Australian Government
Digital Transformation Agency

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Finance and Public Administration Legislation / References Committee

Parliamentary Joint Committee on Public Consultancy and Services Contract Bill 2025

Digital Transformation Agency Submission

Executive Summary

The Digital Transformation Agency (DTA) supports the aim of improving transparency and accountability in the contracting of consultancy services. However, the Bill's current form presents challenges for digital and ICT procurement. Concerns include ambiguity on terms used in the Bill such as the definition of a consultancy contract, the application of the $2 million threshold, and unintended operational impacts such as delays, increased administrative burden, and reduced supplier engagement.

Instead, the DTA proposes that targeted improvements be implemented to utilise existing oversight mechanisms and prevent duplication of processes, thereby ensuring the timely delivery of essential digital services throughout the Australian Government.

Digital and ICT projects are often complex, time sensitive, and iterative.
Introducing additional approval layers late in the contract lifecycle could disrupt delivery of critical government services, undermine agility, and deter participation by small-to-medium enterprises (SMEs).

Introduction

The DTA welcomes the opportunity to contribute to the deliberations on the Public Consultancy and Services Contract Bill 2025. The Bill's intention to improve transparency and oversight in government consultancy and professional services procurement is commendable and aligns with broader accountability goals. However, as currently drafted, the Bill presents several operational challenges that could inadvertently delay project delivery, increase administrative burden, and discourage supplier engagement, particularly from small and medium enterprises (SMEs).

Current DTA Approach to Digital Procurement

Since 2017, the DTA has held responsibility for whole-of-government digital and ICT procurement, developing robust, streamlined frameworks that support efficient, timely, and transparent acquisition. The Digital Marketplace Panel 2 (DMP2) is central to this, providing guided, user-focused pathways for buyers and suppliers, including SMEs and Indigenous Businesses, while using a Performance Monitoring Framework (PMF) to ensure continuous review and improvement of procurement practices. The DTA's adaptive approach supports ethical conduct, inclusivity, and reduced bureaucracy, enabling government procurement to remain responsive and competitive in a rapidly evolving digital landscape.

Principal Concerns Regarding the Bill

Ambiguity in Terminology

The Bill uses "consultancy" and "services" interchangeably, which creates uncertainty around which contracts are covered. In digital procurement, distinguishing between consultancy (strategic advice or planning) and professional services (implementation, support, or operational activities) is critical.

In a digital context, services contracts are typically categorised as:

- **Consultancy Services:**
  Consultants are individuals, partnerships, or corporations engaged by a government entity to provide professional, expert, or strategic services that support decision making. These services typically involve the development of an intellectual output that reflects the independent view or findings of the consultant or consultancy. The work is generally one off or irregular, and consultants operate under a lower level of direction and control compared

to employees. Unless explicitly stated in the contract, the output may not belong to the contracting entity. Consultants are not integrated into the entity's workforce or focused on the direct delivery of operational activities. Digital examples could include strategic technology, enterprise architecture, or technology investment advice.

- **Professional Services:**
  Professional Services refers to the engagement of external individuals, partnerships, or corporations by a government entity to deliver specialised expertise, capabilities, or functions that support the entity's operations or decision making. This includes engagement of qualified personnel with industry experience for short term or fixed- duration arrangements. They typically operate under the direction or supervision of the entity and produce outputs that are regarded as Commonwealth products. Arrangements normally support entities to scale flexibly and augment internal capability. Digital examples include engagement of a software development team to design, build or deploy a digital product, engaging accessibility experts to recommend improvements to a website, or outsourcing the delivery of an agency's IT help desk function.

- **ICT Labour Hire:**
  Provision of personnel with specific digital or ICT skills to perform tasks within government agencies. ICT labour hire involves the placement of individuals within the agency to deliver defined outputs or support ongoing operations at the direction of the agency. This category is distinct from consultancy or professional services, as it does not involve independent advice or outsourced services. The output is generally regarded as a Commonwealth product, is produced under the supervision of the Commonwealth entity, normally through access to Commonwealth assets. Digital examples include the engagement of a scrum master, project manager or programmer for a fixed term to augment agency capability.

Why the distinction matters

The Bill's interchangeable use of "*consultancy*" and "*services*" risks capturing operational contracts, such as software-as-a-service and cloud-based subscriptions services. These are foundational to the Australian Government's digital infrastructure but would not ordinally meet the definition of a "consultancy". These contracts are complex, centrally negotiated, and require agility to meet evolving agency needs. If the Bill's definition is applied too broadly, routine service contracts (including maintenance and support) could be subject to unnecessary consultancy oversight, causing procurement delays, and increased administrative burden.

Application of the $2 Million Threshold

The Bill's requirement for parliamentary approval of contracts exceeding $2 million is unclear, particularly for contracts that bundle goods and services or undergo variations or extensions. This creates compliance risks and administrative uncertainty, as agencies may interpret the threshold inconsistently. Essential digital contracts frequently surpass the threshold due to scale and complexity, and the lack of clarity could inadvertently disrupt procurement of routine but critical digital capabilities. DTA recommends the Bill specify how the threshold applies to bundled contracts and contract variations and provide practical reporting guidance.

Impact of Contract Variations and Lifecycle Changes

Digital projects often require contract amendments to address evolving requirements. If such changes push a contract's value above $2 million late in its lifecycle, the Bill will trigger parliamentary approval mid-project, risking significant delays and operational uncertainty. Clear provisions are needed to address how and when contract variations are assessed against the threshold, ensuring ongoing projects are not unduly disrupted.

