Category 2 for the Whole of Government Software Licensing and Services (SLS) Panel

AIIA response

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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. We are a not-for-profit organisation to benefit members.

Since 1978 the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity.

We do this by delivering outstanding member value by providing a strong voice of influence; a sense of community through events and education; enabling a network for collaboration and inspiration; and through the development of compelling content and relevant and interesting information.

We represent organisations nationally, including global brands such as Apple, Adobe, Avanade, 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; and a large number of ICT SMEs.

Our national board represents the diversity of the digital economy. There is more detailed information on our web site.

AIIA appreciates the opportunity to provide feedback on the proposed Category 2 of the Software Licensing and Services Panel:

Below are our responses to questions in paragraph 8.1 – Questions for the Seller

Could you see a way in which Software pricing could be standardised to facilitate easier comparison? For example, are there any pricing and or licensing models that you would suggest could be suitable for government use?

At a high level you could have options for Subscription licensing or Perpetual licensing. However, a more detailed approach forcing Sellers to price their products in a particular way is not feasible. Each Seller will have a way to price a product based on the way it is consumed, architected or deployed. Forcing commercial Sellers to have a specific way to price their software does not fit their current commercial model and mode of operating in a free market economy.

Furthermore, the notion of standardising software pricing contradicts the Government response to report of the ICT Procurement Reform Taskforce – Recommendation 1: encourage competition.

Do you have any views on the Commonwealth being treated as a single customer and licences being flexible to move with staffing changes across government?

Commercial software Sellers like to know what business entity is licensing the software and for what business purpose. They do this for contractual purposes to protect their IP of the company and to make sure that their IP rights are not being breached. When an entity behaves as a consolidated entity this is not a problem. Historically Commonwealth Departments and Agencies operate within specific legislatively defined areas. This flows from the Ministerial responsibility laid down by Parliament. This means that they typically operate independently with the flow on effect that Agencies contract individually with a Seller. However, we have found that this approach works neither in the Government's interest nor in the interest of the Sellers.

One Seller AIIA member indicated that they would not have an issue with novating licenses appropriate for the number of people moving Departments/Agencies should a Department undergo a Machinery of Government change.

In the interests of maintaining the highest of standards across the industry, what are your views on the DTA actively managing the composition of the Panel with a view to adding, removing and rating suppliers based on their performance against innovation, level of engagement, work awarded and quality when delivering products and services?

Adding panellists and modifying panellist's offerings should be able to occur at any time to allow for new products and innovations.

DTA should not insert itself between the end user and Seller. It should regard itself as a facilitator and enabler for Sellers to add products on the panel as it is quite removed from the end user.

DTA can play a role in setting the criteria and basis for the removal of panellists as the panel is set. This should be done with great care and transparency and consultation with Sellers. The criteria for removing a Seller from a panel should be made very clear. Additionally, guidance would need to be provided on rights of appeal; options for reinstatement and waiting periods before applying for reinstatement on the panel.

Ratings suppliers is acceptable but the basis for ratings need to be transparent and documented. The criteria for ratings need to be objective. We are concerned that words like “innovation”, “level of engagement”, “work awarded” are difficult to measure. Therefore, they should not be used. Ratings should be based only on whether the Seller supplied the Agency with the Product that was asked for. Otherwise there could be disputes based on subjective opinions.

As with eBay, Sellers should have the option to rate Agencies as customers on objective criteria. This is consistent with the Seller and Buyer partnership model being advocated under the new proposed Digital Transformation Agenda.

DTA will be requesting monthly reports from the Seller based on how much has been invoiced to the Buyer to develop a holistic view of government investment in COTS Software and to assist with cost recovery. Do you have any views?

We would note that there is an obligation already on Agencies to report their spend. Therefore, we are not sure why DTA would place this additional burden on Sellers. This which would mean extra costs to the Seller which would flow to the software costs where DTA is well placed to source the information from Agencies. As Agency digitise their procurement processes and eInvoicing is implemented, the collection of procurement related data for the DTA can be automated.

