

# Introducing the New Digital .NSW Purchasing Framework

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Industry Briefing

5 August 2021



# Acknowledgment of Country

I acknowledge the Traditional Custodians of the various lands on which we work today and the Aboriginal and Torres Strait Islander people participating in this meeting.

I pay my respects to Elders past, present and emerging, and recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

# AGENDA

## Introductory Remarks and Procurement Reform Overview

Mark Lenzner, Executive Director



## New MICTA/ICTA Contracting Framework

David McGlinchey, Deputy General Counsel, DCS  
Ken Saurajen, Partner, Clayton Utz  
Kristina Skamvougeras, Special Counsel, Clayton Utz  
Monique Azzopardi, Senior Associate, Clayton Utz



## Governance Arrangement



## Live Q&A Speakers Panel



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# Procurement Reform Overview

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Mark Lenzner, Executive Director, ICT/Digital Sourcing



# Beyond Digital | Procurement reform continues to be critical for our vision to drive growth and deliver improved outcomes for NSW

## New customer and digital outcomes are emerging in ...

- Accelerated use of emerging tech for customer outcome
- Growing local technology companies and talent to be world leading

## Delivering these outcomes and associated growth will require:

- An emerging technology delivery accelerator and R&D partnerships for use in the NSW Government
- A scalable and more connected partnership ecosystem
- Alignment between our Investment NSW technology partnerships and precincts and our ICT and digital investment pipeline
- Procurement policies and pathways to encourage and enable a more strategic, diverse and innovative engagement with industry

# Procurement Reform

We have identified **pain points for buyers, suppliers and procurement service providers**. In summary procurement is complex, time consuming and focused on the procurement process rather than business outcome

## Customer Pain Points



## Key Insights

- Procurement systems in are disconnected. Suppliers need to provide the same information up to 6 times with no guarantee of work.
- Lack of diversity in spend. More than 90% of spend is concentrated with 10% of suppliers with many small to medium enterprises missing out.
- Information is locked in a variety of systems and spreadsheets with no ability to effectively support Government initiatives.
- Buyers and suppliers lose time each day trying to find and understand procurement processes and respond to opportunities.
- Procurement professionals focus on low risk, low value procurement rather than high risk, high value strategic procurement.
- There is an endless cycle of loss and recreation of corporate knowledge related to spend and procurement activity.



# Procurement Reform

We have established an integrated **Supplier, Policy and Innovation Development** function to drive a **more strategic, diverse and innovative engagement with Industry**

## Strategic Relationships and Ecosystem

- Own and maintain Strategic Supplier (1+) Management Program/Framework
- Identify and realise opportunities for the NSW Government to partner with SMEs and Start-ups to deliver innovative technology solutions
- Maintain collaborative communities of practice to support continued innovation and delivery of NSWG procurement objectives

## Innovation and Industry

- Create Innovation pathways to advance the innovation agenda of NSWG.
- Engage with Industry and Clusters to support procurement of emerging technologies,
- Align NSWG Strategic relationships, industry priorities and investments
- Create strategies to improve capacity and resilience of the supply chain
- Deliver Industry aligned and refreshed ICT contracting framework

## NSW Government Skills and Engagement

- Leverage ICT procurement policy and ICT scheme management to increase number of government supply opportunities targeting SMEs incl. Aboriginal suppliers, start-ups and disability suppliers
- Increased engagement with clusters to support the NSW Digital Strategy, Digital Blueprint and ICT & Digital investments
- Support development of internal capability to enable take up of new technologies

## Enablers

- Strategic Supplier Plans
- Buy.NSW system enhancements
- ICT Knowledge Network
- Industry and NSWP connect events
- Pitch to Pilot Programs
- ICT contracting framework refresh
- ICT/Digital Sovereign Procurement Taskforce

## Metrics and KPIs

- Launch Supplier Management Framework
- Program Rollout to selected suppliers
- KPIs defined. "As is" and "to be" mapping
- Taskforce recommendations delivered
- ICT contracting framework refresh delivered
- Innovation procurement pathway defined
- Customer feedback pathway defined

# Procurement Reform |

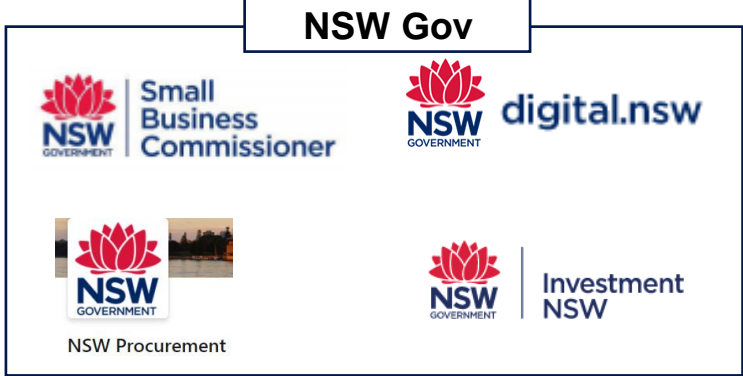
**ICT and Digital Sovereign Procurement Taskforce - Driving economic growth, creating jobs and supporting growth of the local technology sector**

