

ICT Procurement Taskforce

AIIA Response

January 2017

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About the AIIA

The Australian Information Industry Association (AIIA) is Australia's peak representative body and advocacy group for those in the digital ecosystem. AIIA is a not-for-profit organisation that has, since 1978, pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment and drive Australia's social and economic prosperity.

AIIA does this by: providing a strong voice on policy priorities and a sense of community through events and education; enabling a dynamic network of collaboration and inspiration; and curating compelling content and relevant information.

AIIA's members range from start-ups and the incubators that house them, to small and medium sized businesses including many 'scale-ups' and large Australian and global organisations. We represent global brands including Apple, Adobe, EMC, Deloitte, Gartner, Google, HP, IBM, Infosys, Intel, Lenovo, Microsoft and Oracle; international companies including Optus and Telstra; national companies including Ajilon, Data#3, SMS Management and Technology and Technology One. While AIIA's members represent around two-thirds of the technology revenues in Australia, more than 90% of our members are SMEs. Our national board represents the diversity of the digital economy; more detailed information is available on our [web site](#).

Overview

AIIA welcome the opportunity to provide input to the Government's ICT Procurement Taskforce.

The issues outlined in this submission have largely been expressed to the Taskforce through various workshops and face to face conversations with Taskforce personnel and the Minister directly.

AIIA's key message is that procurement should be used as more than a blunt instrument to simply purchase products and services from suppliers/vendors. A mature and effective procurement system is a powerful vehicle for government to execute a much broader and impactful policy agenda. It can drive, for example innovation, diversity, industry development and business and skills development of Australia's indigenous technical capabilities.

The ICT industry has transformed dramatically over the last decade. Government procurement arrangements however, have remained largely unchanged during that period.

In responding to the Taskforce's Consultation Paper, AIIA has grouped issues broadly under the key areas: Rules; Capability and Issues – as outlined in the paper. This is an indicative framework only with many issues relevant across these themes.

Importantly, we have asked members to provide examples/case studies of the issues they have identified. We hope these help to 'bring to life' the very real concerns expressed by our industry.

While recommendations have been included in response to some issues, AIIA's position is that the overall procurement model needs to be reformed. Simply 'fixing' the individual issues one by one will not deliver a coherent, effective and efficient system – that works for both purchasers and suppliers of products and services.

We understand the breadth of this reform task, including the need to manage entrenched cultures on both sides. AIIA stands ready to assist the Government in taking this reform agenda forward.

Finally we would like to refer the Taskforce to the [AIIA Best Practice Procurement Guide](#), developed by members across the country. The Guide is a useful resource for staff involved in procurement and is already used by several State based governments.

AIIA Response Matrix: ICT Procurement Taskforce Consultation Paper

RULES	
<ul style="list-style-type: none"> • Are the Australian Government's procurement rules easily accessible, easy to understand and navigate? • How could the Australian Government's procurement rules and processes be improved to make it easier to offer innovative solutions to government? • What rules, including any security requirements, limit the Australian Government's use of cloud services? 	
ISSUES	CASE STUDIES/RECOMMENDATIONS
<p>Complexity of Rules</p> <p>Of Tiers of rules, intersection of rules and order of rules particularly when the overarching rules are overlaid by the interpretations and practices of individual agencies.</p> <p>At a different level, SMEs are often not aware of the 'rules' that guide procurement. If you talk about 'rules' to them they see this in terms of the requirement to get on a panel and what they need to do to respond to a tender</p>	<p>Recommendations for Change</p> <p>It would be helpful if Australian Government could more clearly articulate the precedence of rules (eg. Resource Management framework > Procurement framework > Agency-specific policies/rules).</p>
<p>Proliferation of Panels</p> <p>Some AIIA members are registered on over 60 panels across federal government. While these are not all refreshed every year, over a 3 or 4 year period, around 20 of these are 'renewed' each year. Each new panel or requirement to 'reapply' to remain on a panel is estimated to cost around \$100k - \$150K. This equates to around \$3m a year. Calculate this out to say 30 companies this comes to in excess of \$90m a year that companies in our industry alone are spending to be eligible to participate in a Government procurement process.</p>	<p>Example: Closed Panel 'Gatekeepers'</p> <p>The Federal Government panel market consists of a number of companies who exist to provide a subcontracting service to smaller businesses. They call themselves Gateways and typically support access to government work for micro businesses (more so than SME's). These companies take a percentage of total of the contract worth - inevitably making subcontracted companies more expensive. In addition to this, the company is required to pay payroll tax (not on the payroll but on the whole revenue of the work) - another 6-7%. Combined with the overhead paid to the 'Gateway' provider, this adds cost to companies and increasingly makes them less competitive.</p>

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<p>This also translates to a cost to Government in terms of assessing responses and supporting the process – easily up over \$100m a year in total.</p> <p>And this doesn't guarantee any work. In fact, experience of members is that when some tenders are issued, they are sent to everyone on the panel who all then need to effectively compete the same process all over again to win the work. This is a costly and duplicate process.</p> <p>High saturation of panels causes confusion for agencies (which we do we buy through?) and duplication of effort and cost for vendors who want to get onto a range of panels to ensure they are competitive.</p>	<p>Recommendations for Change</p> <p style="color: red;">Rationalisation/reduction of panels – and requirement that all agencies are subject to the same procurement arrangements. There is no reason that individual agencies should need individual panels to support their specific ICT requirements.</p> <p style="color: red;">Incorporate a brief, public EOI that has a low barrier for shortlisting.</p> <ul style="list-style-type: none"> • An online, open information sharing session to hear Government requirements • A speed dating session where prospective companies can show-and-tell. • A short list, followed by more detailed Q&A and a chance to discuss solutions and requirements at a more detailed level • A final short-list at this point should provide two or three companies that understand the requirements in much better detail... and all of the others have only invested one day in the process. <p style="color: red;">If a vendor produces new technology or a service that can be shown to provide a clear value-for-money benefit to agencies, leverage a mid-panel entry path.</p>
<p>Panel Lock Out</p> <p>Members report being 'locked out' of panels for some 3 to 5 years if they don't get on to the panel in the first instance</p>	<p>Example: DMOSS/CASS Panel lock out</p> <p>The panel website states, 'allows quick and efficient access to a number of service providers across a broad range of professional engineering and support services disciplines.' It further states: 'There will be no opportunities to tender for inclusion in the DMOSS Panel in 2015.'</p> <p>Notwithstanding the above we have members reporting that in the ten years since it was established there has been 'selective' additions to the panel but typically advances by SMEs have been ignored.</p>
<p>Cancellation of Tenders/Panels</p>	<p>Example: Terminated panels</p> <p>In 2014 the National Disability Insurance Agency (NDIA) put out a request for tender for ICT Contractor Services Panel. This was a major tender that required weeks of dedicated resources. Six months after the tender was submitted, the NDIA contacted vendors to advise they had terminated the RFT. Further, they</p>

