



The National Commission of Audit

Submission Company – Dataflex Pty Ltd.

Subject – Public Liability required by DHS ICT Contractor SON

The Issue

1. Specifically, the Deed of Standing Offer for the Provision of ICT Contractor Services (SON 8678101 - Department of Human Services - Dataflex Pty Ltd is a vendor signatory) has public liability insurance component which can conflict with what is shown in the scheduled Work Order. (This issue may also occur in other generic deeds as well)

We believe the Deed itself limits “Work Orders” for a particular company like Dataflex to a total public liability of \$10million in aggregate. Consequently the option of selecting a \$5million per occurrence on Work Orders by DHS or other department contract officers should be discouraged so the total liability of work orders will not exceed \$10million in aggregate.

2. Also there is confusion on total liability - we note multiple work orders can be raised under the one deed by different agencies /departments at any time.

So the questions are:

1. Is the public liability capped in **total for all work orders** under the deed at maximum \$10M total?
2. Or if every work order for example has a cap of \$10 Million in the aggregate – does that mean as a supplier our total liability under the deed is the total of all work orders combined? EG; if we have 5 x current work orders in place our potential Liability = 5 x \$10M = \$50M? or is the total liability under the deed capped at \$10M no matter how many work orders are in place?

The Solution

1. If our understanding to point one above is correct we believe this issue should be referred to Finance or DHS to advise contract officers in DHS and other departments to select \$10million in aggregate at clause 22 of the specified Work Order at Schedule 7 - Work Orders, not to select per occurrence.
2. In point two above, if the spirit of the deed is to limit total liability of the whole contract to \$10M in aggregate, then the wording of the deed should reflect the total liability of all work orders combined is limited to \$10M.

Deed and Work Order Attachments - -as examples

The supporting Schedule 1 from the SON Deed and Schedule 7 from the Work Order are as follows:-

Schedule 1– Deed Details

Item number	Description	Clause reference	Details
10.	Insurance	13.1	Public liability insurance for an insured amount of \$5 million per occurrence and \$10 million in aggregate. Either professional indemnity or errors and omissions insurance for an insured amount of \$5 million per occurrence and \$10 million in aggregate. Workers compensation as required by Law.

Schedule 7– Work Orders

22.	Limitation of liability – cap	18.2a	<i>[specify the amount to which liability is to be limited under the Work Order]</i> <input type="checkbox"/> \$[insert] per occurrence or <input type="checkbox"/> \$[insert] in the aggregate
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Referred for your consideration,




Director - Dataflex Pty Ltd.
Barton ACT