### Recommendations focused on:

- Enabling increased number of government supply opportunities targeting SMEs and the potential for increased spend on SMEs
- Ensuring SMEs can compete on an equal footing in ICT/ Digital procurement activities
- Fostering growth in capacity and capability of the local ICT/ digital industry, building on existing NSW Government initiatives focused on encouraging this growth as well as investment in technology precincts

### Implications to consider:

- Preferential treatment for sovereign and small and medium enterprises (SMEs), where appropriate and allowable under the Enforceable Procurement Provisions (EPP) Direction
- Social Procurement opportunities for start-ups, Aboriginal-owned businesses, social enterprises and disability organisations



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# Procurement Reform | The first tangible Taskforce recommendation to be announced is **SME Spend Targets**

## **SME Spend Targets** commence from first of April 2021:

- 30% of ICT procurement Addressable Spend (excluding contingent labour) must be spent directly with small and medium enterprises (SMEs)
- 25% of indirect ICT procurement Addressable Spend in all procurements valued above \$3 million must be spent with SMEs

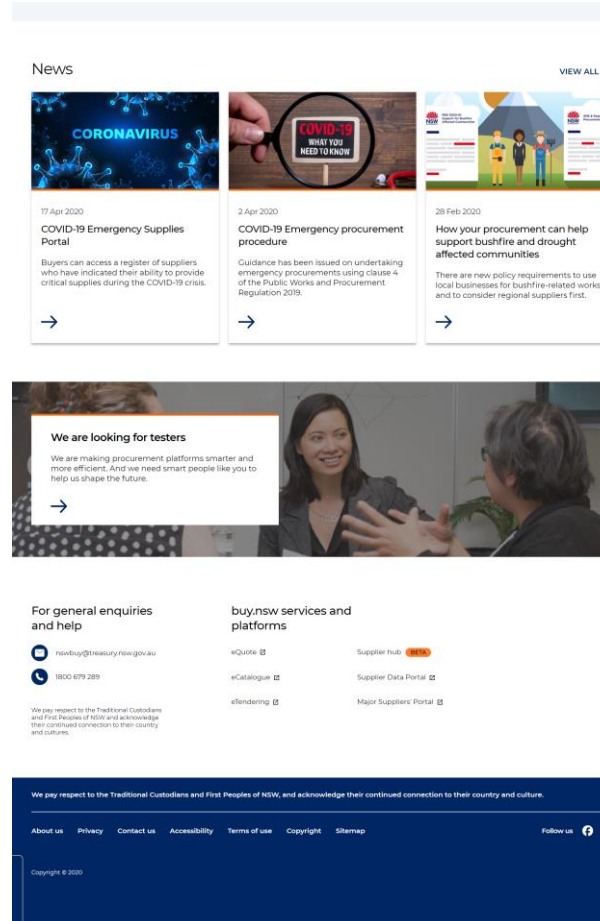
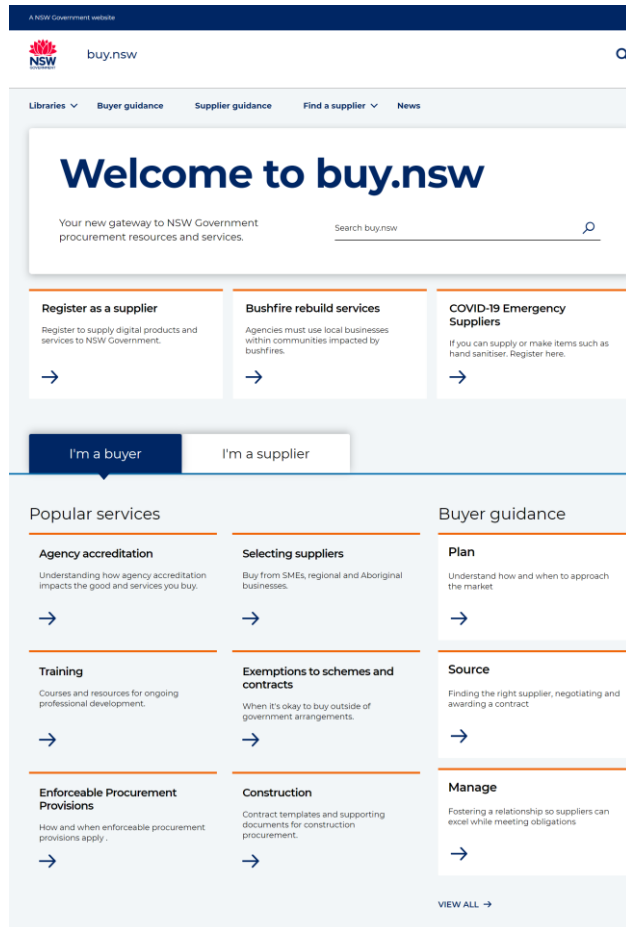