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	<p>stated the NDIA had not completed evaluations of any Tenders submitted in response to the RFT in this time.</p> <p>Instead, the Federal Government announced in the May 2015 Budget that \$143 million would be invested for the DHS to provide a new ICT system for the NDIA. The NDIA will also utilise DHA's existing technology platforms and services, including the DHS ICT Contractor Panel.</p> <p>Although this decision may make financial sense for the Federal Government, Australian SME's that dedicated resources, time and money to this response were effectively 'sidelined'.</p>
<p>Protracted nature of Government procurement, evaluation and approval processes</p> <p><i>Impact on SMEs</i></p> <p>Notwithstanding that SMEs account for some 70% of our workforce, are renowned for driving innovation and highly regarded for their agility and flexibility, current Commonwealth procurement arrangements make it too costly and too difficult for SMEs to effectively compete in these processes.</p> <ul style="list-style-type: none"> • The time and cost of participating in the current panel process for SMEs limits the panels they have the capacity to apply to be on. This is exacerbated by lengthy procurement and approval cycles. • Concern that possible aggregation of product/service tenders will effectively remove ability of SMEs to engage in government procurement market. <ul style="list-style-type: none"> ○ SMEs are being disadvantaged by these big 'catch all' procurements, such as DHS or Defence's 'terrestrial communications bundles' or strategic partner panels like AMSPA.: ○ Not only are many SMEs locked out of the original arrangement due to the client's specifications, they often have to accept draconian prime-sub contract 	<p>Example 1: Protracted procurement at increasingly higher cost</p> <p>A member has provided an example whereby they were involved in a large competitive tender process for over 2 years. In that period, bidders had to respond to changes in scope from the purchaser, multiple requests for additional information etc.</p> <p>Notwithstanding that this was a very large tender, the member estimates that the exercise has cost in excess of \$10m over 2 years for the team they brought together to develop and support the bid.</p> <p>Example 2: 'Misuse' of SME expertise and experience</p> <p>A member recently applied for the ASD Technical Support Services Panel. They were not successful - despite having staff at the time work within ASD and ASD using their staff to deliver the niche skill sets and capability they required at the time.</p> <p>They investigated teaming with a consortium, but given the 'Prime' wanted exclusivity, decided against this on the basis the prime was also building capability within the specialist area of the company. The business risked having their IP poached.</p> <p>So – despite having niche capability and experience that is clearly valued, they were too small to be selected on their own merits and would have compromised</p>

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<p>conditions if they do enter into partnering arrangements. There are also numerous cases of IP leakage/theft between the sub-prime, which ultimately results in the prime either crunching margins or ultimately delivering the contract without the original SME.</p> <p>The consequence of all of the above is that companies are choosing not to respond to some tenders – particularly where they are likely to be costly, where lead times are too long and where perceived risks of the process outweigh the initial investment. This reduces competition, and ultimately innovation and can lead to complacency of incumbents.</p>	<p>their IP to partner with a prime. They made the observation that the procurement exercise was very process rather than outcomes driven.</p> <p>Example: Impact of Closed Panels on SMEs</p> <p>Going through a pre-approved supplier for a closed panel adds anything from 16.85% - 26.85% to the running costs of the SME. This immediately makes them less cost competitive.</p> <ul style="list-style-type: none"> • They are charged payroll tax on the overall REVENUE generated from the government work - because the ACT government considers the company an employee to the Prime Contractor. • They are charged anywhere from 10-20% for access to the panel. Given we are niche, we are known to the agencies and therefore this 10-20% mark-up is purely to have a company on the panel put their logo on our submission (and for us to have access to the Agency). • They compromise their IP - handing it over to the third party supplier who is on the panel and who they are required to sub-contract to.
<p>Thresholds</p> <p>The federal government is the most traditional procurement model and has the lowest threshold in terms of requirements to go to tender - \$80k.</p> <p>The \$80k threshold originally put in place under the Australia-US FTA was signed in 2005 - 12 years back ago.</p> <p>Most States have a \$150k threshold with SA and VIC removing the dollar threshold in favour of a complexity and risk assessment to determine what goes to tender.</p>	<p>Example: Alternative threshold model: South Australian eProjects Panel</p> <p>The ePP was initially launched in 2007. In January 2015 it was enhanced to include a new sub-\$100K 'Low Risk ICT Projects' portal, with a corresponding contract that has a more attractive liability capping requirement for suppliers engaging with agencies for low risk ICT projects. Before using the Low Risk ICT Projects Agreement, user agencies must ascertain the risk profile using their standard agency project risk assessment framework to assign the level of risk to the proposed project.</p> <p>In November 2014 the ceiling threshold for ePP procurements was raised to \$4.4M (originally \$700K) to align with the updated State Procurement Board low value procurement threshold of \$4.4M.</p> <p>The new \$4.4M portal, eProjects Plus Portal, was launched in September 2015. The eProjects Plus can be used for in-scope projects and services from \$700K to \$4.4M (incl.GST), incorporating longer term engagements such as application development and maintenance and software-as-a-service offerings. To complement the extended scope, suppliers on the eProjects Plus portal agreed to</p>

