

Commonwealth ICT Procurement in The Digital Economy

KEY FEATURES OF A NEW APPROACH

2017





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Procurement in The Digital Economy

Corporate and government entities are maturing in their approach to digital transformation, moving away from the “quick wins” that shaped early digital efforts and embarking upon longer term business transformation programs.

Early digital transformation efforts took the customer experience online through the digitisation of forms, the improvement of user interfaces and the adaptation of purchasing and application processes. These changes accelerated the uptake of online service delivery, changed customer behaviour and drove early efficiencies. Behind the scenes, progress has been slower as organisations battle with ageing infrastructure and legacy business processes that fetter long-term, transformational change. Emboldened by shifting social norms, efficiency gains and soaring user expectations, organisations are taking a fresh look at their own shop, and seizing opportunities to drive efficiencies from within.

The Australian Government is as active as ever in its pursuit of “simpler, clearer, faster public services” (Australian Government Digital Transformation Office). In what may be an effort to drive efficiency from within, the Government has sent strong signals that ICT procurement will be next in line for a transformational shake-up. With an annual spend of around \$5.6 billion (Australian Government Department of Finance, 2015), ICT procurement is both an ambitious and strategic target for transformational change.



Recent developments in ICT procurement

In early October 2016, the Assistant Minister for Digital Transformation, The Hon Angus Taylor, set in motion a series of initiatives aimed at consolidating Commonwealth ICT procurement.

First, the Government initiated Machinery of Government changes which saw the establishment of a new “Digital Transformation Agency” (DTA). This change expanded the functions of the former Digital Transformation Office to incorporate additional whole of government ICT procurement functions and gave life to a new project management office to “manage strategy and manage integration of the digital transformation agenda across all of government” (Taylor, 2016).

Second, the Government declared its intention to establish a “Digital Transformation Advisory Board” comprising private and public sector experts tasked with providing “practical and strategic advice to the Minister’s office” (Taylor, 2016).

Finally, the Government established the “ICT Procurement Taskforce” to examine the “opportunities and barriers to delivering better outcomes in ICT procurement” (The Department of the Prime Minister and Cabinet, 2016). The Taskforce released a consultation paper in November 2016 seeking feedback on how to improve innovation in government through ICT procurement.

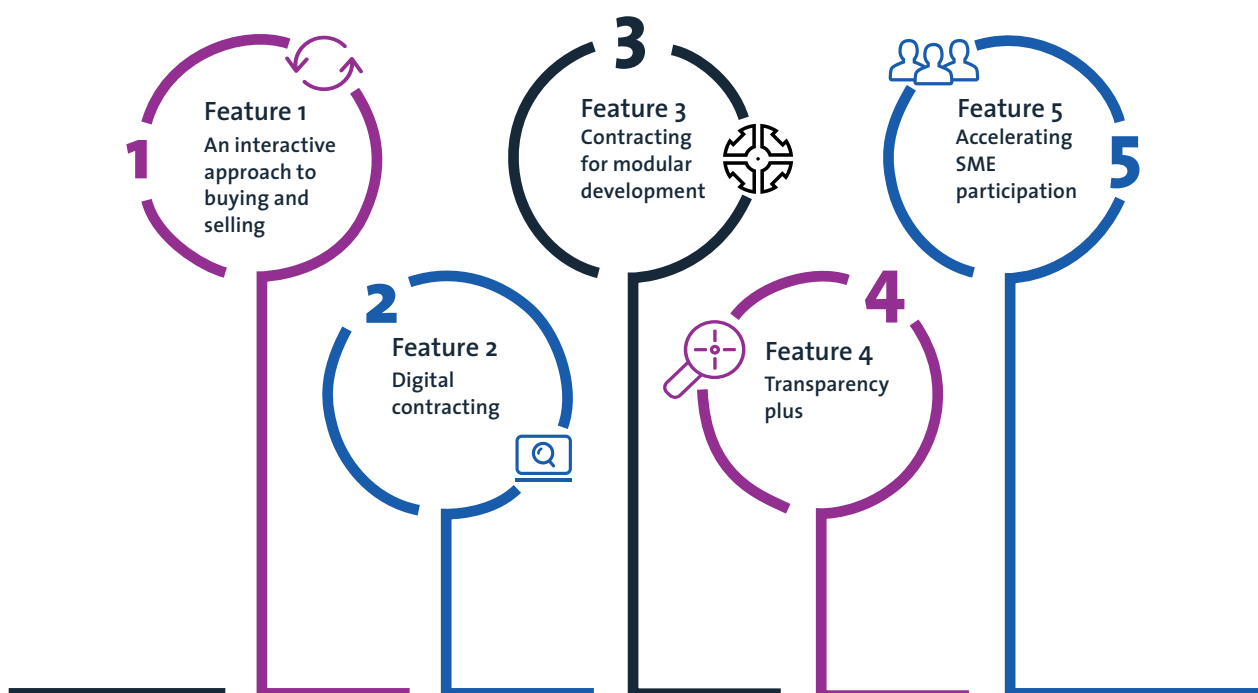
The actions of Minister Taylor and the Government suggest that the Government views the transformation of ICT procurement as a foundational step to the effective execution of its broader digital transformation program.