## **Other recommendations** fall into four key areas:

- Policy and Process
- Education (Buyers and Suppliers)
- Initiatives
- Reporting (define baseline and track progress)

## **Approach** to implementing recommendations:

- Recommendation Working Group with various agencies on Policy and Process changes, and Initiatives
- Cross-cluster Implementation Group with clusters on Education, SME spend targets and Reporting.
- Quarterly reporting back to Industry on our progress



[buy.nsw.gov.au](https://buy.nsw.gov.au)

### Our new gateway to NSW procurement resources and services

**Doing business with Government made easy:** Enables suppliers to register, apply and sell to Government, manage and update their information, and find and apply for Government supply opportunities

### Simplifying Government buying:

A single place where buyers find guidance, resources and support, and access platforms to purchase goods and services. Intelligent search will guide them through the buying process.

### Diverse partnership ecosystem and spend:

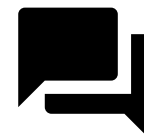
Enable increased number of government supply opportunities targeting and the potential for increased spend on small and medium enterprises (SMEs), Aboriginal organisations and start-ups



Supplier hub



Click to buy



SimpleQuote




Guided buying



Go to market



Digital journeys for Whole of Government agreements



eInvoicing

**SimpleQuote**

- A simplified RFQ process for low risk, low value transactions targeting:
  - SMEs registered to sell to NSW Government
  - Transactions below \$150,000
- Makes open opportunities easier to publish, increase the number of opportunities availability
- Simplifies response requirements and increases a supplier's likelihood of success
- Supports Government initiatives by helping to understand:
  - which and how many SMEs are being asked to provide quotes
  - which and how many SMEs are responding to requests for quotes
  - which buyers, agencies and clusters are buying from SMEs
  - the dollar value of awarded contracts
- SimpleQuote will replace the existing eQuote tool.

**Certified Business Identifiers**

- Verification of business identifiers against known data sources such as Supply Nation, Social Traders, Small Business Commission
- Buyers will be able easily filter and search based on tags.

	Self-declared	Certified
Logged in as buyer	Aboriginal	Aboriginal ✓
Not logged in as buyer	Aboriginal	Aboriginal

**Opportunities Hub**

- Match maker system for all government opportunities and suppliers that have registered on Supplier Hub.
- Integrated with Simple Quote, eTendering and agency systems
- Browse, search or filter opportunities based on service categories
- Push to Service NSW MyBusiness accounts
  - Service NSW to consume the eTendering new business API and display relevant opportunities to MyBusiness account owners.
  - Account owners will be able to click the link, view opportunities and register to sell to NSW Government

# Introducing the new Digital.NSW Purchasing Framework

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David McGlinchey, Deputy General Counsel, Department of Customer Service

Ken Saurajen, Partner, Clayton Utz

Kristina Skamvougeras, Special Counsel, Clayton Utz

Monique Azzopardi, Senior Associate, Clayton Utz

# Overview

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- Introducing the new MICTA/ICTA Contracting Framework
- Key Objectives
- A practical guide to using the MICTA
- A practical guide to using the ICTA and Modules
- Key themes
- Procurement Board Direction, Variations and Transitional Arrangements
- Review and feedback
- Q&A

# Introduction

- Background / Consultation Process
- The new MICTA/ICTA Contracting Framework in effect from 1 July 2021 and will be mandatory for use by agencies from 1 September 2021
- Replaces Procure IT version 3.2 (**Procure IT**)
- Developed for high-value [\$1+M] or high-risk procurements of ICT goods and services
- At this stage, no proposed changes to Core& Framework for low value [up to \$1M] and low-risk procurements

*There are clear and immediate legal, commercial and operational benefits to industry + agencies in utilisation of the new MICTA/ICTA Contracting Framework.*

# Key objectives



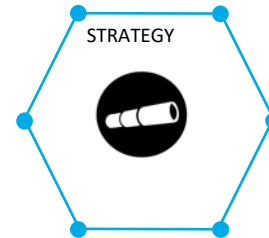
- **Streamline and simplify contract model and variations**
- **Risk focused agency flexibility**
- **Improve overall customer and vendor experience**



- **Enhanced agency privacy, security and liability provisions**
- **Uplift to best industry practice**
- **Modernise legacy contract concepts, positions and language**



