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PREVENTING ICT PROJECT FAILURE: A LAWYER'S PERSPECTIVE.

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Why do ICT projects fail?

- An ill-conceived business case – the project was always a very bad idea
- Wrong supplier - a supplier was chosen who couldn't deliver
- Confused customer - a customer without a clear idea about what they want
- Lack of a common understanding about what is required
- A change in direction and focus – either by the customer or supplier or both
- A mix of some or all of the above
- Failure to recognise any of the above sufficiently early and to act to stem the bleeding

Project Silos



A good contract won't prevent a project failure.



The lawyer's typical involvement in an ICT project life cycle

- Preparing the tender documents
- Evaluating the tender responses
- Negotiations, contract drafting and finalisation
- Post-contract: transition and beyond

Preparing the tender documentation.



Back when life was simpler



Things get complicated



Options, options and more options.

- COTS vs bespoke
- Waterfall vs agile
- Locally installed vs cloud solutions (private, public, hybrid)
- One vendor vs multi-vendor environments

The risk of the wrong contract.

- Unhelpful responses that you can't really evaluate and may influence the choice of the wrong supplier
- No meeting of minds right from the beginning
- Extensive, protracted negotiations later on once you've lost leverage
- The contract remains not fit for purpose

What could we do better

- Better precedents
- Tailored contract with comments
- RFIs
- Contract principles

The benefit of an RFP review

- Legal compliance
- Consistency with the contract
- Clear instructions to get clear responses
- A lawyer who actually understands what you are seeking to do

Evaluation



Flexibility is key



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Negotiation planning

if you fail
to plan
you plan to
fail

What could be done better?



Why does contracting take so long?



The other elephant in the room



Post-contract: transition and beyond.



Dispelling some myths

- Contracts don't outsource all risk – they are not a panacea
- Implied terms arguments are really, really difficult
- Agreements to agree - Courts won't write your bargain for you
- Boilerplate won't save you from yourselves

What could be done better?

- Document all changes
- If your contract doesn't work, fix it – don't ignore it
- Enforce your remedies or at least reserve your position
- Don't stay on the wrong track – include appropriate off-ramps



Questions?



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