With an atmosphere of change well and truly in the air, we think it is timely to consider what a new approach to ICT procurement may look like, and how contracting with ICT suppliers can evolve to support a new procurement and contract management landscape.



Key features of a new approach

Based on international developments and apparent Government priorities and preferences, we consider that a new approach to Commonwealth ICT procurement could incorporate five key features: an interactive approach to buying and selling, digital contracting, contracting for modular development, a new level of transparency and greater participation by SMEs.



FEATURE 1:

An interactive approach to buying and selling



Through its Whole-of-Government panel arrangements, the Government has sought to rationalise, consolidate and integrate ICT capability across the public sector. Despite these efforts, concerns remain about the cost to industry in engaging with the 70 or so different ICT panels in place across the Commonwealth. In 2016, the Government took the panel procurement approach a step further through the development and release of a Digital Marketplace. The Digital Marketplace has a clear objective – to make it easier for buyers and sellers of ICT services to work with each other.

The Digital Marketplace operates as a searchable shopfront for the “Digital Services Professionals Panel”, which was established through an open approach to market. Through the Digital Marketplace, panel suppliers (Sellers) are listed and profiled. Commonwealth purchasers (Buyers) with a need for digital service professionals can browse the marketplace in search of relevant Sellers. Buyers can interact with Sellers and initiate the purchasing process online.

This “online shopping” approach to procurement has many benefits:

- **It improves the visibility of suppliers to Commonwealth purchasers** – The ease of access is likely to assist Buyers to more readily engage with individual contractors and small businesses.
- **It’s searchable** – Buyers can search for suitable Sellers by capability. This functionality could be expanded to enable Buyers to search for Sellers based on other parameters, including size, rates or Buyer satisfaction ratings.
- **It lends itself to a more frequent and flexible approach to panel refreshment** – Panel Deeds for Sellers in the Digital Marketplace continue indefinitely (until termination). This suggests that the Commonwealth will take a rolling approach to the refreshment of the panel, “topping up” rather than “resetting” the panel at set intervals. While the Commonwealth would need to revalidate the suitability of tenders on a regular basis, the shift from rigid, fixed term panels to living, growing panels is an exciting prospect for both Sellers and Buyers, and one which is more in keeping with the online purchasing experience in other sectors.
- **It’s a two way street** – The Digital Marketplace also has the capability to allow Sellers to put forward ideas and solutions, and Buyers to crowdsource solutions by posing problems or challenges to the market.