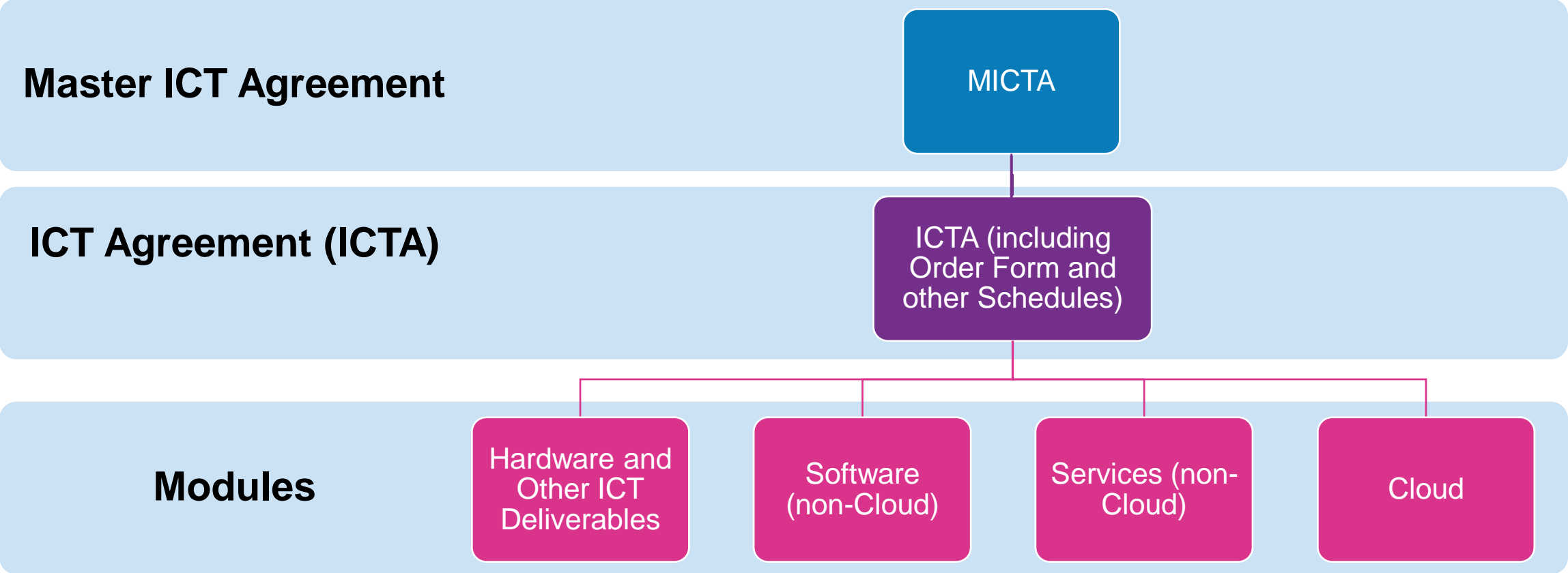
- **Enable enhanced procurement and contracting flexibility and agility**



- **Implement NSW Government ICT and procurement policies**
- **Promote SMEs | Aboriginal enterprises | Regional business**



# Structure of the New Framework



## Download contract templates and modules

The MICTA/ICTA contracting framework comprises the below documents:

### Agreements

- [Master ICT Agreement \(MICTA\) DOCX, 460.46 KB](#)
- [ICT Agreement \(ICTA\) DOCX, 638.36 KB](#)

### Modules

- [Hardware and other ICT deliverables module DOCX, 138.69 KB](#)
- [Software module DOCX, 126.32 KB](#)
- [Cloud module DOCX, 119.2 KB](#)
- [Services module DOCX, 127.98 KB](#)

## How to use MICTA/ICTA

The Department of Customer Service (DCS) developed a user guide to help agencies apply the framework.

It should not be used as a substitute for reading the contract documents.

- [User guide – MICTA, ICTA and modules DOCX, 771.34 KB](#)

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# Practical guide to using the MICTA



# MICTA – Purpose and use

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- Has a similar purpose and function to the Head Agreement under the Procure IT Framework.
- A MICTA can be established by any Contract Authority.
- The MICTA is available for use by any Eligible Customer, to establish standing offer arrangements for the procurement of ICT goods and services, on the terms and conditions of the ICTA.
- Provides flexibility for establishing standing offer arrangements:
  - by DCS, on a 'whole of government' basis;
  - by central agencies for use by their cluster (for example by TfNSW for the use of each agency within the TfNSW cluster); and
  - by an individual agency for the procurement, by that agency, of ICT goods and services on an ongoing basis.

# MICTA - Benefits

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- Allows for the parties to negotiate key matters up front.
- Key matters agreed in the MICTA include rates and prices, KPIs and reporting mechanisms.
- Minimises negotiations when forming each Contract.
- Allows for establishment of panels.
- Provides a simple mechanism, in clause 4 (MICTA Mechanism), for forming a Contract, minimising duplication.
- Entering into a MICTA does not bind any Eligible Customer to form a Contract.
- Provides flexibility, by providing default positions, but allowing tailoring to suit requirements of individual procurements.

