Technology Services Procurement

REVIEW OUTCOMES

Tasmanian Government

Contents

Procurement simplification for technology services

The Department of Treasury and Finance is undertaking work to streamline procurement processes for technology services. This is part of ongoing work to simplify procurement following the release of new Treasurer's Instructions on 1 July 2019, issued under the *Financial Management Act 2016*.

Treasury's technology services procurement simplification initiatives respond to criticism that:

- the contractual framework for ICT contracting, the Government Information Technology Conditions, is 24 years old;

- due to its age, increased time is required to negotiate and amend clauses to reflect current practice, which is inefficient for buyers and sellers;

- the default provisions relating to the unlimited liability of suppliers under the Government Information Technology Conditions are unfair to small businesses;

- the current non-mandatory panel for ICT professional services suppliers is not properly understood by agencies or suppliers; and

- there is no ability (other than via a public tender process) to add new suppliers to the ICT Professional Services Panel within the contract period.

Treasury has undertaken to address the above criticism by reviewing and identifying potential replacements for:

- the Government Information Technology Contract (GITC); and

- the ICT Professional Services Panel (the Panel).

Treasury's review of the GITC contract and the ICT Professional Services Panel is aligned to the Government's strategy for digital transformation - *Our Digital Future,* released by the Minister for Science and Technology, Michael Ferguson, in March 2020. A major action of the Strategy is to streamline government processes for the procurement of technology services.

Background

CURRENT FRAMEWORK

Government Information Technology Conditions

First established in 1991 the GITC is a national framework of standard legal documentation that was developed in cooperation with industry representatives and government. The GITC was designed to assist government buyers and industry suppliers to develop contracts for the supply of information technology products and services in the most efficient and effective manner. GITC version 2 was subsequently released in 1995, which is the version currently used in Tasmania.

Other State governments and the Commonwealth have since moved to more contemporary versions of the GITC, such as Procure IT or bespoke contract arrangements.

In Tasmania, agencies entering into contracts for the supply of ICT goods and services must use the GITC Head Agreement, with limited exceptions.

ICT Professional Services Panel

Treasury established the whole of Government ICT Professional Services Panel on 1 October 2017.

There are currently 64 suppliers across six specialised service categories on the Panel. The term of the current contract expires on 30 June 2021 and an additional (final) two-year extension option is possible.

The aim of the Panel is to streamline procurement processes for both agencies and service providers. Agencies can invite offers directly from the 64 panel members to procure small to medium sized ICT services valued between $50 000 and $250 000, without undertaking a quotation process.

Given the non-mandatory nature of the Panel, agencies can also purchase ICT services by undertaking procurement in accordance with the standard procurement processes as set out in the Treasurer's Instructions, in circumstances where the Panel does not meet their requirements.

The Panel includes the following ICT software and service categories:

- Business Analysis;
- Application Development Services;
- Infrastructure Technical Services;
- Operational Services;
- Security Services; and
- Project Management.

The GITC is the contractual framework underpinning the Panel. All Panel members have entered into a GITC Head Agreement and agencies place GITC Orders when procuring from the Panel.

DISCUSSION PAPER

On 29 October 2019 the Department of Treasury and Finance released the *Technology Services Procurement Review - Discussion Paper* (Discussion Paper) for consultation.

The Discussion paper sought feedback on proposals for replacement of the GITC and the ICT Professional Services Panel. The consultation period closed on 29 November 2019.

There were 27 submissions received in response to the Discussion paper. Organisations including Commonwealth, State and Local Government as well as a number of private organisations responded to the paper.

There was general agreement that the existing arrangements no longer reflect the dynamic and agile nature of the ICT industry.

The Discussion Paper is available via the Government's Purchasing Website at www.purchasing.tas.gov.au/buying-for-government/resource-library/items-of-interest.