Against this background, we expect that in examining the “opportunities and barriers to delivering better outcomes in ICT procurement” (The Department of the Prime Minister and Cabinet, 2016), the ICT Procurement Taskforce will look at how the Commonwealth could improve access to ICT panel arrangements, for both suppliers and purchasers, by making them available on a Digital Marketplace style platform. With the rationalisation of the Digital Marketplace business function and the Whole-of-Government ICT procurement functions in to the DTA, and a Minister with a clear reform agenda, we anticipate that the climate would be right for any such proposal to gather momentum.

CASE STUDY: GOV.UK – THE DIGITAL MARKETPLACE UK

In November 2014, the UK Government launched a beta version of its Digital Marketplace. The Digital Marketplace is available through GOV.UK, the front door to Government in the UK. The objective of the Digital Marketplace was to enable public sector agencies to find people and technology for digital projects.

The Digital Marketplace UK currently enables government purchasers to procure goods and services under three different “frameworks”. A framework is a set of terms that apply to contracts entered into under the framework (like a “panel deed” in an Australian context). Suppliers were invited to apply to deliver services under the frameworks, which included:

- **G-Cloud framework** for cloud-based services. These services fall into four broad categories, namely Infrastructure as a Service (IaaS), Platform as a Service (PaaS), Software as a Service (SaaS) and Specialist Cloud Services (SCS). These services must be “off-the-shelf” cloud services.
- **Digital Outcomes and Specialists framework** for digital specialists, user research studios and user research participants.
- **Crown Hosting Data Centres framework** for physical datacentres to house private or legacy systems that cannot be migrated to the cloud.

The Digital Marketplace has experienced rapid growth in its two years of operation. It is now home to 2,900 suppliers and has facilitated £1,475,493,469 worth of ICT sales (Digital Marketplace Blog, 2016). The G-Cloud framework has been a key driver of this success, principally by shortening and simplifying the process of procuring appropriate cloud services (Digital Marketplace Blog, 2016).

FEATURE 2:

Digital contracting



Concerns about “set and forget” contracts languishing in bottom drawers could be a thing of the past as the Commonwealth explores opportunities to better utilise digital contracting in the procurement process. The DTA has embraced digital contracting through its Digital Marketplace and has flagged the possibility of a digital payment system for Commonwealth purchasing.

Agreements between the Commonwealth and ICT suppliers (including panel suppliers) often take the form of a standing offer deed, under which the parties enter into contracts (or “Work Orders”) on the terms of the deed. The Commonwealth also enters into standalone or “one-off” contracts with suppliers. An electronic method for administering and entering into Work Orders could help the Commonwealth to streamline and manage the high volume of contracts it encounters day to day.

The law as it stands is not compatible with an end-to-end electronic contracting solution for all agreements. Standing offer deeds are entered into on a nil value, no commitment to spend basis, meaning they are a set of promises without payment. Due to the absence of payment, which is an essential element of a binding contract, a deed must be written on “paper, parchment or vellum” and signed in the presence of a witness in order to be legally binding. To date, the courts have held the view that an electronic contract does not meet the “paper, parchment or vellum” requirement and therefore cannot be a legally binding deed.

Once a standing offer deed has been executed manually, contracts under the deed may be entered into electronically. The Commonwealth has embraced this approach for services procured under standing offer deeds through the Digital Marketplace. Buyers administer “click wrap” style agreements, which enable Sellers to “Agree” to a legally binding contract with the click of a mouse.

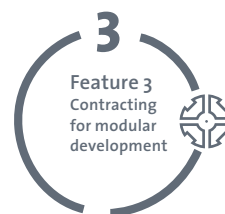
While the use of digital contracting in Commonwealth procurement is currently low, the Digital Marketplace example indicates that Commonwealth agencies are willing to explore process change.

From the international experience (see case study), it is clear that electronic processes can improve the transparency and efficiency of government procurement and contract management. We anticipate that the Commonwealth procurement landscape will, in the future, feature systems to streamline and digitise the execution and management of contracts.