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	<p>updated terms and conditions commensurate with higher value engagements (compared to suppliers on the standard eProjects portal).</p> <p>The pre-qualification process involves an assessment of supplier capacity, capability, financial and insurance status.</p> <ul style="list-style-type: none">• Up to \$220k (inc. GST) – a minimum of 2 quotes• \$220k-\$700k (inc. GST) – a minimum of 3 quotes• \$700k-\$4.4m (inc. GST) – a minimum of 4 quotes <p>The panel uses a risk-based approach to determine insurance and liability requirements. Operation of the panel is funded by a 2% cost recovery levy invoiced to the supplier and calculated on the total cost of projects transacted through the panel. The levy is to cover the cost for support and operation of the panel.</p> <p>Benefits using the panel include:</p> <ul style="list-style-type: none">• pre-negotiated contract terms and conditions agreed by suppliers on the panel• agencies are not required to obtain CSO support to prepare contracts• the use of templates simplifies the process of supplier engagement• a large number and range of ICT suppliers are on the panel. <p>Suppliers can apply to join the panel at any time.</p>
<p>Expression of Interests, Requests for Procurement/Tender,</p> <p>EOIs are viewed cynically by industry (ie. Is this EOI a quasi-RFP or a fishing expedition or a process of free consulting) and very rarely deliver the outcome that an agency is after.</p>	<p>Several members have commented that they have been involved in these sorts of 'fishing' exercises and the extent to which the information they have provided is subsequently 'used' in the context of the RFT documentation – potentially compromising the competitive advantage of the company.</p> <p>Example: Department of Finance ICTSSH Panel - SON661641</p> <p>This panel was established in 2012 and runs until 2017. New suppliers have been added to the panel periodically but not all requests for entry have been accepted.</p> <p>We have a member that has traditionally supplied the Department of Defence with specialist security hardware and software. These contracts were done direct.</p>

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	<p>In 2015 the Department of Defence asked the member company to supply them with the detailed specifications of the specific hardware the member had been providing to them. The company researched their requirements and supplied them with the exact specifications and a quote (as requested) on what they required.</p> <p>The business later discovered that the Department took the information provided to them and went to 'market' via the Finance ICTSSH Panel – a panel that had not been 'open' to the business and therefore one they were not listed on. When questioned by the business Defence advised that it was 'policy' that all hardware and software procurement would now go through this particular panel. This is notwithstanding that given their preferred supplier status with the manufacturer, the business' costings were at least 30% cheaper than suppliers listed on the Panel.</p> <p>The contract was subsequently awarded to a multi-national company with no experience supporting the specialised ICT security hardware in Australia. Ironically, the value of the procurement - approximately \$500,000 – though not large to a multi-national would have been extremely valuable to the much smaller locally based business.</p> <p>Recommendations for Change</p> <p style="color: red;">Provide more detail of the incumbent solutions in the tender documents. With a large number of deals going to incumbents, it is more competitive to allow new participants to clearly understand what is in place before choosing to bid/not bid</p>
<p>Security Requirements</p> <p>The obligations requiring contractors to comply with government security frameworks are typically poorly described.</p> <p>The ISM, IRAP, EPL and CCSL requirements levied on IT products are onerous and give little assurance of a good secure result.</p> <p>Good security is difficult but these requirements make it hard for agencies to make good security decisions, reduce innovation and</p>	<p>Example: Evaluated Product List</p> <p>We have had experiences whereby an agency has chosen a particular product from a competitor simply because it was on the EPL – even though it did not meet the business requirements. The decision was made to reduce the time of the project as the newer, more innovative product would have to be evaluated by ASD.</p>

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increase cost for the government. The cost of clearing these evaluations are ultimately born by the government.

Australia is a relatively small IT marketplace and would have more choice of secure and security products if it recognised overseas and international security standards such as the NIST framework and FEDRAMP, and had a better implementation of the Common Criteria scheme.

The **ISM** is an excellent standard for cyber security. However, it is poorly understood by security practitioners in government, asymmetrically applied and encourages a compliance approach to security. The requirement to 'comply' with the ISM often negates the ability for tenders to consider more up-to-date and innovative security solutions and is technically against the instructions of the ISM itself to take a risk management approach to security. The government needs to give agencies clearer advice on security standards and what is needed to meet their own secure business requirements.

If done correctly, the **IRAP** scheme is a good way of determining if a system has taken a risk management approach to applying the ISM. However, it is only a snapshot in time with system changes and updates often negating the currency of the assessment. It is also onerous and costly. It takes over a year to complete notwithstanding that it also applies to "unclassified" material.

Further, there is little understanding regarding what the IRAP assessment actually provides from a business perspective. It is perceived as a compliance requirement for all agencies irrespective of the nature of the data in question. An agency should assess whether or not their data requires an IRAP assessment before proceeding.

The **Evaluated Products List (EPL)** is Australia's way of implementing the Common Criteria scheme. On the surface the EPL provides

Recommendations for Change

AIIA recommends a more flexible approach to security – based on risk management principles and less on compliance requirements.

Australian Government Security Vetting Agency (AGSVA) requirements need more harmonisation across agencies. Agencies also need to be less opaque with vendors – stating clearance requirements using AGSVA parlance should be standard.

It has also been suggested that Australian Government agencies recognise international security standards or other Government evaluations – this will give the government access to more products that are more secure for less cost. Some governments issue interim security certification whilst full certification is occurring – this can reduce the amount of time between purchase and implementation.