Discussion Paper Feedback

Feedback on the GITC

The majority of the submissions supported replacing the current GITC framework with a more contemporary alternative. Common themes from the feedback received included:

- *the GITC framework is complex, protracted and is difficult to understand;*

- *it is out of date and is no longer fit for purpose;*

- *it does not cater for new and emerging technologies such as cloud-based software and software as a service and can require significant modification of the contract terms to be used for these services which can cause significant delays;*

- *the current liability arrangements are too high in many situations. There should be flexibility and discretion available for agencies to vary this amount based on a risk assessment for the services being procured. This would alleviate the ongoing impost of insurance premiums on suppliers and associated costs on low-moderate value contracts; and*

- *the current framework is generally inflexible, inhibits choice and innovation.*

Submissions also indicated a range of other specific issues concerning the GITC.

Overall, there was general consensus that a review of the current GITC framework is warranted.

Feedback on the ICT Professional Services Panel

The most common criticism of the existing Panel is the inherent lack of flexibility and the inability to add new participants on a more regular basis. Most of the respondents would prefer to see arrangements with more frequent review, allowing new participants to be added more regularly.

Consistent themes from feedback relating to the Panel included:

- *that the Panel precludes new entrants for a significant period and does not reflect the environment within the ICT industry;*

- *pre-qualification is impossible for technologies that emerge after the tender process has occurred; and*

- *that the existing arrangements encourage incumbency, are non-responsive and do not support the Government's objectives of finding innovative solutions to technology challenges.*

Overall there was general consensus that a review of the current ICT Professional Services Panel is warranted.

Feedback on the options outlined in the Discussion Paper

Mandatory Panel option

Only two of the submissions indicated a preference for the implementation of a mandatory panel option as proposed in the Discussion Paper. Concerns about this option essentially mirrored those related to the existing arrangements. In addition to concerns raised by respondents about flexibility and accessibility, one respondent commented that:

> *'panel arrangements that have a market place style view hamper competition as the silent auction approach favours those who have the lowest prices, not the best service'.*

Multi-use list option

The proposal to replace the Panel with a multi-use list received strong support with about half of the submissions providing support for this proposal.

A number of the submissions supported the potential replacement of the panel with some form of multi-use list / prequalification arrangement, comments included:

- *the multi-use list would allow for new entrants to be added more easily;*

- *it would provide greater flexibility for Tasmanian agencies to procure services that meet its needs;*

- *it would allow for flexibility of emerging technology and new products; and*

- *the approach outlined for the multi-use list is in all respects better aligned with the dynamic and fast moving nature of the ICT industry.*

There were also concerns raised with the proposal to replace the Panel with a multi-use list. These included:

- *asking Government agencies to use the market approaches outlined in the Treasurer's Instructions would be counter-productive when Professional Services are in-scope;*

- *increased administrative burden on agencies and suppliers; and*

- *the paper's list of advantages for a multi-use list are not significant improvements in comparison to using the Panel or normal procurement process.*

The positive feedback received in relation to the proposed multi-use list was consistent with the negative feedback regarding the existing and/or proposed Panel. There is a desire for a model that:

- *allows greater flexibility to add new entrants;*

- *has an ability to capture new and emerging technologies; and*
- *is generally better aligned with the dynamic nature of the ICT industry.*

Ongoing consultation

Since the release of the Discussion Paper, Treasury has continued to engage with TasICT, suppliers, agencies and the Digital Transformation Agency, to seek further comments on the options identified in the review.

Options for Change

REPLACEMENT FOR THE GOVERNMENT INFORMATION TECHNOLOGY CONTRACT

During the review, there has been overwhelming support for a replacement of the GITC.

Treasury and the Office of the Crown Solicitor (OCS) have reviewed suitable alternatives for the GITC, including:

- the eServices contract (Victoria) (eServices);

- the Queensland Information Technology Contracting framework (Queensland) (QITC);

- the Procure IT framework (NSW) (Procure IT); and

- the Commonwealth Digital Transformation Agency Digital Sourcing framework (Commonwealth) (DTA Sourcing framework).

The assessment took account of useability, adaptability, market acceptance, balance, risk position, key positive aspects and key issues, gaps and shortcomings.

