a code was introduced.

[18] http://www.apsc.gov.au/publications-and-media/current-publications/learning-from-failure/opening-up-the-aps

[19] http://health.gov.au/internet/main/publishing.nsf/Content/ehealth-record

[20] http://www.intermedium.com.au/article/opinion-turnbull-brings-expertise-ict-decision-making ; https://www.liberal.org.au/coalitions-policy-better-and-more-accessible-digital-services

[21] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/2016Census/Report

[22] . http://www.finance.gov.au/sites/default/files/Review-of-the-Australian-Governments-Use-of-Information-and-Communication-Technology_1.pdf viewed online 4/01/2017

The improvements to AusTender, establishment of the Digital Transformation Agency and the launch of the Digital Marketplace may have a positive impact on ICT procurement processes and project delivery[23]. There has been limited feedback from MSIA members in regard to the Digital Marketplace concept although what feedback we have received suggests some skepticism in the concept:

"We have not listed with the Digital Marketplace. We have participated in similar initiatives (SA ran one for many years), without ever deriving any business from them."

MSIA member 2017

Government engagement with Industry Associations could assist in translating some of these initiatives into working solutions.

Unfortunately there are a number of instances where the Government has determined to develop what it considers to be appropriate solutions without reference to industry. The results are not successful[24] and competition against industry innovation and efficiency are stifled. Just as a "one size fits all" approach is not suitable for optimal procurement, likewise this approach is not optimal for health software development and innovation where industry should be encouraged by, not in competition with, government.

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[23] http://ministers.dpmc.gov.au/taylor/2016/new-digital-agency-establishes-agenda

[24] E.G The recent development of the Online Prescription Authority system – the result has not been taken up by providers and could have been done more effectively by industry. Also, the secure messaging industry has had direct competition in the past from the National Electronic Health transition Authority (NEHTA). Documents detailing this and a stated intention by a government agency to "replace" a provider, are available on request.

SUMMARY

The MSIA thanks the Taskforce for the opportunity to provide feedback about Public Procurement in Australia and provides the following points as a summary of this submission:

1. Rules must be clear, concise and appropriate.

2. Government Procurement Policy should strive for value for money but transparency, integrity and fairness should also underpin the framework. A one size fits all approach has not worked.

3. As a part of the transparency, the procurement decisions and outcomes should be measured so that both positive and negative outcomes can inform future ICT procurement.

4. Innovation and productivity depend on procurement processes being accessible to all levels of the market

6. Effective communication and meaningful stakeholder engagement are key to project success.

7. Industry associations (such as the MSIA) are well placed to assist Government in educating industry and the public service.

8. A positive or "smart' risk culture within the public service and a shift of focus from compliance to outcomes is essential together with a recognition that there are some things industry can do more efficiently and the government should not compete in these areas.

9. ICT accreditation frameworks exist for industry and there should be a similar accreditation framework to ensure that the people responsible for ICT procurement are properly trained and have a sufficient industry knowledge to create specifications and select the most appropriate solutions to satisfy the requirements.

10. The whole of Government, not just Agencies, should allow contractors to own the Intellectual property in any software developed under an ICT Contract as the default position.

The MSIA looks forward to the final report and welcomes any further requests for information.

Yours Sincerely,

Emma Hossack

Emma Hossack
BA (Hons), LLB, LLM

E: ehossack@extensia.com.au
M: 0411 478 799 **P:** (07) 3292 0250
S: ehossack_extensia.com.au
W: MSIA.com.au