
James Dunn

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BACKGROUND

James is a Director of Proximity. James has built a very strong reputation in the Australian Government ICT procurement sector as a dependable and outcome focused lawyer and procurement advisor who provides practical and commercial solutions.

James' main areas of practice are public sector contracting and procurement with a focus on technology and capital acquisition, including software licensing, systems integration, hardware acquisition, mobile communications, internet connection services and communication systems.

He has played an important role in the provision of legal and procurement services for a number of high profile and complex government ICT projects and has been responsible for coordinating large legal and procurement teams.

James' is especially skilled in:

Commonwealth government procurement and tendering: providing outcome focused legal support for the end-to-end procurement process (procurement strategy; approach to market documentation; evaluation, negotiation and contract management) for complex procurements.

Commonwealth government ICT: providing legal support for complex ICT procurements and developing and negotiating software licence agreements for Australian Government Agencies.

Commonwealth government contracting: developing easy to navigate, plain English template suites for contracts, funding agreements and MOUs that reduce agreement development and negotiation time; providing pragmatic and workable contract law and contract interpretation advice.

James has a current NV2 security clearance with AGSVA.

EXPERTISE

- › General contracting law
- › Procurement and tendering
- › Governance and probity
- › Intellectual Property
- › Information and communications technology
- › Telecommunications
- › ICT Outsourcing
- › Cloud Computing
- › Software licensing and support
- › Hardware acquisition and support
- › Agile ICT procurement
- › Whole of government ICT arrangements

James has provided assistance to Australian Government clients on some of their most important and complex ICT procurements and contracting arrangements; including assisting the ATO establish its ICT Professional Services Panel, major procurement relating to the Australian Government Internet Gateway Reduction Program, establishment and management of current whole-of-government ICT panels, procurement of Defence's Land 75 Battle Management System and the procurement of a new Commonwealth Budget Management System for the Department of Finance.

James assists clients with the whole procurement process including procurement strategy and structuring, development of RFT documentation, evaluation of tenders, preparation for and conduct of negotiations, and management of contracts.

RELEVANT EXPERIENCE

Procurement and Tendering

James Dunn has 13 years' experience advising Australian Government on procurement projects. James advised Defence on its procurement of sustainment services for the Navy's \$3b Landing Helicopter Dock Ships including the development of the RFT pack for the capability support services, evaluation of tenders and negotiation of the contract. James provided extensive support to Defence to ensure the successful management of third-party IP throughout the procurement process.

James assisted Defence in relation to the Land 75 Battle Management System procurement. James assisted with evaluation, drafting the contract and contract negotiation directive, and negotiations with Elbit Systems.

James assisted Defence with negotiating a new long-term agreement with UNSW for the provision of academic services at ADFA and assisted Defence with developing and negotiating a contract for the support of a Digital Hydrographic Database for the Australian Navy. James has advised Defence in relation to several other procurements including hard shelters, a battle command support system and a land track management system for Army; assisting Defence to obtain the best value for money.

General contracting law

James recently led Proximity's team in developing a new suite of Australian Government ICT contracting templates for the DTA to replace the SourceIT template suite. Proximity developed a comprehensive Digital Sourcing Contract Template for complex ICT procurements and separate templates for software, hardware and ICT consulting services. James advised the NDIA on funding agreements, intra-Agency corporate services agreements and property licences.

James assisted Home Affairs (then Customs) to establish MOUs between Home Affairs and 12 other client agencies for the provision of secure internet gateway services. James recently led Proximity's development of a single MOU template for NHMRC. The template can be tailored using 'smart template' technology that allows clause selections to suit project requirements.

James provided legal support to Defence with the development of a Collaborative Industry Agreement for the provision of services in relation to the Joint Decision Support and Simulation Centre.

ICT Projects

James assisted the CDPP with its procurement of an enterprise business management system including development of the RFT pack, leading the legal evaluation of tenders and development and negotiation of the final contract. James designed a legal evaluation process that quickly assessed the overall legal risk of each tender to enable an efficient short-listing process.

James assisted Home Affairs (then Customs) with its procurement of secure internet gateway services as part of the Government's Internet Gateway Reduction Program. James assisted with the procurement strategy, drafting market testing documentation and evaluation and was the lead negotiator for the contracting stream. James advised the NDIA on the procurement of major enterprise complex ICT systems and services and consultancy services.

James assisted Defence CIOG with developing the ITRI for the ERP Program Systems Integrator role. James acted as legal advisor on Icon Water's Asset Maintenance and Management System Program, a once in a generation technology transformation procurement project. He also advised Health and Environment with conducting enterprise-wide ICT outsourcing procurements.

James assisted Defence to implement its ICT sourcing reform agenda through the establishment of its Distributed Computing Central Services agreement and major open infrastructure agreement. James assisted with renegotiating numerous software licensing and support agreements with major suppliers as part of Defence's strategy to rationalise and standardise its procurement of software services.

At a previous firm, James assisted Finance to procure a new Central Budget Management System, establish whole-of-government ICT panels (including for desktop computers, invoice reconciliation services and telecommunication commodities), the establishment and ongoing management of the whole-of-government Microsoft Volume Sourcing Arrangement, the first of the Australian Government's Coordinated Procurement Contracting Framework Initiatives.

James assisted Finance to achieve improvements to Microsoft's standard terms, particularly greater protections in the software licensing usage and transfer rights and assisted with ongoing management of the arrangement. James has advised many entities on software licences including the ATO, Defence, Home Affairs, Finance and the NDIA.