Specifically in relation to Cloud security:

- Government should not diminish its focus on security, but look at ways of streamlining assurance and compliance processes so that more cloud services can be made available to agencies.
- Improve the arrangements where software and platform vendors who build on top of cloud infrastructure services (ie. Amazon's AWS, Microsoft's Azure, Macquarie Telecom, Sliced Tech, Vault Systems) can better leverage the security certifications of the infrastructure provider.
 - AWS, Azure, Macquarie, Sliced Tech, Vault all have IRAP assessments and are listed on ASD's Certified Cloud Services List (CCSL).
 - If a software vendor builds on top of that infrastructure they are still required to be assessed and certified against the Information Security Manual (ISM).
 - Most often this is done through an agency undertaking a self-assessment of the solution; or in certain circumstances hiring an IRAP assessor to undertake that assessment

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increased assurance that a product is more secure and does what it says it does. However, there are a number of issues with the Australian implementation.

- Firstly, as with the above, any changes to the product, negates the articulated security benefits. While changes should trigger a product re-assessment, due to the time and cost requirements, this is seldom done. This translates to government subsequently implementing unevaluated and sometimes vulnerable products.
- Secondly, evaluation can only occur after an agency indicates interest in buying a product. The time and effort it takes to undertake the mandatory evaluation sometimes results in the product itself being superseded by more secure, up-to-date products.

Additionally, the implementation in Australia sometimes requires re-evaluation by an Australian (or 5-eyes) based lab, negating the advantage of a global common criteria scheme and adding additional expense to multinational companies. The Common Criteria scheme, of which Australia is a member, was designed to prevent this kind of expensive redundancy. Australia should recognise international standards.

The Certified Cloud Security List (CCSL) was designed to provide Australian government agencies with assurance of the security of cloud services it purchases. While this is understandable for high classification networks, it is excessive when applied to UNCLASSIFIED and PROTECTED networks. In addition, some of the requirements levied on providers are unnecessary and based on outdated security models. They negate the potential cost savings to government for using shared infrastructure. They also completely ignore standards and certifications done by other governments, for example the US FEDRAMP scheme.

Further the requirement to be on the CCSL is unclear and seemingly applied randomly. For example, there is no requirement for CCSL certification for DNS services to government but there is for email

- To streamline the ability for other agencies to adopt SaaS solutions, there should be the ability through the Digital Marketplace to market that their solution is built on top of IRAP-assessed infrastructure and that the software layer has been assessed by an agency against the ISM.

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<p>security screening services. In another example, ASD was unable to advise whether a service provided was required to be assessed under the CCSL scheme. After months of no action, the agency seeking the service had no choice but revert to an in-house, arguably less secure solution.</p>	
<p>Value for Money</p> <p>Value for money is increasingly equated with 'cheapest'. This creates a perverse incentive for the market to adopt a 'race to the bottom' mentality.</p> <p>This inhibits creative problem solving and undermines innovation. At its most extreme, industry respondents forward responses that are close to unprofitable and then hope to grow the scope of the contract after winning the tender. This leads to inevitable tension on both sides.</p> <p>The approach particularly disadvantages resellers who, although they may add another layer of value to the service/product are outbid on the bottom line price. Vendors express the view that they cannot afford to provide the level of service that Agencies expect as a result.</p>	<p>Example: Value for money = cost</p> <p>A member recently encountered a situation where after over a year of effort was spent assisting an agency deploy and manage a software product, they subsequently loss the contract on the basis that they were marginally more expensive than a competitor. Price was the sole determinant of the procurement decision.</p>
<p>Probity</p> <p>Current probity arrangements are poorly understood and executed. They prohibit vendors having reasonable information gathering conversations with agencies – even before a procurement goes to market. Improved guidance is required to ensure agencies have greater flexibility to engage with industry during tender processes.</p> <p>Current processes foster misunderstandings on both sides because no one is actually talking to one another.</p>	

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<p>The objective of probity is to ensure no one participant receives special treatment or information that is not available to others. It should not be to 'lock down' communication to the point where misunderstandings occur and not clarified.</p> <p>While agencies perceive probity as reducing risk, done badly it actually adds risk to the procurement outcome.</p>	
<p>RFPs</p> <p>The complexity and size of Request for Proposals is often a major disincentive to smaller organisations. Larger industry players carry 'response teams' whose jobs are solely to coordinate tender responses; this is an overhead that smaller organisations cannot carry and even larger organisations are struggling to justify.</p>	<p>Example 1: DTA marketplace</p> <p>Members have pointed out the irony of the DTA marketplace process – billed to be a new system to reduce the burden of interacting with government, the process was made more difficult for businesses with multiple skillsets and staff required to address each skillset separately.</p> <p>Example 2: Lack of Digital 'Savviness'</p> <p>Advised by a member of a tender released by the National Archives (badged to be leading a digital first strategy) who was advised by the agency that they were unsuccessful in their bid because the agency couldn't read their case studies because these were links to the case studies on our website, and they had printed the tender to review it.</p> <p>Recommendations for Change</p> <p>Simplifying tender documentation or using pre-qualification approaches to streamline the information required from industry for every tender would go a long way to opening up the market to new vendors.</p> <p>Avoid detailing the desired solution to the 'nth' degree. More focus should be put on detailing the problems trying to be fixed and allowing industry to be creative</p> <p>A focus on outcomes would simplify the RFP documentation; and would also take away the current game of 'the win price', where every respondent is trying to meet a 'price point' on inputs against the requirements.</p>

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Inclusion by Agencies of the business case justification or business background of the Tender when going to the market would provide Industry with the broader intent of the solution/project and allow for alignment of the response to business outcomes and encourage broader value-added proposals.

Embrace open competitive frameworks to innovate and drive value for money outcomes. The fact that many ICT projects can be multifaceted should not be used as an excuse for restricting tenders, instead it should be seen as an opportunity to seek innovative and progressive ideas from the market, including from small and large suppliers. There are options for opening up tender processes such as a planned staging of ICT projects or the encouragement of joint/partnered proposals and more sophisticated options such as some form of 'package' bidding, where process rigidity takes a backseat to competitive dynamics and innovation.