# MICTA – When not to use the MICTA

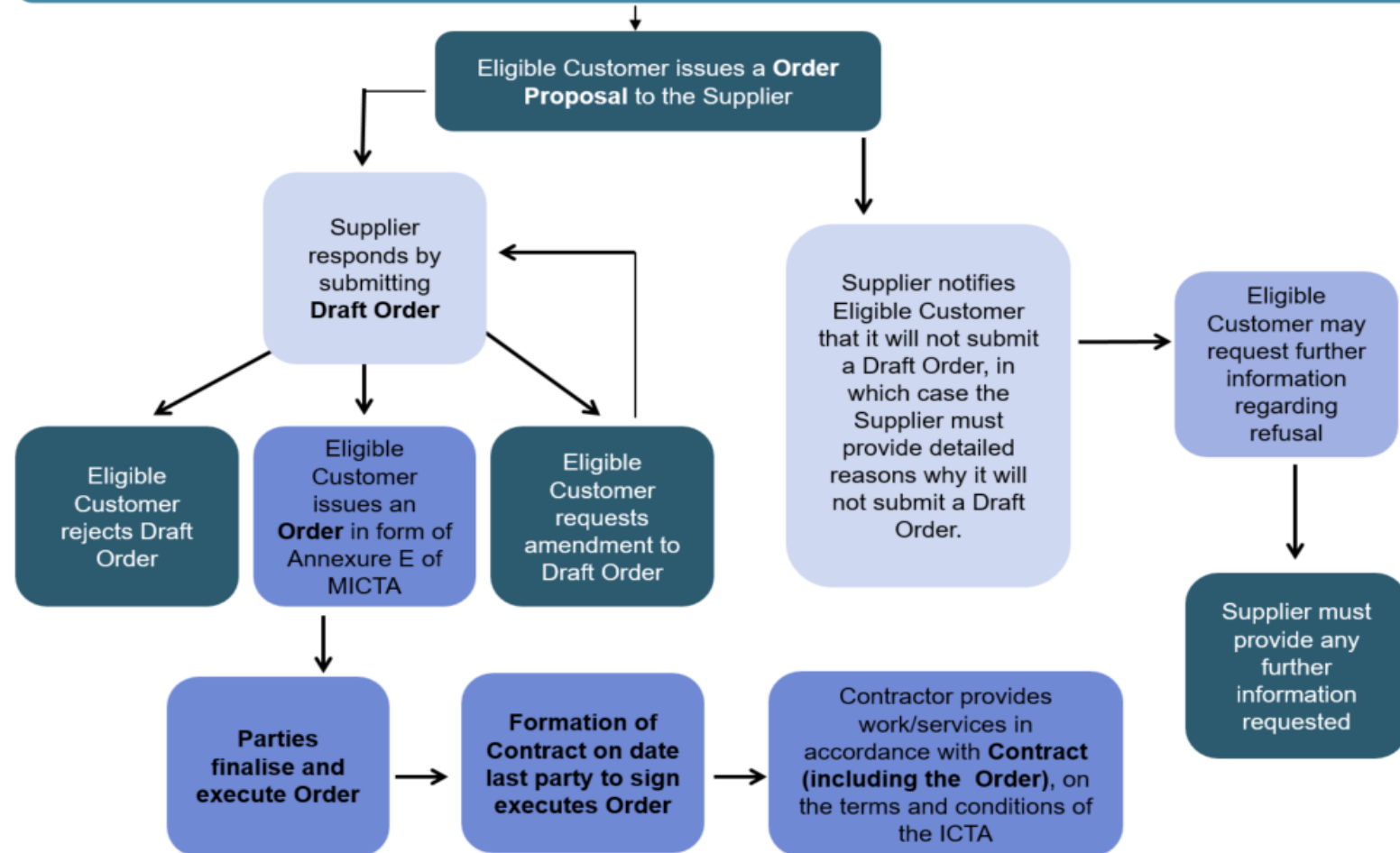
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The MICTA is not intended to be used where:

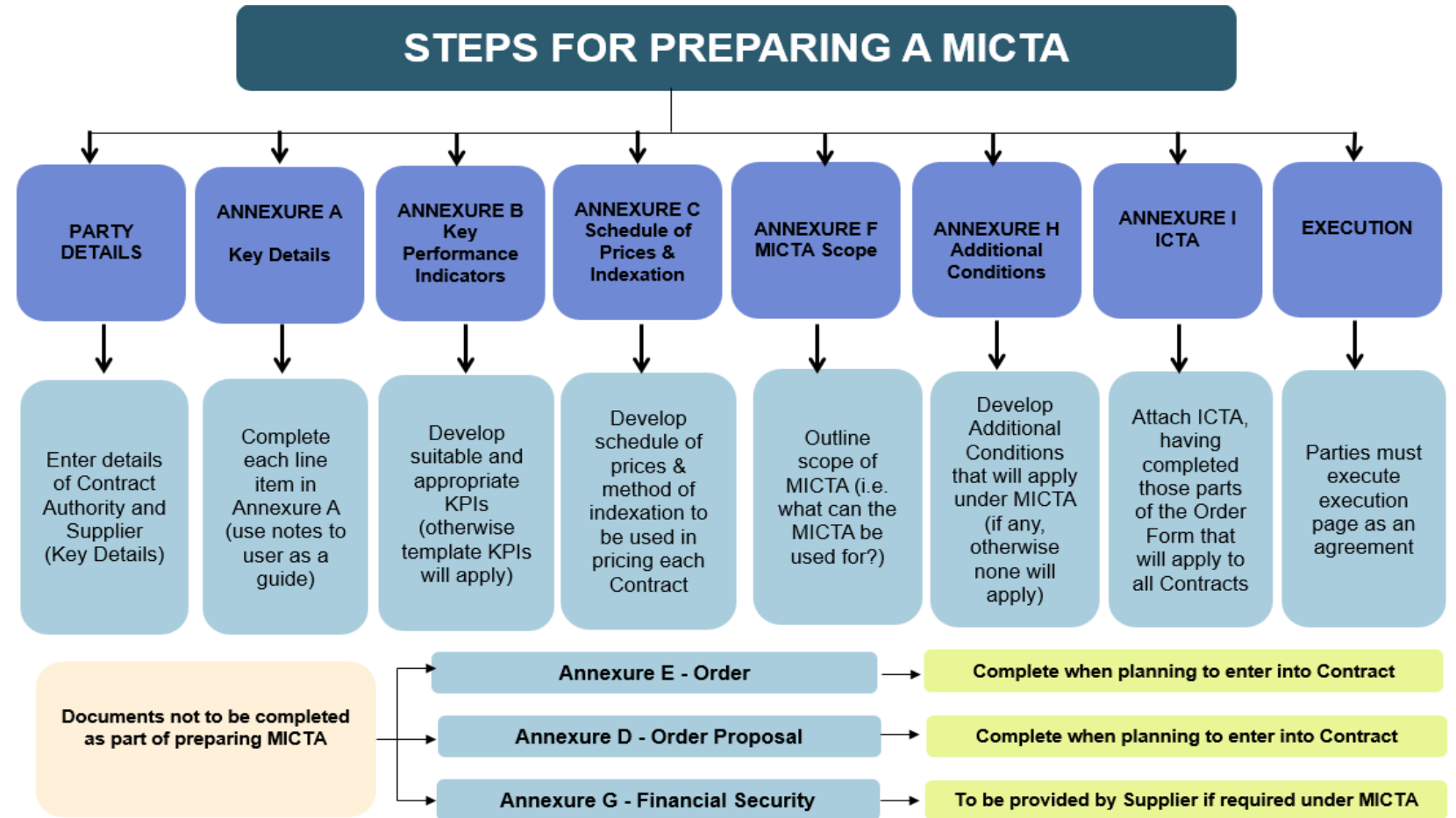
- an agency is procuring ICT goods or services without the need to establish a standing offer arrangement, in which case an ICTA should be used;
- there is an existing MICTA available for procuring the relevant ICT goods and services, that agencies are required to use (eg. a whole of government MICTA), in which case the relevant agency should enter into a Contract as an Eligible Customer, using the existing MICTA; or
- an agency is seeking to vary the volume or quantum of goods, services or deliverables under an existing ICTA, in which case, the processes in the existing ICTA should be followed.

# MICTA – Entering into a Contract

## MECHANISM FOR FORMING A CONTRACT UNDER A MICTA



# MICTA – Preparing a MICTA





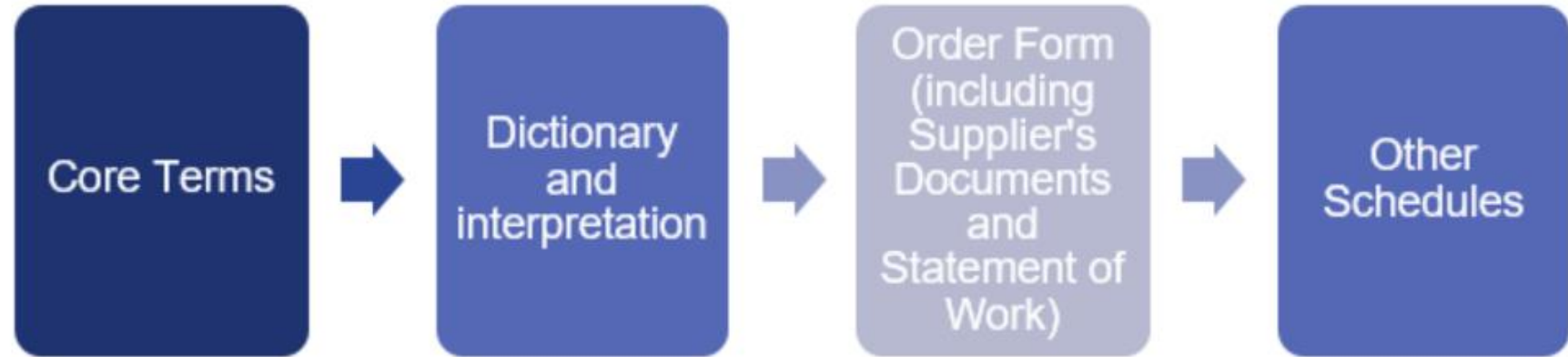
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# Practical guide to using the ICTA and Modules