Each of the four contract suites has positive attributes and negative attributes.

The review identified that:

- the QITC and eServices contract suites are more user friendly and versatile than the Digital Sourcing framework and could be adapted to suit the requirements of the Tasmanian Government;

- the Procure IT contract suite is currently under review by the New South Wales Government and may soon become out dated;

- the eServices contract suite is well suited to projects of low to medium risk and complexity, whereas QITC is better suited to projects that are of higher risk and complexity (although not very complex or high risk); and

- none of the contract suites are suitable for very complex or very high risk ICT procurements.

Treasury/OCS Recommendation

The OCS and Treasury recommend that a version of the QITC contract suite, modified to suit the Tasmanian context, be implemented to replace the existing GITC.

The QITC contract suite is adaptable to suit various products and services, transaction value and risk. The General Contract Conditions and Comprehensive Contract Conditions are accepted by government and industry as balanced, standardised terms to be used, without many amendments, for ICT procurements.

Treasury will continue to work with OCS to modify the QITC framework for Tasmanian conditions.

REPLACEMENT FOR THE ICT PROFESSIONAL SERVICES PANEL

During the review, Treasury refined the options identified in the Discussion Paper and analysed three alternatives to the current the ICT Professional Services Panel:

- a mandatory multi-use list for procurements valued at $100 000 or more (with the option to use for procurements valued under $100 000);

- a mandatory open or 'evergreen' panel for procurements valued at $100 000 or more (with the option to use for procurements valued under $100 000); or

- no centralised panel or multi-use list.

The alternatives identified above differ slightly to the options included in the Discussion Paper. The work Treasury has undertaken since the release of the Discussion Paper has highlighted the ability to consider a more flexible 'panel' including the ability to add new suppliers on an ongoing basis. The potential for there to be no centralised panel or multi-use list was also not identified as an option in the Discussion Paper.

Treasury assessed each option, against the following objectives:

- flexibility, including the ability to add suppliers in response to changes in market conditions and technology;

- consistency with Tasmanian Government procurement policies, including the Buy Local Policy;

- simplification of procurement processes for both buyers and sellers;

- encouraging competition, to provide a diverse range of suppliers with the opportunity to win Government contracts;

- maintaining value for money; and

- costs of establishing and maintaining the arrangement.

Each of the options assessed meet these objectives, but to differing degrees.

Option 1 – Technology Services Multi-Use List (Mandatory)

This model was one of the options identified in the Discussion Paper and received strong support from respondents.

Under this model a multi-use list (the List) of suitably qualified suppliers would be established to provide ICT Professional Services to the Tasmanian Government.

Thresholds

While the scope of the current Panel is the provision of ICT professional services valued between $50 000 and $250 000, a multi-use list could cover all technology services procurements valued at $100 000 or more (with an option to use the List for procurements valued at under $100 000).

Establishing the List

Under this model Treasury would conduct an open process initially to invite suppliers to apply to participate. Each application would be assessed against a set of identified criteria to determine suitability.

Suppliers assessed as meeting the criteria become registered to provide services to the Government in a range of categories (for example, the categories that exist under the current Panel). The List also affords the flexibility to add additional categories at any time. Each of the categories would essentially operate as a stand-alone list.

Assessment/Evaluation criteria

Assessment criteria may include:

- Confirmation of legal entity status
- Assessment of financial viability
- Demonstrated experience relevant to registration category
- Confirmation of relevant insurances
- Satisfactory reference checks

Adding new suppliers/categories

The List would be open on an ongoing basis and suppliers would be able to apply for registration at any time. A notice would be continuously available on the Tenders website for potential registrants to access relevant information including application documentation.

The List would also afford the flexibility to add new service categories on an ongoing basis. If a new category is to be added to the List, existing registrants would be provided with an opportunity to register in that category.

Procuring from the List

Once the List is established agencies can undertake subsequent streamlined processes to procure the required services from registrants on the List.