Prizes not procurement

One of the ways the US government is currently getting around the procurement conundrum is by offering competitions instead of RFPs - challenging the community to come up with solutions rather than paying the same suppliers to deliver pre-defined work orders.

The US government currently has legal authority to offer prizes up to US\$50 million for these competitions in lieu of procurement.

The South Australian Government recently introduced a similar scheme. The scheme makes available \$100 million worth of IT work as part of a completely open expression of interest process. This allows innovative ideas from potential suppliers rather than specifying particular services. There will also be an emphasis on locally based innovation and growth of the ICT industry.

More information on the scheme can be found at:
<http://www.dpc.sa.gov.au/news/call-innovative-ict-solutions>

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CAPABILITY	
<ul style="list-style-type: none"> • What capabilities does the Australian Government need to be able to take full advantage of digital technologies, now and in the future • In your experience, what are the biggest capability gaps in Australian Government ICT procurement? How could the Government better develop or access the capability required? • In your experience, has the governance approach used by agencies to manage large ICT projects enabled or inhibited the success of those projects 	
ISSUES	CASE STUDIES
<p>Consistency</p> <p>Members make the observation that procurement areas within Government often lack procurement operations and analysis skills.</p> <p>There is also a lack of executional consistency with some agencies unclear about what they can and cannot do in terms of executing their procurement activities.</p> <p>Vendors also have to manage a lack of consistency across states and territories in terms of procurement requirements – resulting in essentially the ‘repackaging’ of the same offering. Repackaging of standard offerings inevitably adds cost and arguably risks.</p>	<p>Recommendations for Change</p> <p style="color: red;">Members have identified the value of ‘Piggy-backing’ between State and Federal panel arrangements.</p>
<p>Contractual arrangements</p> <p>Notwithstanding agreed pre-qualification processes and requirements, where a vendor is successful in a bid they still need to separately negotiate contract arrangements – all of which typically differ across agencies.</p>	<p>Example: Misalignment of requirements and nature of the procurement</p> <p>In 2014 the Department of Finance flagged it was introducing new Model Security Clauses. AIIA provided details comments from members highlighting flaws with the proposed legislation, including that it required insurances not then available to the market, introduced a heavy compliance and administrative burden on vendors, particularly SMEs and lacked a risk based approach to addressing the issue of cyber security.</p>

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Contract arrangements do not match what is actually being purchased. The risk/reward balance is typically disproportionately loaded against vendors. As well as adding cost to offerings, innovation is invariably stifled.

We understand risk profiles for projects differ, but the starting point for Commonwealth in all instances is unlimited liability, high insurance level requirements and IP ownership. This has no regard to the nature of the work to be done, the changing nature of the business and service environment and is arguably an abrogation of risk by the Commonwealth.

It is also out of step with best practice across the States and Territories where IP is retained by the supplier (as appropriate), liability negotiable relative to project risk and the roles and responsibilities of the respective purchaser and supplier; and insurance levels relative to the nature and scope of the project.

Two issues emerged.

- First, the Monday after the request for comments to the draft legislation closed, the same, unamended clause was included in the proposed Cloud panel contract. Industry fairly interpreted this as a less than genuine consultation process.
- Second, despite several emails/correspondence to the area requesting feedback regarding consideration of the comments made by industry, nothing has ever been received.

The process of engagement was neither transparent nor genuine.

Recommendations for Change

Build flexibility into contract terms. While we recognise that government may have a range of set 'terms', it is important to recognise that they may not fit every situation.

In terms of IP should reside with the provider as standard and a license for exclusive use provided to the client to fulfil their requirements.

Development of short form contracts for low value contracts and/or SME engagement to reduce cost and complexity for both industry and government.

Understanding of Commercial realities

Procurement arrangements reflect a poor understanding of the commercial realities of private sector business – both in terms of the need to drive revenue and deliver profits as well as manage risk.

An effective and competitive private sector is crucial to Australia's growth and national competitiveness agenda. Australia needs to build and support strong businesses with robust, competitive and quality product and services. It is naïve to expect that business will accept liabilities for risks they cannot control – that they have no capacity to control or for

Example 1: We sometimes get agencies demanding free support for products they have installed contrary to our advice. Generally they are trying to use it for a purpose it is unfit for or not designed for and then blame the vendor when it does not work.

Example 2: We get agencies that request a quote for products and specify the price they wish to pay – then back out claiming the price is too high.

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them to provide their offerings without reasonable profit margins.

The nature and the complexity of the procurement and contract processes inevitably results in some SMEs accepting more risk than they can manage and mitigate – just to get the work.

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CULTURE	
<ul style="list-style-type: none"> • How does culture influence the Australian Government's approach to ICT procurement? What sort of culture change would better support innovative ICT services and get more SME and startups working with the Government? • What experience have you had with 'partnering' with the Australian Government and what is required to do it better? 	
ISSUES	CASE STUDIES
<p>Aggregation of tenders</p> <p>AllA is concerned that aggregation of product/service tenders reduces/removes the ability of SMEs to engage in the government procurement market.</p> <p>SME members report being locked out of tenders due to the specificity of agency specifications.</p>	<p>Example: Proposed changes to the Capability Acquisition and Sustainment Group (CASG), Defence Panel</p> <p><i>While the following situation was averted due to intense advocacy from AllA members, it highlights industry concerns regarding the disparate approaches to procurement across government, the lack of insight into the commercial realities of business and the overall lack of regard to effective competition and innovation in efforts to simply make the job of the agency more streamlined and 'easier'.</i></p> <p>Late last year AllA members were advised of the intention of the Department of Defence to restructure its long standing CASG Panel to essentially only allow for a handful of large businesses to bid for work. It was envisaged that these businesses would subsequently sub-contract tasks/opportunities to SMEs.</p> <p>As raised with the Department at the time, this would not only reduce SME access to government procurement work but also reduce the profitability of SMEs required to pay a margin of their fee back to the sub-contracting business.</p> <p>We were vehemently advised by members that this had the potential to threaten the viability of thousands of Australian small businesses, especially in South Australia, NSW, South-East Queensland and the ACT.</p>