Challenges in Assessing Scope and Reporting

Existing reporting systems, such as AusTender, do not provide sufficient granularity to distinguish between products and services within contracts. This makes it difficult to determine which contracts would fall under the Bill's definition of "consultancy". The DTA suggests leveraging AusTender data to inform the Bill's scope, and developing clear, practical guidance for agencies to interpret and apply reporting obligations consistently.

Impact on SMEs and Supplier Engagement

The increased complexity and additional approval layers proposed by the Bill may significantly deter SME participation, reducing competition and innovation in the digital sector. SMEs rely on agile processes and streamlined requirements to engage effectively in government procurement. Added administrative burdens and uncertainty could discourage their involvement, undermining policy objectives to foster a dynamic, competitive marketplace. The DTA emphasises the importance of minimising unnecessary complexity to preserve SME engagement and maintain a healthy procurement environment.

Delivery Delays and Increased Administrative Burden

Requiring parliamentary approval for contract variations above $2 million introduces procedural delays, affecting timely delivery of digital services and the government's capacity to respond to urgent needs, such as cybersecurity or system upgrades.

Confidentiality and Probity Challenges

Parliamentary review must be balanced against the need to protect commercially sensitive tender information. Without robust safeguards, there is a risk of compromising supplier data, undermining trust, and threatening the integrity of the procurement process. The DTA recommends establishing protocols that ensure thorough oversight while maintaining strict confidentiality.

Recommended Changes to the Bill

While the DTA has some reservations about the draft Bill in its current form, should the Bill proceed, the DTA recommends addressing the following items:

1. Clearly define "consultancy" and "services" within the Bill to reflect sector distinctions and avoid unnecessary oversight of operational contracts.
2. Specify how the $2 million threshold applies to bundled contracts, variations, and extensions, with practical guidance for agencies.
3. Develop transparent reporting requirements and leverage existing systems such as AusTender to support consistent application.
4. Design oversight mechanisms to minimise delays and administrative burden, particularly for SMEs and time-sensitive digital projects.
5. Implement confidentiality protocols to protect commercially sensitive information during parliamentary reviews.

Existing and recently improved accountability mechanisms

Existing and emerging non-legislative measures from the DTA provide robust mechanisms to promote transparency, accountability, and effective management of digital and ICT consultancy and services contracts. These initiatives, when fully implemented, have the potential to deliver the objectives of the Bill, namely, enhanced transparency, without introducing the operational risks and administrative burdens that may arise from legislative intervention.

Current measures

Senate Estimates hearings, independent audits conducted by the Australian National Audit Office, and oversight from the Joint Committee of Public Accounts and Audit together provide a comprehensive, ongoing framework for parliamentary scrutiny, compliance monitoring, and continuous improvement in digital procurement and contract management across the Commonwealth.

Contract Limits and Reviews Policy

The DTA provides agencies with guidance to structure digital contracts and work orders in a manner that mitigates risk and fosters improved outcomes. A consistent government, wide trend is the adoption of smaller, modular contracts, which enhance flexibility and performance management. Under this policy, digital contracts and work orders are limited to a whole-of-life value of $100 million. In addition, digital contracts cannot exceed an initial three-year term. Any extension options are similarly capped at three years and are contingent on a formal review of contractor performance and deliverables. This framework ensures contracts remain agile, performance-oriented, and subject to appropriate governance at critical milestones.

Additional Measures Being Progressed

The DTA has been working to progress additional seller accountability measures including through a new Seller Performance Monitoring Framework, as well as an initiative to strengthen information sharing on seller underperformance across agencies. The DTA believes these measures will improve accountability and transparency of digital sellers and provide a mechanism for reporting and addressing issues.

Seller Performance Monitoring

The DTA is collaborating with government agencies to strengthen contract outcomes with digital suppliers. One such initiative is the Digital Marketplace Panel 2's PMF, which adopts a structured process for collecting, evaluating, and reporting supplier performance data across the panel. Embedding these practices encourages a more accountable and evidence-based contracting environment, supporting agencies in making well-informed decisions. This will be in operation from November 2025.

Strengthening Information Sharing

The DTA is currently progressing an initiative to improve information-sharing across agencies on digital seller underperformance. By enabling transparency across agencies—supported by procedural-fairness safeguards (e.g. a right of reply)—this initiative is designed to enable agencies and the DTA to manage risk more effectively, apply targeted commercial controls, and improve procurement as well as project delivery outcomes.

Conclusion

The potential challenges associated with the proposed Bill may outweigh its anticipated benefits, particularly in relation to digital procurement. Introducing additional approval and reporting obligations for consultancy and services contracts, especially those that are complex, time sensitive, or frequently subject to change, risks unintended delays, increased administrative workload, and greater uncertainty for agencies and industry stakeholders.

For digital projects, where adaptability and timely responses are essential to meet technological advancements and evolving public expectations, these added layers of oversight could impede efficient delivery of government services, disrupt project schedules, and discourage supplier participation. This is particularly relevant for SMEs, which contribute significantly to innovation and competition within government. The resulting uncertainty may also affect market confidence, potentially making it more difficult for government to attract and retain high quality suppliers and solutions.

While the DTA is unable to support the Bill in its current form, in light of the advised existing and proposed oversight mechanisms, it is recommended that any future Bill be carefully focused on specific risks or identified gaps, rather than duplicating or complicating the current framework. This approach will best support secure, contemporary, and value for money digital and ICT services for the Australian Government and community, maintaining the established standards of transparency and accountability.