The legislative compliance/reporting burden on Australian businesses is already overly high. The government has spent significant amounts of money to reduce the compliance and administrative burden of dealing with government especially for small businesses. Therefore, to reimpose compliance and reporting burdens by means of contractual arrangements is in direct contradiction to the policy to reduce compliance burden/red tape for small businesses who will feel the financial impact placed on them through the monthly reporting requirements. Additionally, multiple panel arrangements with different and inconsistent reporting requirements enforced by contractual means is actually increasing the compliance burdens on business of all sizes.

Furthermore, the inclusion of reporting requirements under this panel arrangement contradicts the Government response to the report of the ICT Procurement Reform Taskforce Recommendation 8, where the government accepted the following recommendation:

“The taskforce recommends immediate simplification of a range of ICT procurement practices for agencies, including reforms to ICT procurement panel arrangements.

Is the grouping of Software and related Services into the current sets of Classes logical and does it cover the majority of COTS? Do you have any views,

alternative groupings or additional Software or Services not covered? Refer to the Statement of Requirement for the comprehensive list and definitions.

AIIA members note that some major software categories have been missed. Some suggested software categories to be included are:

1. CRM
2. Case Management
3. Human Resource Management
4. Electronic Document Management Software
5. Records Management Software
6. Content Management Software
7. Service Management Software
8. Identity Management Software

Alternatively, DTA could remove categories all together from the approach to market but then categorise the Offerings based on Buyer business requirements across agencies and which Sellers get on the panel.

Below is AIIA's comments on the proposed Head Agreement Terms and Conditions:

Description	Reference if applicable	Feedback	How you would like the matter addressed or alternative wording
	5.2	It is not reasonable to expect Sellers (especially small businesses across Australia) to participate in forums and meetings as reasonably requested by DTA (based in Sydney and Canberra) when travel is involved especially in a digital age and by an agency leading digital transformation.	The option of attending DTA forums and meetings by teleconference or videoconference should be made available to Sellers.
	5.4	In the scenario that the Seller is also a panel member of a panel in another state – and there are no requirements under the state panel arrangement for the Seller to confirm their eligibility to use the Panel with DTA – it does not	Delete this clause. Diligent Buyers should conduct their own investigations to determine what is the best prices they can obtain from a Seller.

		make sense that the Seller will find themselves in breach of this Agreement by contracting under the State arrangement for having failed to notify the State Buyer buying off the State Panel, of their eligibility to use the Panel with DTA. Also if there was a consolidated panel arrangement /marketplace across jurisdictions, there would be no need for this type of notification to be made by Sellers. Sellers should not have to pick up an additional administrative burden due to challenges faced by different levels of governments to collaborate and create a consolidated panel arrangement and marketplace. It is also very unclear the form and protocols for making such a confirmation.	
	6.1	Without Buyers also agreeing to buy things outside the Offerings within the Categories there would no incidence of Sellers selling things outside the Offerings.	Include reciprocal provision that Buyers will also only request Offering within the Categories.
	6.6.4	Kick start Kits – definition is too broad	Include further details in Kick start Kits definition as to what the content requirements are
	8.2	As Agencies will be entering this information in their contract management and payments systems (raising purchase orders), it is not clear why Agencies are not able to supply this information to DTA. This is an additional administrative burden for Sellers with no benefit to them.	Delete this clause.

	8.3	The requirement to supply information to both the Buyer Agency and the DTA only increases the compliance burden for Sellers.	Delete this clause and ask Agencies to forward copies of the Seller invoices to DTA as after all this should constitute the best source of truth of how public money has been spent.
	14.1	The collaboration with third party contractors may require the Seller to reveal their software IP.	Clause 14.1 should include a provision that where such collaboration requires the Seller to share its software IP with third parties, the DTA will work with the Seller to ensure that the third-party signs non-disclosure agreements protecting the Seller's IP in software.
	32.1	Performance Guarantees and Unconditional Financial Undertakings are not appropriate for COTS.	This should only apply to Services and not COTS.