# ICTA structure and function



The ICT Agreement or 'ICTA' is functionally equivalent to the Customer Contract under Procure IT. However, there are a number of key differences; for example:

- different Core Terms
- new Schedules
- definitions and interpretation provisions incorporated within the ICTA and not a standalone document
- enhanced flexibility.

# Steps to prepare an ICTA

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- Complete **Schedule 2: Order Form**
  - Part A;
  - other Parts of the Order Form (these apply to specific Modules. Not all will be relevant);
  - Supplier's Documents; and
  - Statement of Work (template form is included in **Schedule 3**).
- Complete/address other relevant Schedules (see next slide)
- Execution.

*NB: Schedule 1 contains the definitions and interpretation provisions.*

# Other Schedules

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Schedule 4: Payment Schedule

Schedule 5: Change Request Form

Schedule 6: Deed of Confidentiality and  
Privacy

Schedule 7: Escrow Deed

Schedule 8: Performance Guarantee

Schedule 9: Financial Security

# Using the Modules

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Reduction from 14  $\Rightarrow$  4 Modules, with Modules covering:

- Hardware and other ICT Deliverables
- Software (non-Cloud)
- Services (non-Cloud)
- Cloud.

Module Terms describe terms and conditions for particular types of Services and Deliverables.

Elimination of separate order form document for each Module.

# Key definitions and terms

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- Critical CSI
- Data Location Conditions
- Non-ICT Services
- Order Documents
- Order Form
- Policies, Codes and Standards
- Policy Change
- Supplier's Activities

*Note: Terms are defined both in Schedule 1 and in the Module Terms.*

# Making the most of the User Guide

- A helpful resource in terms of the practical application and use of the agreement documents:  
***NB: Should not be used as a substitute for reading the MICTA/ICTA Contracting Framework in full.***
- Outlines the key changes between Procure IT and the MICTA/ICTA Contracting Framework
- Addresses transitional arrangements
- Has some FAQs



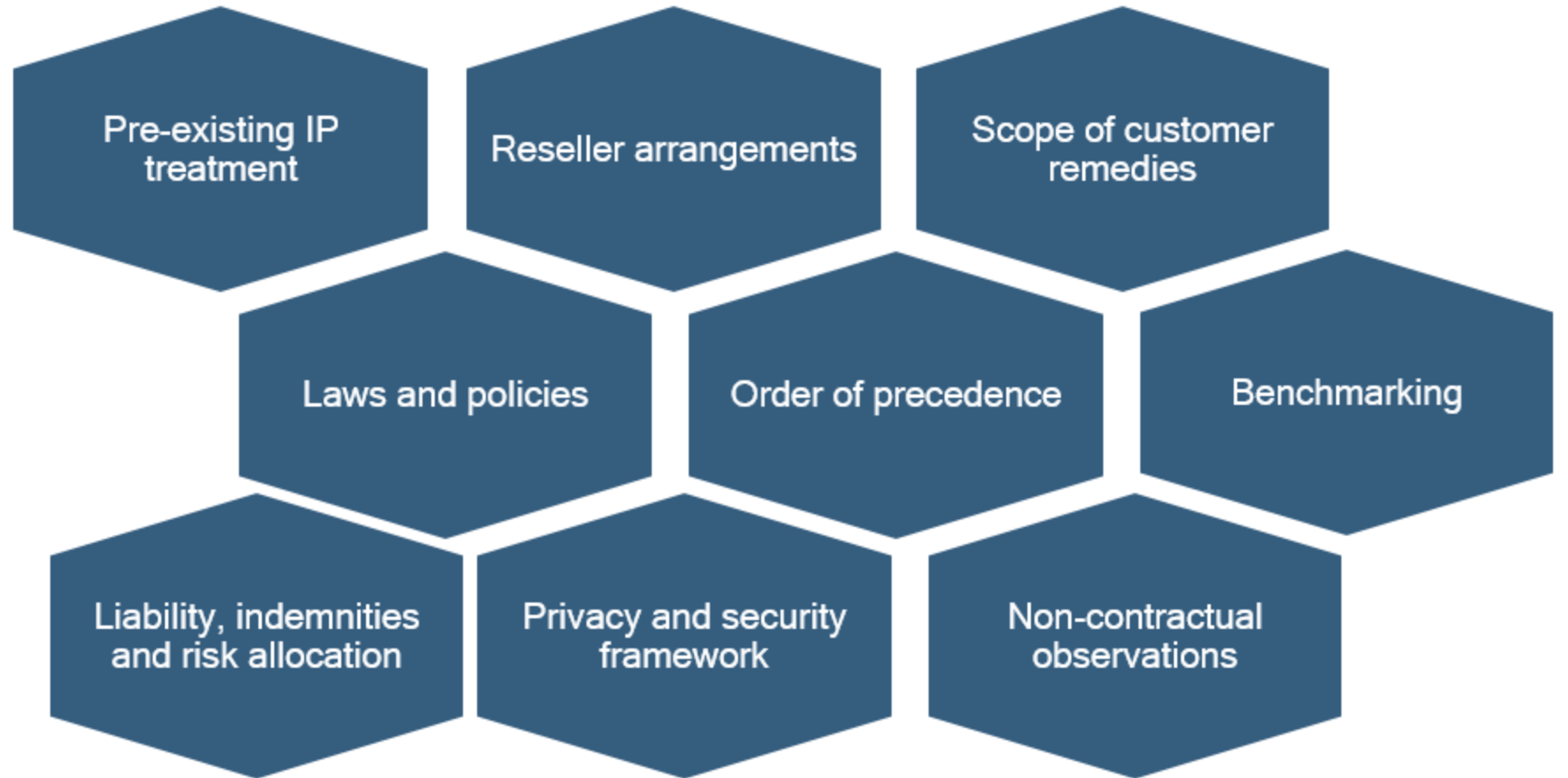
Digital.NSW  
ICT Purchasing Framework -  
MICTA, ICTA and Modules

