

GITC v5.01 (Queensland): Part 2 - A Big Shift for Queensland Government, A Bigger Shift for ICT Suppliers

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Introduction

In Part 1 of this article, which was published in the June edition of *Computers & Law*, I explained how an ICT supplier can obtain accreditation to sell ICT products and services to the Queensland Government, what GITC v 5 is and how it works. This article is Part 2 of the series and provides a high level analysis of some of the key legal and commercial issues that are associated with the standard GITC contract together with some suggested risk mitigation strategies for suppliers.

Queensland Government spends more than \$600 million each year on Information Technology and Communications (ICT) products and services. In order to sell ICT products and services to Queensland Government and its Agencies, an ICT supplier must become an 'accredited' supplier, and sign the Government Information Technology and Services Contract version 5.01 (GITC).

Background

The Queensland Government has produced a new contract for Government Departments, Agencies and Eligible non-Government Bodies (Customers) to purchase ICT products and services. Information Standard 13, a policy document issued under the *Financial Management and Accountability Act 1997*, makes it mandatory for all Customers to use GITC as the basis for all ICT procurement in the State.

It was a major task for the Queensland Government to produce GITC which is a significant improvement on its predecessor GITC v2. Considerable industry consultation occurred in the preparation of the new drafts of GITC, in particular with AIIA (Australian Information Industry Association) and

ITCRA (Information Technology Contract and Recruitment Association).

Key Legal and Commercial Terms

Some of the legal and commercial issues worthy of note include:

Most Favoured Price

Clause 3.3 of Part 2 (Part 2 is the Customer Contract) ensures that the Customer is always offered the best pricing possible where the product or service has been offered in 'similar' circumstances. This provision is an ongoing warranty of "best price". I make the following observations:

1. The drafting captures any transaction that is similar in nature to that proposed under GITC. It is not clear from the drafting as to the actual mechanics of determining the phrase 'similar circumstances', however since the words: "includes volumes (where Price is dependent on volume), timing, terms and conditions," are included in the clause, it can be assumed that at least these factors will be taken into account in determining the 'similar circumstances'. The inclusion of the circumstance of "timing" is important given the fast moving nature of technology innovation and the rapid change in prices, especially in relation to products like PCs.
2. The drafting of the Head Agreement and Customer Contract implies that if a supplier sells goods to Customer A for \$1000 on say the 1st February 2006, then similar goods are sold to Customers B, C and D in similar circumstances for \$1,200 each on say February 28th 2006,

Customers B, C and D should be refunded \$200 each.

3. As a consequence of the requirement to provide a refund on the price received on the sales to Customers B, C and D, a potential issue arises with the recognition of revenue on those orders. Those organisations that have such revenue recognition policies should consider the impact of this clause.

In managing some of the risks associated with the most favoured price clauses, a central management function should be used to manage pricing, quotations, orders and price lists. Also, similar deals should be monitored carefully to check that the Customer really is receiving the best pricing.

Warranties

The warranties that are to be given by the Contractor under the Customer Contract are quite broad. The warranties in the Customer Contract are in addition to those required under the Modules in Part 3.

I make the following observations:

1. As the warranties in clause 9 of the Customer Contract are in Part 2, they will have a general application across all Modules. Caution should be exercised when negotiating items such as Warranty Periods and the other warranty aspects in the Modules because the warranties are structured to enable the Customer to make a subjective determination of whether the product or service has met an 'absolute' standard of compliance with the warranty. This contrasts with the industry standard position which is that an objective test should be used to