



18 November 2013

Mr John Sheridan
Assistant Secretary
Technology & Procurement Division
Department of Finance

By e-mail

Dear Mr Sheridan,

The NSW Business Chamber (the Chamber) welcomes the opportunity to comment on the Basic Contract Suite and commends the Government for its willingness to look at ways to simplify the process by which smaller suppliers contract to deliver Government goods.

The Chamber is one of Australia's largest business support groups, with a direct membership of more than 14,000 businesses, providing services to over 30,000 businesses each year.

Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, the Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Chamber is a leading business solutions provider and advocacy group with strengths in workplace management, occupational health and safety, industrial relations, human resources, international trade and business performance consulting. Operating throughout a network of offices in metropolitan and regional NSW, the Chamber represents the needs of business at a local, regional, State and Federal level, advocating on behalf of its members to create a better environment for industry.

As you may be aware earlier this year, the Chamber joined with other chambers of commerce across NSW and Australia, to undertake a landmark federal election campaign ***Small Business - Too Big to Ignore***.

The campaign focussed on the needs of Australia's 2 million small businesses and the critical contribution of this sector to the Australian economy, employment and health of our nation's local communities.

NSW Business Chamber
incorporates:

- Sydney Business Chamber
- Australian Business Lawyers & Advisors
- Australian Business Recruitment Solutions
- Australian Business Consulting & Solutions
- Australian Business Apprenticeships Centre
- Australian Business Training Solutions
- Australian Business Defence Industry Unit
- Australian Business Industrial

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Based on a review of the contract as published, the proposed changes will help in addressing our campaigns key concerns in terms of reducing red tape and making it easier for more small businesses participate in Government procurement processes.

The Contract is well set out and uses plain English language wherever possible. Furthermore the colour coding applied to the Contract assists in navigating the various elements of the contract, which makes it easier to understand.

These changes will help reduce the time (and therefore cost) of contractual preparation and will be strongly welcomed by the small business sector.

While the Contract has much to recommend it, there remain issues that would need to be borne in mind by a 3rd party contractor or supplier to the Commonwealth:

The Contract is subject to ACT law. In the event of litigation this could prove an expensive inconvenience to the supplier/contractor who may not reside in the ACT.

The Contract has an uncapped indemnity (C.C.9). Although the contract amount may be \$200,000 or less that doesn't mean that indemnified damages are limited or restricted. Furthermore, the breadth of the indemnity (in terms of who it benefits) will result in greater exposure for the contractor/supplier.

The document clearly confers more power and discretion on the Commonwealth – contractors/suppliers need to be aware that there is no equality of treatment or bargaining power under the contract. The termination provisions (C.C.10-12) illustrate this point with powers under these parts conferred on the Commonwealth, with no equivalent for the contractor/supplier.

The contract can be made subject to a range Special Conditions. Obviously, these will vary as context demands, but if these additions are unclear, overly complex or highly partisan, then all of the good work of the platform could be nullified. In order to justify the investment in this exercise the Commonwealth needs to adopt a philosophical position of endeavouring to use special conditions that are simple and well-structured consistent with that applied in the platform Contract.

As always, contractors/suppliers need to be risk aware whenever they are establishing a contractual relationship, regardless of the contractual terms. The Commonwealth should actively remind businesses to seek their own legal advice prior to entering into a contract to ensure that a business is cognisant of all risks prior to agreement.

Thank you for the opportunity to provide feedback on this important work. If you have any further questions in relation to this submission, please feel free to contact Mr Luke Aitken, Senior Manager Policy on (02) 9458 7582.

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton". The signature is written in a cursive style with a large initial 'P' and 'O'.

Paul Orton
Director, Policy & Advocacy