User Guide



# Key themes

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# Reseller arrangements

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- Reseller arrangements can be addressed through the Additional Conditions.
- Reseller arrangements need to be treated in a bespoke manner. There is not a "one-size fits all" model.
- If reseller arrangements are permitted, this needs to be specified in Item 12 of Order Form in accordance with clause 3.6 of the ICTA.
- Accommodating EULAs.
- Types of terms that will need to be considered in the context of reseller arrangements.

# Key themes- Liability and Indemnities

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- Balanced, clear and customer and industry aligned
- Streamlined liability and indemnity framework
- Retention of “Default” general cap of 2x fees with a \$2M floor.
- “Default” position of uncapped indemnities in relation to:
  - Obligations relating to Customer Data [Use + security + location]
  - Confidentiality + Privacy
  - Security and Security Incident notification
  - fraud/recklessness/wilful misconduct + personal injury/death+ IP infringement

# Key themes- Liability and Indemnities (cont.)

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- Indemnities excluded from the general cap.
- Retained exclusion of consequential loss but “carved in” specific heads of recoverable loss.
- Flexibility to implement alternate liability frameworks on a case-by-case basis.
- Professional Standards Legislation

# Key themes - Privacy and Security Framework

- Flexible, risk focused, scalable security framework.
- Broad based auditable requirements/security certifications and complemented by specifying security standards detailed in the Order Form.
- Positive obligation on Supplier to audit compliance with its Security Program and security obligations under agreement.
- Obligation on the Supplier to run initial and annual security awareness training for its Personnel involved in carrying out the Supplier's Activities.
- Requirement to have a Data Management and Protection Plan that sets out framework on how suppliers will protect personal information and comply with privacy laws.



# Procurement Board Direction & Variations

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## PBD-2021-02 – Mandated use of ICT Purchasing Framework

- Applies to both the Core& Framework and the MICTA/ICTA Contracting Framework
- Mandatory application from 1 September 2021 however discretion to use from 1 July 2021.
- Agencies retain discretion to use MICTA/ICTA Framework regardless of the contract value

## Variations to the ICT Purchasing Framework

- Non- Beneficial variations –Agencies now enabled to make Non-Beneficial Variations to MICTA/ICTA and Core& subject to compliance with a new Governance Risk Framework (**GRF**)
- The ability of an Agency to make Non-Beneficial Variations using the GRF excludes exemptions from using the ICT Purchasing Framework, WoGA's and variations which vary the order of precedence.

# Transitional Arrangements

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- In-flight Procurements
- Options and Extensions
- Pragmatic and Flexible Approach

# Review and feedback

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- Not "set and forget" – MICTA/ICTA Contracting Framework will be reviewed in 12 months time.
- Chat-bot / electronic contracting to facilitate completion of the Order Form in the pipeline.
- DCS welcomes feedback on the MICTA/ICTA Contracting Framework documents.
- Written feedback can be submitted to:

[ICTServices@customerservice.nsw.gov.au](mailto:ICTServices@customerservice.nsw.gov.au)

# Q&A







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