AIIA Response Matrix: ICT Procurement Taskforce Consultation Paper

<p>'Them and Us' Mentality</p> <p>Members report a “them and us” approach by government agencies. They report significant difficulties in attempts to work collaboratively with government staff. They report that in some instances agency staff adopt from the outset a need to “blame someone” in the event that something might go wrong.</p> <p>In other instances, where a senior manager does not agree with a project outcome, they will resist working with the vendor to develop a solution that fully meets government requirements. Members express frustration at the position they find themselves in - with agency staff abrogating their decision making responsibilities and instead shifting that risk to the vendor.</p>	<p>Recommendations for Change</p> <p>Require high level ownership or leadership within Government or Agencies to show commitment to a project or ICT strategy.</p>
<p>Innovation Interface</p> <p>At a time when Australia needs to be looking for opportunities to drive the innovation required to deliver increased productivity improvements and growth, current arrangements stifle innovation – by Government and by industry.</p> <ul style="list-style-type: none">• A major frustration of members is that notwithstanding the deep technology and business expertise and experience of industry, agencies issue tenders that request specific technology solutions. This is in the absence of articulating clear business requirements and the business outcomes that need to be achieved.• There is no appetite for innovation and no process to engage industry early to test if innovative solutions are available and viable. <p>There is no flexibility to stand up Proofs of Concept and agile digital solutions on a just in time basis - having regard to rapidly emerging new technologies and service models.</p>	<p>Example 1: AIIA has a member that could not get on a Federal Government Panel – notwithstanding that it was doing business with the US Department of Defence in an area of sophisticated security management using state of the art new technology.</p> <p>Example 2: A member was invited to respond to a RFT for a proof of concept. The business description of the problem and the outcomes to be achieved was end user focussed and a candidate for an innovative solution but when the tender documentation was let not only prescriptive of the solution but also the technology. Major technology vendors decided against bidding on that basis of the inherent vendor bias in the RFT.</p> <p>Example 3: An agency entered into a contract with a company to jointly develop an innovative solution to a business problem. The agency then neglected to contribute to the project, including providing important business requirements and metrics, effectively sabotaging success. After many months of unhappiness on both sides the contract was cancelled on the basis that the provider was unable to provide the product.</p>

AIIA Response Matrix: ICT Procurement Taskforce Consultation Paper

Recommendations for Change

The innovation interface with industry needs a fundamental overhaul. PM&C and the DTA should, through the Digital Marketplace and other mechanisms, encourage agencies to specify the problem they are looking to solve or the outcome they are looking to deliver, rather than a detailed list of technical requirements (technical capability match should be a secondary requirement as opposed to the primary).

Initially this will need to be managed as a centralised process as agencies build capability around engaging the industry more effectively. Having a core group that run this process will also go some way to rebuilding trust with industry that Government is willing to engage in a true innovation dialogue.

Maybe some form of concept viability process where agencies test their assumptions and solicit feedback in place of the usual industry consultation process (which is largely an agency telling the market what they are proposing to do, rather than seeking feedback on a proposed model)

We believe It has been suggested that there may also be merit in Government establishing a civilian version of Defence's RPDE to quickly assess (1) the merits of technologies offered by industry and (2) its applicability to agencies.

Additional Comments and Actions for Effective ICT Procurement

The following provides additional thoughts/actions in support of developing and operationalising an effective ICT procurement framework.

Procurement process should be framed within a broader policy context.

- A mature procurement framework recognises that procurement plays a key role in industry development, driving innovation and facilitating value for money.

Greater clarity of the whole of government's strategic ICT directions.

- In practice this requires eliminating the silos which currently exist at the agency level around ICT and ICT requirements. If industry had a better understanding of the government's ICT and Business directions it would be better positioned to provide innovative ideas in a more agile manner and able to invest in the capabilities needed to contest future work. This would particularly assist local smaller businesses that need to plan and manage resource and capability requirements across projects.

Outcomes focussed

- Under a strong governance model, the focus of procurement must be more on outcomes, benefits identification and realisation rather than specifying deliverables.

One-stop pre-qualification or certification process

- One-stop pre-qualification or certification process, where matters such as insurance certificates, company ownership details and ABN's (common to all tenders) are collated so that the same information does not need to be repeated every time a tender is submitted.

Effective industry engagement

- Effective industry engagement to facilitate reduced procurement cycles and minimize the cost and risk of tender periods becoming delayed and delivery times condensed.

Proactive industry engagement

- Proactive industry engagement to assess, well in advance of competitive tendering processes, the market's ability to deliver value for money and innovative solutions to (i) help inform and articulate the requirement development process, and (ii) understand the broader capabilities of both domestic and overseas suppliers, ensuring all relevant players are provided the opportunity to participate and compete.

Direct engagement with industry in the development of core contractual materials.

- This process has been adopted in varying degrees by the State Governments in NSW, Victoria, Queensland and South Australia. The process identifies and resolves potential contractual issues from the outset and avoids the need to negotiate contracts separately and with individual suppliers.
- In the spirit of transparency and improving the capability of vendors, a more structured, proactive and informative approach needs to be adopted for post tender outcome briefings with unsuccessful vendors.

