Procure IT...The NSW Government's Answer to Information Technology Procurement

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The NSW Government is a major purchaser of information technology products and services and for this reason, it is not surprising that many information technology based businesses are interested in supplying their products and services to them. In an attempt to simplify the contracting process, increase efficiency and subsequently decrease the costs involved for both contracting parties, the NSW Government introduced "Procure IT", replacing Government Information Technology Conditions (GITC) Version 2 for information technology contracting.

This article provides a brief explanation and overview of the way that Procure IT works and relevantly outlines the NSW Government's Code of Practice for Procurement.

What is Procure IT?

Procure IT is a set of standard terms and conditions for information technology contracts, developed in 2003 by the NSW Government. It followed consultation with NSW Government clients and various members of the IT industry, including the Australian Information Industry Association (AIIA).

The standard terms and conditions that make up the Procure IT framework are designed to be agreed between the NSW Government (referred to as "Contract Authority" in Procure IT) and the Supplier (referred to as "Contractor" in Procure IT) forming an agreement ("Agreement"). Various eligible entities and persons ("Customers") are nominated and listed in the Agreement as being entitled to place an 'order' with the Supplier ("Order") under the terms of the Agreement (Customers would usually be various departments of the NSW Government that wish to purchase the relevant products/services from the Supplier). Each Order forms a separate contract

between the Customer and Supplier ("Contract").

While the terms and conditions of the Agreement between the NSW Government and the Supplier apply to all Orders placed by a Customer pursuant to that Agreement, the Order allows for some flexibility. The Customer and Supplier are able to document their agreed positions on certain provisions of the standard terms and conditions and tailor the Contract provided that any additional provisions or conditions that are inconsistent with the Agreement are approved by the NSW Government in writing.

Why has Procure IT been developed?

Procure IT encompasses what the NSW Government considers as 'commercially fair conditions', written in plain-English. It has been developed for the procurement of a broad range of IT products and services, from hardware and development services, to personnel services, systems integration services and managed services.

Procure IT will apply to new panel arrangements and GITC will apply to existing panel arrangements, until the arrangement is renewed. The NSW Department of Commerce believes that the Procure IT documentation has been simplified, shortened and has brought the GITC up-to-date to include new technologies and provide greater certainty in contractual dealings.

The Agreement and the Contract

With reference to the Procure IT framework (examined below), the Agreement between the NSW Government and the Supplier consists of:

* Part 1 – the Standard Terms and Conditions of Agreement;

* Part 2 – the Dictionary;

* Part 3 – all Schedules relevant to the Agreement; and

* Part 4 – any Modules to the Agreement specified to apply.

The Contract between the Customer and the Supplier consists of:

* all parts of the Agreement as set out above;

* Part 5 - the Order Form and details;

* the Service Level Agreement (if one has been agreed); and

* any additional conditions the parties have agreed to in accordance with the Agreement.

The Procure IT Framework

An understanding of the Procure IT framework is essential for information technology suppliers who are seeking to be successful in securing NSW Government contracts.

The Procure IT framework consists of:

Part 1 - Standard Terms and Conditions: Part 1 sets out the terms and conditions between the NSW Government and the Supplier during the term of the Agreement and as between the Supplier and Customer when the Customer places an Order.

Part 2 - Dictionary: This part lists the defined terms that feature in the Procure IT documentation. Specific terms used only in particular modules are defined in those modules rather than in the Dictionary.

Part 3 - Schedules: The Schedules provide additional provisions on particular subjects as outlined in the table at the end of this article. While Schedules 1 to 3 must be completed

by the parties, the other Schedules are only to be incorporated if they are necessary.

Part 4 - Modules: The Modules contain additional terms and conditions which are specific to particular products or services supplied by the Supplier and apply to particular types of IT procurement. Specific modules include hardware acquisition and installation, hardware maintenance services, licensed software, software support services, managed services and systems integration services (among others). The parties will agree as to which Modules are relevant to a particular Agreement.

Part 5 - Order Form: The Order Form is used by Customers to place Orders with the Supplier and forms the basis of the Contract between the Supplier and Customer. Pro-Forma Order Forms have been designed for each high-level type of IT procurement and consist of three parts - the General Order Cover Page, General Order Details and the Module Order Details specific to a module, for example licensed software.

Part 6 - Service Level Agreement Template: This template agreement allows for benchmarks, key performance indicators, methodology for performance measurement and remedies to be set by the parties where applicable.

Accreditation

It should be noted that no relevant accreditation or pre-qualification scheme exists or is required by the Procure IT framework.

NSW Government Code of Practice for Procurement - *What does it do?*

Relevant to the effective operation of Procure IT, the NSW Government Code of Practice for Procurement ("Code") outlines the method in which the NSW Government must conduct its procurement activities when interacting with the private sector. The first issue of the Code dated 1 July 2004 applied to all procurements for which tenders closed up to and including 31 January 2005. The current issue of the Code dated 18 January 2005 applies to procurements for which tenders close on or after 1 February 2005.