The approach to be used for subsequent procurements is determined by the value of the services required, for example:

Value of services required	Approach to the List
Less than $100 000	Not mandatory to procure from the List. Agencies may choose to do so and the method used is at their discretion.
$100 000 and above but less than $250 000.	Agencies seek three (or more) quotes from registrants on the List in relevant categories.
$250 000 and above	Agencies seek submissions from all registrants on the List in relevant category(s), through a closed request for tender.*

*The potential for additional flexibility to allow for open tendering in certain circumstance will be considered during implementation.

Additional Features

Specific and simplified Request for Quotation and Request for Tender templates would be available for buyers procuring services from the List.

Advantages and Disadvantages

Advantages	Disadvantages
Suppliers can apply to be registered on the List at any time. This would address the most significant criticism of the current Panel.	Ongoing administration required for application and assessment processes.
There is no limit to the number of suppliers who can register on the List.	Buyers required to undertake subsequent procurement process.
Potential for better value for money outcomes with competitive process undertaken.	Discount or pricing not assessed for registration on the List and so not fixed.
Some simplification of procurement processes.	Suppliers required to respond to individual RFQ / RFT requests.
Alignment with Buy Local Policy - economic and social benefits assessed for each procurement.	
Relatively easy to establish in the short term.	
Relatively cost effective to administer.	

Implementation timeframe

This option can be implemented prior to the expiry of the existing panel (30 June 2021). However, some features of the List would continue to be developed following the establishment of the List, including streamlining the processes (including implementing electronic solutions) for subsequent approaches to the List.

Option 2 – Technology Services "Evergreen" Panel (Mandatory)

A mandatory closed panel was also one of the potential options identified in the Discussion Paper. There was little support from respondents, with only two identifying a preference for it. Submissions expressed concerns with the inherent lack of flexibility of a panel, as new suppliers are effectively locked out of opportunities to contract with the Tasmanian Government for supplies covered by the panel.

In response to feedback from stakeholders about the need for a more adaptable and flexible panel, Treasury has identified an alternative panel arrangement, that is continuously open to new suppliers (ie, an 'evergreen' panel).

The Digital Transformation Agency's Digital Market Place is an evergreen panel for technology services, with approximately 1 500 suppliers registered to provide ICT services to the Australian Government and other users. Suppliers are registered in a range of different categories and buyers can approach the Market Place a number of different ways to engage suppliers. During the review, Treasury consulted with the DTA about potential access to the Digital Market Place. However, there are a number of challenges in embedding the Tasmanian Government's procurement policies, including the Buy Local Policy, in the Digital Market Place. This option was not progressed during the review.

One option that would be available in Tasmania is to develop a bespoke evergreen panel that is consistent with Tasmania's procurement framework.

Under this option a panel of suitably qualified suppliers would be established to provide technology professional services the Tasmanian Government.

Thresholds

While the scope of the current Panel is for ICT professional services valued between $50 000 and $250 000, an evergreen panel could cover all technology professional services procurements valued at $100 000 or more (with an option to use the Panel for procurements valued at under $100 000).

Establishing the Panel

Under this model Treasury would conduct an open tender process initially to invite suppliers to tender for inclusion on the Panel.

A Tender Evaluation Group would be established to conduct a full tender evaluation process which would include assessing the submission against identified and benchmarked evaluation criteria including a full value for money assessment.

Assessment/Evaluation criteria

The evaluation criteria for the Panel model would necessarily be more detailed than the criteria for the List and may include:

- Confirmation of legal entity status
- Assessment of financial viability
- Demonstrated experience relevant to registration category
- Assessment of Technical capability
- Assessment of supplier's response to Economic and Social Benefits Test
- Assessment of supplier's pricing
- Confirmation of relevant insurances
- Satisfactory reference checks
- Relevant accreditations
- Others

Suppliers determined to have satisfactorily met the benchmarked criteria would enter into a contract to become registered on the Panel to provide services to the government in a range of categories (similar to those that exist under the current Panel).

Each of the categories would essentially operate as a standalone Panel.