Change costing models

- Costing models used by agencies should be updated to better reflect new business models for ICT product and service delivery. Encouraging government agencies to shift to an OPEX (rather than CAPEX) based procurement model:
 - enable agencies to more efficiently and regularly refresh devices/assets (rather than sweating assets for 3-4 years+); and

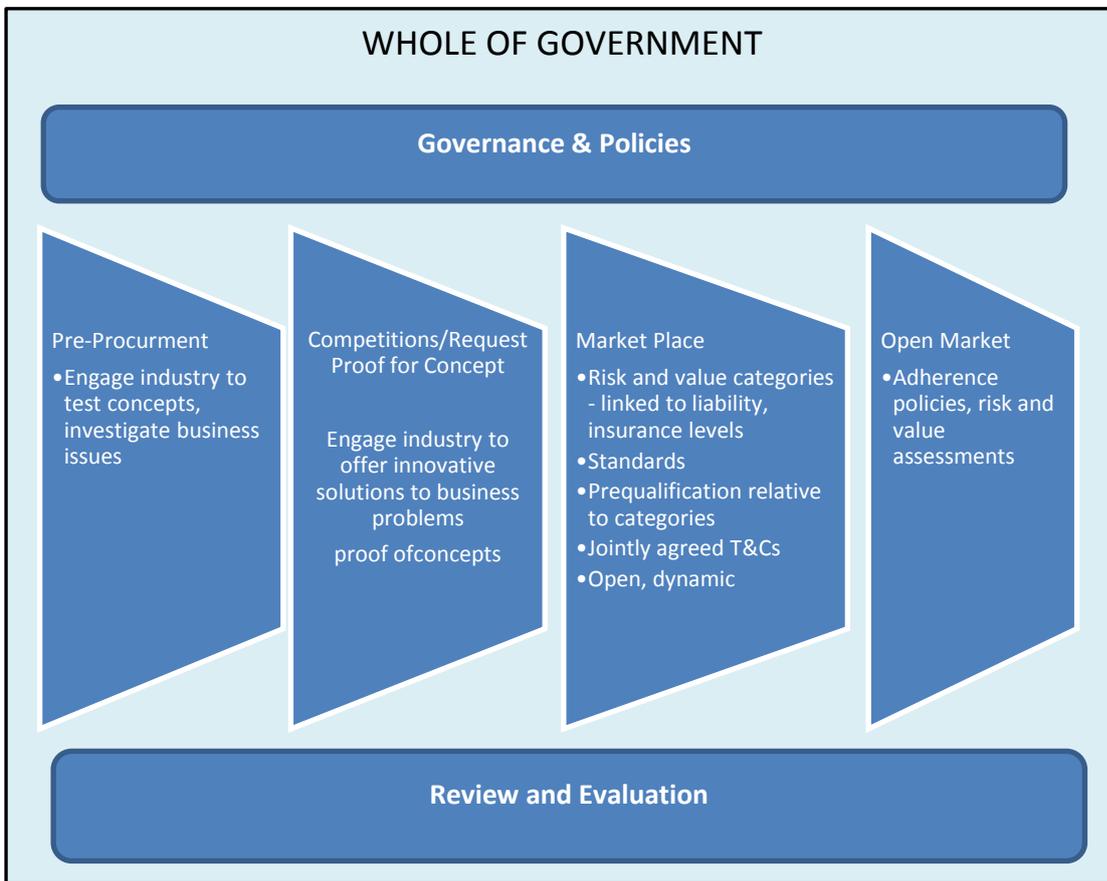
- reduces the overall cost of ICT expenditure for agencies – only what is used is paid for. Moving to an ‘as a service’ model also reduces the need for internal IT support and reliance on unnecessary or legacy hardware and software.
- Whole of life costs for assets must be incorporated into cost models - not just the cost per unit or device.

Key Performance Indicators

- AllIA strongly encourages that government procurement process should operate within a formally determined review and evaluation framework, including a set of well-defined KPIs. An example of procurement KPIs developed by the OECD is attached at Appendix 2.
- To gauge the level of perceived ‘experience’ of collaboration as part of procurement processes, both purchasers and suppliers could complete a simple qualitative survey.

Market place

- All of the above could be drawn on to build a competitive, agile procurement framework, incorporating the following broad framework. Importantly it is underpinned with an evaluation and review process to ensure the model retains its integrity.



Appendix 1: TechUK Concept Viability Model

Concept Viability enables structured industry engagement before an initiative is taken to market in a competitive tendering process. This model was developed and is currently operated by TechUK. By providing an opportunity for vendors to work on real business 'problems' and identify and test the feasibility of potentially innovative solutions, the model informs procurement processes and drives efficient, effective and innovative business solutions leveraging technology capability. While not relevant in all cases, such a model could support more difficult and complex procurement initiatives.

The key benefits of Concept Viability for the Customer include:

- Provides a one-to-many engagement with a broad range of technology companies, including SMEs and larger more established suppliers.
- Provides a structured, well defined process to facilitate engagement with industry in a non-competitive, probity-free environment.
- Raises the profile of the procurement opportunity to a more diverse supplier base.
- Helps customers understand how the market can help contribute to solutions, and where there are opportunities to exploit innovation.
- Provides early visibility of risks and challenges before investment has been made.
- Allows the pros and cons of different technical, commercial and delivery approaches to be explored.
- Demonstrates a mature procurement approach.

The key benefits of Concept Viability for the Supplier include:

- Provides a defined process for industry to engage with Government on a level playing field.
- Provides early insight into business opportunities and the strategic drivers behind them.
- Issues or concerns can be raised without companies feeling their position in the procurement process is threatened.
- Emerging technologies and associated risks can be discussed openly, allowing suppliers to manage expectations about what the market can contribute.
- Suppliers can decide at an early stage whether to bid for work, saving significant time and financial resources.
- Allows suppliers to interact with potential supply chain or consortia partners.

Concept Viability is designed to inform, rather than replace, other proof of concept or feasibility work. It enables procurement strategies to be aligned to ensure that when the customer goes to market they are clear about the feasibility of different solutions and the technology options available to them. It also opens up options for potential suppliers to put forward truly innovative solutions.

APPENDIX 2: Performance Indicators for ICT Public Procurement

During the last two decades public procurement has undergone profound changes. Policy makers, academics and practitioners alike share the broad view that public procurement has evolved from a clerical signoff-ridden set of activities to a strategic tool to enhance efficiency in public organizations, to regulate markets and promote sustainable development.