In seeking to achieve the 'best value for money in the expenditure of public funds while being fair, ethical and transparent', the NSW Government utilises the Code to establish the standards of behaviour and responsibilities expected from (among other bodies) government agencies, tenderers and service providers, as well as require commitment to continuous improvement and best practice performance by all participants in the procurement process. The Code details specific practice requirements for service providers and other participants including environmental management, occupational health and safety management as well as workplace practices and industrial relations obligations.

Importantly, the Code sets out a guide to the critical factors which may form the basis of the evaluation criteria used by government agencies in assessing tenders. In addition to price, evaluation criteria may include innovation or quality offered, the Supplier's ability to meet Code requirements, the previous performance of a tenderer and the delivery times offered. In accordance with the Code, evaluation criteria

should be consistent with the proposed contract requirements and aim to identify the best value for money. The Code also examines compliance issues regarding reporting and dealing with Code breaches and the possible commercial and government-wide sanction that can flow from a breach of the Code.

What happens if there has been non-compliance with the Code?

If a government agency is found to have breached the Code, the agency will take corrective action in relation to such policies, practices or procedures that are inconsistent with the Code or attributable to the breach. A non-government party could have sanctions applied to them such as a formal warning, partial or full exclusion from tendering if it cannot show cause why such sanctions should not be applied.

Future developments

As the Procure IT framework is tested through its application and use, it is important that contracting businesses keep abreast of any developments in the Procure IT framework and its application. It is evident that in a competitive and dynamic procurement environment, a firm understanding and working knowledge of the Procure IT framework is vital to those businesses seeking successful information technology contracting with the NSW Government.

1 The information contained in this article has been summarised from the NSW Department of Commerce Procure IT User Guide, The NSW Department of Commerce Procure IT website (http://www.supply.dpws.nsw.gov.au/Procure+I T/Procure+IT.htm) and the NSW Government Code of Practice for Procurement issued 18 January 2005.

Procure IT - Part 3 Schedules Summary

Schedule No.	Schedule Name	Brief Description
1	Agreement Details	General details which form part of the Agreement and any Contracts.
2	Agreement Documents	Any additional terms or documents (if any) that are to be incorporated from the request for tender, the tender or any other communications between the parties.
3	Product and Service List	Lists all products and services subject to the procurement including pricing information.
4	Statutory Declaration by Approved Party or Sub-Contractor	Utilised by the NSW Government to ensure that third parties involved in fulfilling obligations on behalf of the Supplier under the Contract, adopt and comply with the terms of the Agreement.

Schedule No.	Schedule Name	Brief Description
5	**Expert Determination Procedure**	Outlines the process for the determination of a dispute by an expert where an amicable resolution has not be achieved by the parties.
6	**Confirmation of Insurances**	A statement of insurances held by the Supplier.
7	**Financial Security**	A deed of agreement setting out the terms upon which a financial security is provided and may be called upon by the Customer.
8	**Performance Guarantee**	A deed of agreement setting out the terms upon which a performance guarantee is provided and may be called upon by the Customer.
9	**Deed of Confidentiality**	A deed of agreement setting out the terms for the preservation of confidentiality in certain information.
10	**Privacy**	Addresses the Supplier's privacy obligations.
11	**Escrow Agreement**	A deed of agreement between the Supplier, Customer and an escrow agent to place the source code of a product into escrow for release to the Customer in certain circumstances.
12	**Variation Procedures**	Provides a process for managing changes to the operational requirements of a project or variations to the terms.
13	**Risk Management**	Sets out the format of the risk management plan.

Who is spying on you? - taking a look at Spyware

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What is spyware?

Spyware is a relatively new phenomenon. Spyware is intelligence gathering software that is both installed on a computing device and takes information from the computer without knowledge or consent of the user. Often the information obtained is given to a third party and used to build databases of information about people. It is called "spyware" because the software literally enables spying - it may target banking and credit card details, sensitive information, commercial information or your own private information.

A recent journal article discussing spyware opened with a statement that describes, in simple terms, the alarming nature of spyware:

"You are being watched. Monitored. Every move you make is being recorded, logged. Your personal tastes and desires, your friends, travel plans, favourite TV shows, and newspapers. Perhaps more disturbing, this information is stored into databases, sold and shared with nameless and countless others. And you have no idea...."[1]

How a PC becomes infected with spyware and how do I know if my PC is infected?

A user of the Internet usually plays an unwitting role in downloading spyware, often by accident through downloading a spy-carrying email attachment, downloading "free" software[2] or simply browsing the Internet. Some examples of free software that have been known to be accompanied by spyware include browser toolbars and modifications, UnZip, PC clocks, personal organisers and Kazaa.[3]

Some spyware will use deception to mislead you into installing the software. For example, advertisements for "anti-spyware" tools may actually include spyware, or buttons that say "cancel" activate the installation of the spyware when clicked.[4] A user may even inadvertently consent to "monitoring" software as part of an end user licence agreement.

Although it can be difficult to know if your PC is infected with spyware, there are various symptoms that you should look out for. These include[5]:

- your computer's performance is slower than usual;

- error messages appear;

- new icons appear on your desktop that were not there before;

- new toolbars have been installed;

- your anti-virus and firewall software turns itself off;