James acted as the procurement and legal advisor on Icon Water's Asset Maintenance and Management System Program, a once in a generation technology transformation project.

Assisted the National Disability Insurance Agency with the sourcing of its major enterprise ICT systems.

Assisted Defence CIOG with developing the ITRI for the Defence ERP Program Systems Integrator role.

Assisted the ATO to establish the Treasury Portfolio ICT Professional Services Panel. This assistance included:

- › assisting with developing an updated Deed of Standing Offer based on tenderer feedback and to reflect changes in the governance of the panel;
- › advising on the evaluation process;
- › developing a supplier performance framework; and
- › probity advice relating to the evaluation phase and establishment of the Panel

Assisted the Department of Defence to implement its ICT sourcing reform agenda through the establishment of its Distributed Computing Central Services agreement and major open infrastructure agreement. James assisted the Department with renegotiating numerous software licensing and support agreements with major suppliers as part of Defence's strategy to rationalise and standardise its procurement of software services.

Assisted CASG in relation to the Land 75 Battle Management System procurement. James assisted with the evaluation of tenders, drafting of the contract negotiation directive, drafting of contractual documents and the conduct of negotiations with Elbit Systems. James also provided procurement advice and support to the BCSS component of the Land 75 Program, including drafting procurement documentation for the in-service support services and conducting the commercial and legal evaluation for the sole source procurement.

Assisted CASG in relation to the Land Track Management System contract with Northrop Grumman, including assisting with the commercial evaluation, development of contract documents and conducting many complex aspects of the negotiations, including negotiation of the software escrow arrangements.

Assisted the Australian Government Information Management Office (AGIMO) to implement a key recommendation of the Gershon Review through the establishment and implementation of whole-of-government ICT panels (including for desktop computers, invoice reconciliation services and telecommunication commodities). James advised on procurement strategies, the development of RFT documentation, evaluation of tender responses and negotiation of Head Agreements with multiple panellists. James assisted AGIMO with establishing and implementing multiple panels simultaneously.

Assisted the Department of Finance with the procurement of a new Central Budget Management System (CBMS). This is a highly complex and high profile project involving multiple stakeholder agencies and a dual stream multi-stage procurement that requires the purchase of Commercial-off-the-shelf (COTS) products and a Systems Integrator to tailor and implement the COTS products into Finance's IT environment. The project includes advising on the procurement strategy, developing documentation, tender evaluation and negotiation of contracts with both a COTS provider and Systems Integrator. James has coordinated a large team of lawyers to provide legal services for both procurement streams in parallel.

Advised the Department of Health and Ageing and the Department of Department of Sustainability, Environment, Water, Population and Communities on their major ICT outsourcing projects. These projects including assisting with the development of procurement strategy options, market

documentation, evaluation and negotiation of complex outsourcing contracts. These contracts included a wide range of services including software and hardware acquisition and support, equipment leasing and licensing of Agency premises.

Provided advice to the Department of Immigration and Citizenship (DIAC) in relation to the Systems for People and Biometrics ICT procurements.

Advising on the procurement of a new ICT system for the National Blood Authority.

Provided advice in relation to the Systems for People IT project for DIAC.

Assisted with the procurement of an information system software for the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

Software licensing

James has reviewed and negotiated many software licence and support agreements including for traditional desktop applications, enterprise server software and cloud software as a service. James regularly drafts end user licence agreements for Commonwealth entities and has assisted the Australian Government to negotiate software licences with some of the world's largest software vendors including SAP, Microsoft, IBM and Symantec.

James has advised a wide range of entities on their software licences including the Australian Taxation Office, Department of Defence, Department of Immigration and Border Protection (previously Customs), Department of Finance and the National Disability Insurance Agency.

James assisted AGIMO with the establishment and ongoing management of the whole-of-government Microsoft Volume Sourcing Arrangement, the first of the Australian Government's Coordinated Procurement Contracting Framework Initiatives. This involved developing and negotiating a Head Agreement under which government agencies can place enrolments for Microsoft Products. James assisted AGIMO to achieve improvements to Microsoft's standard terms, particularly greater protections in the software licensing usage and transfer rights and has assisted with ongoing management of the arrangement, including contract interpretation issues.

Whole of government

Assisted the Australian Customs and Border Protection Service on a secondment basis with its procurement of secure internet gateway services. The project is part of the Government's Internet Gateway Reduction Program which will reduce the number of Australian government agency internet gateways from 128 to 8 for improved operational efficiency, reliability and security. The project will also facilitate the transition to IPv6. This project is particularly important for the Customs and Border Protection because it is procuring the services for the agency and a large group of more than nine client agencies. James provided advice on:

- › Procurement strategy - including the RFT for Gateway Services, purchasing from the Internet Based Network Connections Panel and the use of the Intra Government Communications Network (ICON)

- › Drafted the market testing documentation and procurement documentation (including the tender evaluation plan)
- › System integration risk – including risk mitigation options such as cooperation obligations, service levels, risk transfer mechanisms, etc
- › Governance arrangements – including establishing MOUs between the lead agency and the client agencies.
- › Evaluation of tender responses, including development of the tender evaluation reports
- › Preparation of contracting negotiation strategies and directives; and
- › The conduct of negotiations

QUALIFICATIONS

- › Bachelor of Laws (Australian National University)
- › Bachelor of Arts (Australian National University)
- › Graduate Diploma in Legal Practice (Australian National University)
- › Admitted as a lawyer of the Supreme Court of the ACT
- › Admitted as a lawyer of the High Court of Australia
- › Unrestricted practising certificate

MEMBERSHIPS

- › ACT Law Society