

## Buik, Jessica

**From:** Tony J Cooke [tcooke@paxus.com.au]  
**Sent:** Tuesday, 3 March 2009 6:29 PM  
**To:** Buik, Jessica  
**Subject:** ITCRA Code of Conduct - Minor Variation of Authorisation No: A91063

**Attachments:** pic01386.jpg



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I am writing to object to some of the proposed changes to the ITCRA Code of Conduct, lodged as Minor Variation of Authorisation No: A91063.

To disclose my interest in the matter: Paxus is a founding member of ITCRA. I have personally been on the Board of ITCRA for the past 9 years, and I have previously served as President for two years. I voted against the proposed changes at the time they were presented to the Board, but the motion was carried and subsequently voted in at an annual general meeting of the association.

My objection is to the proposed deletion of subclauses 7.1.3 and 7.1.4, clauses 7.2 and 7.3, and Schedule A. These clauses define a process for the orderly transition of contractors from an outgoing supplier to an incoming supplier, in the event a client changes suppliers.

It should be noted that the deleted transition process is only applicable when there is no provision for transition in the client agreement with the outgoing supplier, and "where the outgoing Supplier and the Client cannot agree on the terms of cessation of the contract" (taken from the deleted subclause 7.1.3).

Under the amended Code of Conduct, in the event of the above situation arising (i.e. no provision for transition in the agreement), the incoming supplier is bound by the code to pay full fees to the outgoing supplier for the outgoing supplier's contractors until the completion of those contracts. While this would be a good outcome for the outgoing supplier, it is not practical to think the client would agree to pay the incoming supplier an additional fee to cover the cost of processing outgoing suppliers contractors, because it would increase the overall fees paid by the client.

The above situation would create an unnecessary and unwanted decision point for the incoming supplier. It will need to decide to either honour the new Code of Conduct and therefore reject the commercial agreement with the client, or break the Code of Conduct and negotiate with all parties outside the guidance of the Code.

I believe the variation to remove the transition clause is anti-competitive because:-

It presents a situation whereby an incoming supplier is forced to either attempt to charge a higher fee than the client was previously paying, or walk away from the business,

As it is likely that most suppliers would opt to accept client terms, in which case the incoming supplier would be forced to leave the association (because it could not agree with the Code of Conduct), there is no industry protection for the outgoing supplier in the negotiation process, and

Contractors caught up in the transition process are at risk of being terminated by the outgoing supplier if acceptable transition terms could not be reached.

The transition clause in the existing Code of Conduct serves as a good circuit breaker in the event there is no pre-agreed process between the client and outgoing supplier. Incoming suppliers are able to follow a process and negotiate the most equitable outcome possible for all parties, and in the event agreement cannot be reached, ITCRA has a process for mediation.

In terms of changes to the Application, I propose that clause 4.4 of the application

be rejected, which would have the effect of leaving the defined transition process in the Code of Conduct.

Regards,

Tony Cooke | Managing Director  
Paxus | Level 3, 60 Collins Street, Melbourne, Vic, 3000 | W:  
www.paxus.com.au  
T: +61 (0)3 8680 4300 | F: +61 (0)3 8680 4399 | E: TCooke@Paxus.com.au  
[alternatively contact my Assistant: Deb Kerr T: +61 (0)3 8680 4302 | E:  
dkerr@paxus.com.au]

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