CASE STUDY: KONEPS – KOREA’S ONLINE E-PROCUREMENT SYSTEM

Internationally, governments are increasingly transitioning to “end-to-end” e-Procurement systems that streamline administration, improve transparency and harness efficiencies. The World Bank cites the Government of South Korea as a leader in the field of e-Procurement, having delivered a fully featured e-procurement system (e-bidding, e-purchasing, e-contract management) (United Nations, 2011). Korea’s online e-procurement system (KONEPS) is fully integrated with all other government operations, including financial management systems, company registrations and tax systems (United Nations, 2011). Significant investment by Korea saw KONEPS evolve from an electronic tendering system (like AusTender) to a comprehensive, end-to-end service which now facilitates \$US56 billion worth of public and private sector transactions per year (Korea Public Procurement Service, 2014). According to the Public Procurement Service, the investment is paying off, with annual savings of \$US4.5 billion dollars in administrative costs each year (Korea Public Procurement Service, 2014). South Korea’s leadership in this field is likely to have contributed to it being ranked third of 193 countries in the 2016 UN E-Government Development Index (United Nations, 2016).

FEATURE 3: Contracting for modular development



The Australian Government Digital Service Standard (DSS) mandates the use of “open standards and common platforms” for software development as a means of avoiding “vendor lock-in”. The Government’s shift away from single-platform solutions to modular, service-oriented architecture is indicative of the strategic shift occurring more broadly among large organisations that are seeking an agile replacement for “monolithic” legacy systems.

Service-oriented architecture comprises a flexible ecosystem of applications (called “services”) which link to data sets via Application Programming Interfaces (APIs). As organisations shift towards self-service models, service-oriented architecture provides a more accessible pathway between user and data. In contrast to a single-platform solution, service-oriented architecture supports iterative software development by multiple in-house or commercial vendors which encourages contestability and innovation in the market. Common standards and languages help to secure consistency across the system.

The DTA encourages Commonwealth agencies to use systems designed in a modular and API-enabled way. The DTA claims that modular and API-enabled systems are “more able to leverage new and better technologies as they emerge, instead of being locked into strictly defined and less flexible traditional large systems” (Australian Government Digital Transformation Agency, 2016).

High value contracts between the Commonwealth and vendors are often designed for a “lead vendor” relationship. They include provision for software as well as a full suite of services, such as configuration, customisation, maintenance, support, consulting and training. The “lead vendor” approach can be reinforced by intellectual property provisions and other arrangements that make it difficult for the Commonwealth to pivot to new technology as it arises.

We anticipate that agencies will be looking to implement contractual models that support iterative software development using common platforms. Agencies will also be looking to secure intellectual property rights that enable interoperability between government data sets and services.

We acknowledge that this represents a significant change to the commercial position commonly found in high value contracts between the Commonwealth and vendors. However, in our view, it is important to ensure that technology drives contracting, which means that new commercial and contracting models should be up for discussion.

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CASE STUDY: US DIGITAL GOVERNMENT STRATEGY

In 2012, the US Government published its "Digital Government Strategy". The Strategy proposed a conceptual model that acknowledges the three "layers" of digital services – the information layer, the platform layer and the presentation layer as set out in Figure 1 below. The Strategy argued in favour of a "Shared Platform" approach to development, which involves building for multiple use cases at once, using common standards and architectures, participating in open source communities, leveraging public crowdsourcing and launching shared government-wide solutions and contract vehicles (Executive Office of the President of the United States, 2012).