As the OECD points out, the problem is that most discussions about the outcomes of public procurement strategies boil down to estimating the value of savings from competitive procedures and/or from streamlining processes by using electronic means, although it is far from being clear what commonly shared methodology on how to compute savings has been reached.¹

The OECD Discussion Paper on Public Procurement Performance Measures² identifies a range of performance indicators and provides examples of performance measures under each category. Key indicators relevant to ICT procurement are outlined below.

1. Strategic leadership

- a. Existence of a strategy or strategies explicitly stating the main objectives of procurement processes
 - i. Number of distinct objectives listed in the strategy (for instance, savings/value for money; sustainability; participation of SMEs; innovation; alignment to broader government or agency business/stakeholder strategy)
 - ii. Existence of a prioritisation of these objectives in the strategy
 - iii. Existence of mandatory targets (e.g. to achieve socio-economic and/or environmental objectives)
 - iv. Number of different participants (namely, different institutions at the national level or different organizational units at the single public entity level) consulted in the development of the strategy.
- b. Adoption of a clear process to collect and publish data on the performance of public procurement processes
 - i. Number of different public organizations (or organizational units in the same organization) gathering data on procurement processes or to which public buyers (or purchasing units in the same organization) are obliged to provide data on procurement processes
 - ii. Number of different public organizations (or organizational units in the same organization) publishing statistics on procurement processes
- c. Existence of a specialised unit or institution in the government making formal assessments of the extent to which procurement processes achieved their intended objectives (as listed possibly in the strategy)
- d. Percentage (value) of procurement spending in goods / services / civil works that is benchmarked. Benchmarking here means using the outcome of a class of procurement processes to assess the goodness of the system (at the national or the single organization's level)

2. Savings

- a. Average percentage savings through open competitive procedures (excluding e-auctions).
- b. Average percentage savings through the use of e-auctions. Savings are to be computed as the (percentage) difference between the reserve price and the awarding price, where the level of the

¹ OECD, Discussion paper on public procurement performance measures, 2012, available at: http://www.oecd.org/gov/ethics/Discussion%20paper%20on%20public%20procurement%20performance%20measures%20GOV_PGC_ETH_2012_1.pdf

² As above

reserve price should in principle be aligned to the purchasing cost through a direct negotiation with the most easily available supplier.

3. SMEs participation in procurement

- a. Average percentage (both number and value) of procurement contracts that are awarded to SMEs
- b. Positively discriminatory policies in favour of SMEs and other classes of firms (according to the nature of ownership, geographical location etc.)
 - i. Does public procurement regulation allow for set asides? (YES/NO). "Set asides" are public contracts that can awarded only to a specific family of firms (say, SMEs, niche skilled firms etc.).
 - ii. Number and value of requirements set aside for SMEs
- c. Other measures to facilitate access of SMEs to procurement markets
- d. Existence of preferential financial treatment of SMEs (e.g. waiving fees)

4. Efficiency of procurement processes

- a. Existence of a central purchasing body or bodies at central and/or local levels or shared services across public contracting authorities (YES/NO)
 - i. Fraction of the overall value of procurement contracts awarded independently of any other contracting authority
- b. Percentage of public contracts awarded through centralized/joint procurement procedures across contracting authorities
- c. Number of operating e-procurement platforms at the national and the local level and average value of public contracts awarded by using the functionalities of each platform
- d. Average number of functional Full-Time Equivalents (FTEs) used process until contract award in i) open; ii) restricted; and iii) negotiated procedures

5. Openness of procurement processes

- a. Percentage (both number and value) of procurement call for tenders being published online
- b. Percentage (both number and value) of procurement contracts awarded by means of non-competitive procedures (that is, exceptions to competition where the procuring entity contacts a single supplier in order to solicit a proposal or a price quotation without competitive tendering)
- c. Percentage (both number and value) of procurement contracts for which foreign suppliers are NOT allowed to bid

6. Effectiveness/quality of procurement processes

- a. Frequency of complaints from the publication of the call for tenders until the end of contract execution
 - i. Frequency of complaints until contract award
 - ii. Frequency of complaints after contract award
- b. Percentage (both number and value) of competitive processes awarded by means of the value for money criterion (in which both technical and financial dimensions are considered in the award criteria.)

7. Professionalism in the procurement function

- a. Percentage of public officials working on procurement-related tasks (whose job profile includes some procurement-related duties)
 - i. Percentage of contractors vs. full-staff procurement officials
 - ii. Percentage of public officials working full time on procurement-related tasks

- iii. Existence of inter-disciplinary teams to bring together different expertise
- b. Average number of years of experience of procurement officials
- c. Percentage of full-staff procurement officials holding a higher level of education
- d. Average number of hours of training on procurement topics received by each full-staff procurement official in the previous year
- e. Existence of a certification program (either compulsory or voluntary) for procurement officials
 - i. Percentage of officials having completed a certification program

8. Relationships with suppliers, end-users and other stakeholders

- a. Average number of weeks (or days) for paying suppliers in practice
 - i. Percentage of late payments of suppliers in previous year
- b. Percentage (both number and value) of contracts that are entirely cancelled ("rescinded") during the contract execution
- c. Existence of recording programs on suppliers performance
- d. Existence of suppliers' white lists or other reputation mechanisms
- e. Regularity of training programs / informative session specifically designed for suppliers /suppliers association in previous year
- f. Level of "suppliers satisfaction index" (if a measurement system is in place such the suppliers satisfaction surveys)
- g. Level of "customers satisfaction index" (if a measurement system is in place such as the customers satisfaction surveys)
- h. Adoption of other systems different from customer satisfaction surveys to gather end-users' feedback
 - i. Adoption of solutions involving civil society or other non-government stakeholders in the oversight of the contract management