



# Commercial Principles

## To Guide Procurement of Telecommunications Services

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# 1. Introduction

## 1.1 Executive Summary

The NSW Government Telco Strategy was endorsed by the ERC in October 2016 and recommended government agencies commit to principles to guide future market approaches for telecommunication services. These principles are designed to increase contestability and reduce unit prices.

This document presents six commercial principles and implementation guidelines to encourage competition in the domestic telecommunications market. The principles are:

- 1) **Minimise Service Bundling:** Ensure that services are unbundled in a way that maximises contestability.
- 2) **Exploit Market Dynamics:** Ensuring that forecast movement in unit pricing is adequately taken in to account.
- 3) **Consider Future Demand:** Ensuring that value for money is maintained as demand fluctuates over time.
- 4) **Act as One:** Where government agencies across cluster boundaries work together to achieve great commercial outcomes.
- 5) **Co-termination:** Structuring new contracts to minimise impediments in transitioning to future suppliers and aggregating demand.
- 6) **Strategic Alignment:** Ensuring new contracts are developed in consideration of broader technology strategies.

## 1.2 Context

### 1.2.1 Strategic Alignment

In NSW, 7.5 million people receive services delivered by a large and diverse public service, comprising almost 330,000 full time employees. This workforce increasingly relies on robust, real-time information and communications technology (ICT) networks, facilities and services. To meet this increased consumption and demand, the NSW Government procures a wide range of fixed data, fixed voice, mobile (voice and data) and radio services and products.

Broadly speaking, increase in demand for these products and services is driven by two sets of pressures: increasing public expectation for a digital government able to deliver services 'anytime anywhere'; and changes in ICT capabilities and markets.

Since 2012, the NSW Government has progressively updated its ICT strategy. The NSW ICT Strategy 2012 elevated ICT to one of the Government's highest priorities and introduced new frameworks for cloud services, information management and ICT skills. The Digital+ 2016 update increased focus on contestability in ICT procurement and use of cloud and 'as a Service' (aaS) models. More recently, the 'Making it Happen' State and Premier's Priorities further emphasised the need for digital engagement and service delivery.

As services become digitised, and as ICT capability underpinning the digital strategy becomes increasingly delivered through a variety of public and private clouds, dependence on telecommunications services has, and is expected to increase. However, as already noted, increasing demand has taken place in the broader context of rapid technology and market change, which presents the opportunity to challenge the status quo and consider alternative approaches to the commissioning of telecommunications services.

### **1.2.2 NSW Government Enterprise Telecommunications Strategy**

In response to this opportunity, the ICT and Digital Government Leadership Group (IDLG), NSW Government's peak ICT governance committee, commissioned a review of Government telecommunications services. This review was undertaken throughout the first half of 2016 and has recommended the following summarised actions:

#### **a) Reduce duplication**

- Agencies share existing WAN connectivity on a best efforts basis between offices and data centres in the short term, where existing capacity exists.
- Take steps to accelerate network sharing; converging to a shared networking fabric over the next 5–10 years, reducing duplication and fixed data spend. This will start with a Proof Of Concept (POC) of the shared networking fabric, and as the POC is carried out a business case will be developed for expansion of the capability should it prove viable.

#### **b) Improve contestability**

- Take steps to increase contestability of fixed data, fixed voice and mobile services. This could be achieved in a number of ways, for example by making demand information available to the market, by changing NSW Government's 'go to market' approach for telecommunications services and by seeking alternate suppliers and technical approaches (e.g. optical, SDN, use of NBN) in otherwise less contestable locations.

- Share spend and contract data across government agencies and clusters, and enhance procurement support for agencies allowing more informed purchasing decisions to be made.

**c) Adopt technology sooner**

- Provide agencies with support to adopt technology sooner and try innovative models. This could be achieved by use playbooks (template business cases, guidelines, standards and process) and building blocks to help agencies accelerate their use of standard, and through the adoption of well-defined solutions fit for government (e.g. BYOD saving, migration off legacy voice etc.).

### **1.3 Purpose of this Document**

This document has been created to define the principles relating to improving the contestability of fixed data, fixed voice and mobile services which will be communicated through a DFSI circular.

The principles will be applied by agencies and adoption monitored and enforced by the IDLG, Procurement & Technical Standards Working Group or other teams within DFSI.