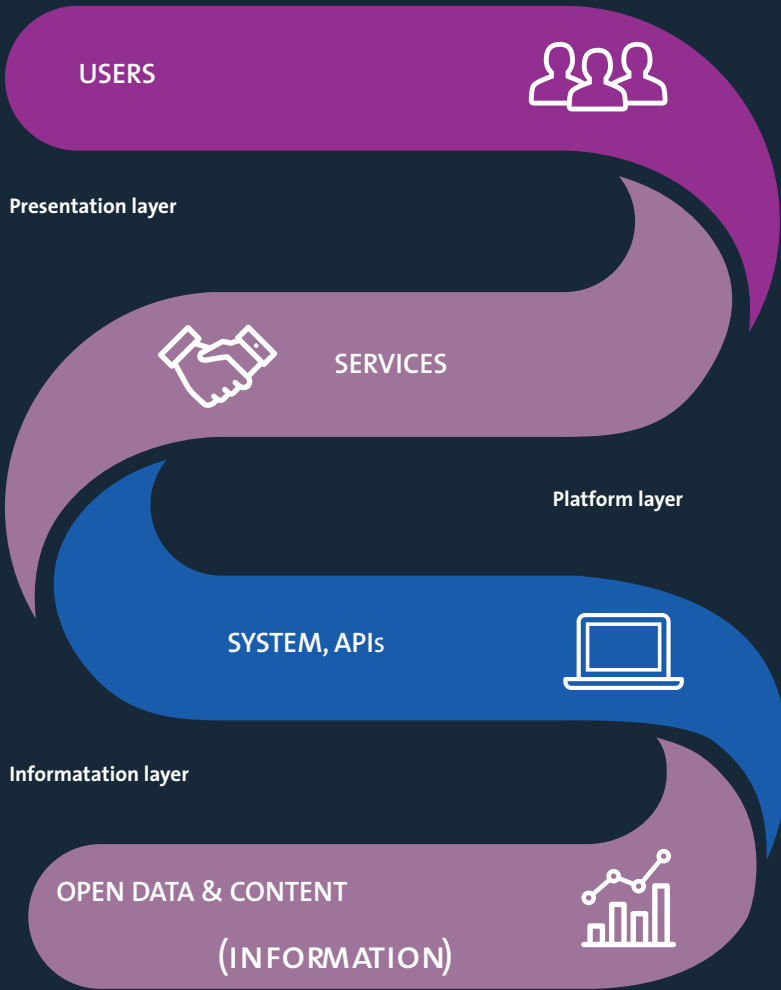
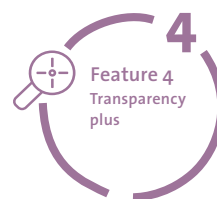


Figure 1: Conceptual Model (Executive Office of the President of the United States, 2012)

FEATURE 4:

Transparency plus



When launching the Digital Marketplace beta, Minister Taylor emphasised four “flaws” in procurement processes – innovation, interaction, accountability and transparency and reiterated that we need procurement systems that drive accountability and transparency for the benefit of both Buyers and Sellers. The Government continues to promote transparency in procurement through reporting requirements, limits on confidentiality provisions in contracts and the mandated use of AusTender for open tenders.

The Government has expressed a desire to ramp up the level of accountability and transparency in ICT procurement, alluding to the sort of buyer / seller reporting and review mechanisms commonly seen on peer-to-peer platforms like Uber and TripAdvisor. The Government has suggested that agencies should be looking for “endorsements” to support decision making, particularly for commodity type services where providers have similar hourly rates, and that technology can be used to enhance the process of reputation building and endorsement.

We expect that the increased use of digital platforms throughout the procurement process will give rise to new avenues for agencies to share information about expenditure and the buyer experience.

The Digital Marketplace publishes a list of “Services and Rates” providing Sellers and potential Sellers with a guide as to the price range generally applicable to digital specialist roles. Price ranges are given as a guide only, and Sellers are free to dictate their own rates on their Seller pages. Seller pages are available to all registered Buyers, providing a level of commercial confidentiality while allowing agencies to view and compare rates early in the procurement process. Of course, rates are only one part of the story, with the core focus of the Commonwealth Procurement Rules continuing to be on value for money. This is why information about past performance is so important.

In lifting the veil on formerly confidential assessment and evaluation processes, the Commonwealth would need to tread carefully to manage the commercial and reputational risk of certain disclosures to Sellers. If the Commonwealth enables Buyers to publish negative feedback, it will need to establish appropriate controls to enable Sellers to respond to, or resolve, that feedback. A low-risk starting point could be to enable Sellers to manage the “endorsement” aspect of their own profiles, self-editing and moderating information about previous projects, providing references and nominating referees. This would streamline the current reference-checking aspect of the procurement process while minimising new risks.