Adding new suppliers/categories

Similar to the List, the Panel would be open on an ongoing basis and suppliers would be able to apply for registration at any time. A notice would be continuously available on the Tenders website for potential registrants to access relevant information including Request for Tender documentation.

The process for adding additional suppliers under this model would necessarily be more involved than would be the case for a multi-use list. An evaluation panel would need to be convened to undertake a full evaluation of each tender submission received and a more formal approval process would be required. Suppliers determined to have satisfactorily met the set of benchmarked criteria would enter into a contract to become registered on the Panel on an ongoing basis.

It would also be possible to add new supply categories to the Panel on an ongoing basis. Although as with adding suppliers, the process required to add an additional category would be more involved and would equate to subsequent full tender process to establish the new category to the Panel.

Procuring from the Panel

Subsequent procurements from the Panel would occur in a similar fashion to the arrangements in place for the existing panel. Agency buyers would directly engage suppliers from the relevant categories on the panel using formal purchase orders.

Advantages and Disadvantages

Advantages	Disadvantages
Streamlines process for buyers, allowing them to approach single providers / Panel members.	Process of adding new suppliers is considerable with a requirement to undertake a full tender evaluation for each new supplier.
Streamlines process for suppliers, no requirement to respond to multiple quotation / tender requests.	Exemption required to procure outside of the Panel.
Consistent contractual terms and conditions.	Risks buyers repeat purchasing from a singular or select few suppliers, as there is no requirement to compete for each procurement.
Pricing established through the Panel.	Value for money not tested on ongoing basis and not aligned to specific procurement.
Unlimited sellers.	Buy local considerations not aligned to specific procurement (ie, not assessing the economic and social benefits of the supply).
	Administratively more complex because of continuous tender evaluation.
	Requires additional funding to administer, through a contract management fee.
	Would take longer to establish than the List.

Implementation timeframe

It is unlikely that this option could be implemented prior to the expiry of the existing Panel (30 June 2021). Exercising the final extension to the existing Panel would be required. This would result in an implementation timeframe for the new Panel of 30 June 2023.

Option 3 – Devolved model. No centralised panel or list

This option involves the replacement of the current GITC with a new contract suite, but no specific centralised replacement for the ICT Professional Services Panel.

Under this option agency buyers would be required to approach the market in accordance with the requirements of the Treasurer's Instructions.

Advantages and Disadvantages

Advantages	Disadvantages
Consistent with procurement framework.	Does not significantly streamline procurement.
Consistent contractual terms and conditions.	Buyers required to undertake a procurement process in accordance with the Treasurer's Instructions.
Unlimited sellers.	Discount / pricing is not addressed.
Value for money established for each procurement.	Potential for inconsistencies across government in terms of procurement and engagement.
	No central agency responsible for oversight and administration of arrangements.

Comparative assessment of the options

✓ - positive

✗ - negative

○ - neutral

	List	Panel	Devolved
Flexibility	✓	✓	✓
Consistency with procurement framework	✓	✓	✓
Streamlining procurement	○	✓	✗
Buy Local	✓	○	✓
Value for money	✓	○	✓
Competition	✓	○	✓
Costs to administer	✓	✗	✓

Treasury Preferred Option

While the Panel has greater potential to streamline procurement and the devolved option is the simplest option to administer, Treasury considers that the List option is preferred because it:

- addresses the criticism relating to the inflexible nature of the existing Panel and would allow new suppliers to be added at any time;

- allows for new and emerging technologies to be captured;

- allows for the continual assessment of value for money, addressing the criticism of the existing arrangements that the lowest price is favoured over the best service;

- is less expensive to establish and administer on an ongoing basis than an 'evergreen' panel arrangement; and

- reduces the risk of buyers only procuring from a limited number of suppliers.

Next steps

Treasury will:

- continue to work with the OCS in relation to the implementation of the replacement for the GITC;

- commence steps to implement the List as the preferred replacement for the existing ICT Professional Services panel.

It is anticipated that the List would be established prior to the expiry of the current Panel on 30 June 2021.