## 2. Principles

### 2.1 Application

Principles should be used as a guide, and should be implemented in the context of each agencies individual circumstances. Furthermore, implementation should be tailored according to the market conditions at the time the procurement exercise is conducted. As such, exceptions to principles should be allowed where it can be demonstrated that their application fails to deliver value for money on a whole-of-government basis.

The following section lists the proposed commercial principles, together with implementation guidelines to demonstrate how they should be applied.

### 2.2 Commercial Principles

#### 2.2.1 Minimise Service Bundling

Principle: Ensure that services are unbundled in a way that maximises contestability.

Implementation Guidelines:

- When tendering for mobile services, classify employees according to service need and seek separate pricing for users in metro and regional/remote areas, allowing suppliers to tender for either or both sets of users.
- Break down contracts into smaller elements to better manage drivers of pricing (e.g. separate MDM and fixed voice from mobile contracts).
- Separate commoditised mobile from more bespoke fixed line networking, and Layer 2 fixed data links from layer 3 applications, services and management.

#### 2.2.2 Exploit Market Dynamics

Principle: Ensure there is a mechanism to take advantage of unit price decline in a declining market, and to mitigate risk of price rises in an increasing market.

Implementation Guidelines:

- In a market expected to demonstrate unit price decline:
  - a) Seek to include standard clauses in new contracts which allow annual price review based on Whole-of-Government contract benchmarks.

- b) Limit the contract term to two years for services which can be easily migrated to new suppliers (such as mobile handsets).
- In a market where unit prices are expected to increase:
  - a) Seek fixed pricing.
  - b) Include options for extension in the contract term.
  - c) Where extension options are included, seek loyalty discounts.
- Where a supplier has undertaken capital investment to provide a service to a government customer typically due to low contestability, ensure ability for price stepdown when the supplier has recovered their initial investment.

### **2.2.3 Consider future demand**

Principle: Consider future demand when approaching the market for pricing.

Implementation Guidelines:

- Select units to reflect changes in underlying demand: For example, use \$/GB for low growth/declining markets, flat price for increasing markets.
- Seek to include standard clauses in new contracts which allow annual price review based on changes to demand.
- Seek to include flexibility to adjust volumes during contract term (e.g., move between different plans)
- Where there is a high degree of uncertainty in future demand, aim for shorter contract lengths or include favourable early termination terms.
- Proactively consider how the adoption of new technology or modification of process could drive a reduction in demand and hence price.

### **2.2.4 Act as one**

Principle: Government agencies will work together to achieve value for money.

Implementation Guidelines:

- Seek to include standard 'most favoured nation' clauses in new contracts to enable one agency to benefit from the demand generated and hence pricing achieved by another. Manage vendors that try and get around this, by defining technologies and plans broadly, and carefully monitoring their effectiveness.

- Price and contract information will be shared with other government agencies to better inform procurement decisions. Terms allowing this should be included in new tenders.
- Where practical, enable smaller agencies to leverage or reuse contract terms, without needing to separately negotiate.
- Pool demand and approach the market on a whole-of-cluster or whole-of-government basis where feasible and where this would not impede contestability by violating the principle of unbundling.
- Benchmark pricing with other jurisdictions.
- Implement data pooling across individual plans, including pooling between data only devices (such as tablets, sensors and laptops), and devices offering voice and data services such smartphones.
- Discourage standard pricing with large “one off” discounts.

### **2.2.5 Co-termination**

Principle: Structure new contracts to minimise impediments in transitioning to future suppliers.

Implementation Guidelines:

- Structure contracts so that services that commence after contract commencement terminate on the same date.
- Avoid or minimise early termination charges. Avoidance of some types of termination charges may be easier than others, for example, termination charges associate with mobile handsets are likely to be unavoidable in contrast to termination charges associated with the actual plans.
- Ensure supplier transition out obligations are factored in up front and consider inclusion of a disengagement period in new contracts.

### **2.2.6 Strategic Alignment**

Principle: New contracts should be developed in consideration of broader technology strategies.

Implementation Guidelines:

- Agencies set the length of new contracts on the basis of the timing of broader technology strategies: E.g., plan to share networks for fixed data; move to BYOD for mobile; migration to IP telephony or UC solution for fixed voice.

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