We expect that the increased use of digital platforms throughout the procurement process will give rise to new avenues for agencies to share information with other agencies about expenditure and the buyer experience.

FEATURE 5:

Accelerating SME participation



Small and medium-sized enterprises (SMEs) make a substantial contribution to the ICT supply landscape. However, despite contributing to 60% of Commonwealth ICT contracts, SMEs only receive 30% of the ICT spend (The Department of the Prime Minister and Cabinet, 2016). While SME involvement can promote innovation in software development, the ICT Procurement Taskforce is concerned about:

- the widespread use of panels and the time and cost required from SMEs to participate in panel processes;
- expensive market testing exercises at a cost which SMEs can struggle to bear;
- onerous terms and conditions, including in relation to liability; and
- onerous security requirements, including the requirement to obtain certifications and clearances at the suppliers' cost.

Governments are increasingly exploring opportunities to partner with SMEs to accelerate new projects. In October 2016, the New South Wales government issued procurement direction "2016-05 Procurement Innovation Stream". The direction provides that agencies can engage a SME directly on a short term contract valued up to \$1 million in order to run a proof of concept trial. The decision to raise the "innovation threshold" from \$250,000 to \$1 million recognised the need to give agencies greater scope to test the capability of goods and services to meet current or emerging business needs. Participating agencies must publish a report on the outcome of the trial. Where a proof of concept trial results in a need for the procurement of products or services, the agency must run a competitive procurement process. This provides transparency to all parties (ie, the agency, the vendor and potential competitors) and puts the onus on agencies to ensure that their arrangements with the initial vendor facilitates a future market testing.

The Commonwealth Procurement Rules provide that an entity may conduct a procurement at or above the procurement threshold through limited tender when it is procuring a prototype or a first good or service intended for a limited trial, or developed for research, experiment, study or original development. Currently, agencies rely on this exception to enable the conduct of proof of concept trials. However, unlike the NSW procurement policy, there is limited published guidance and no formal requirements to encourage the collection and sharing of lessons learnt. Consequently, the line between trial and ongoing service can become blurred. There is also the risk that agencies use this exception as a "quick fix" and do not develop an overarching legal and technical strategy which avoids vendor lock-in and allows interaction with, and re-use by, other agencies.

The ICT Procurement Taskforce Consultation Paper sought submissions on a range of factors, including the market's view on the structural and cultural barriers to entry and participation by SMEs and start-ups in Commonwealth procurement processes. Empowered with this knowledge, we may see the Commonwealth adopting changes to accelerate SME participation, such as the reforms observed in NSW. Reporting requirements, as in NSW, and guidance on the management of probity would support agencies and give decision makers the confidence to test innovative ideas and work with smaller suppliers within the confines of the procurement rules.

Other features set out in this paper have the potential to stimulate SME participation. Digital forms of buying and selling can increase SME exposure to opportunities at a lower cost than the cost of maintaining a place on multiple panels. SME and sole-supplier participation may also increase if the government shifts towards service oriented development using common platforms and open source software, which does not require an extensive single-vendor presence and can instead utilise an in-house capability supplemented by freelance digital specialists.

WHAT'S NEXT?

The ICT Procurement Taskforce has an ambitious agenda: to make it easier and cheaper for ICT businesses to contract with the Australian Government and to deliver better government services at a lower cost. Interested observers can expect to see findings and recommendations presented by the Taskforce in early 2017. We consider that the features outlined in this paper have the potential to streamline the procurement process for all participants, and we anticipate that aspects of these features may emerge as part of a new approach to ICT procurement in the future.

KEY DATES:

31 January 2017 – ICT Procurement Taskforce formal submission period closed

Early 2017 – ICT Procurement Taskforce reports to Government

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