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CATAPULT
Connected Places

Transforming Public Procurement

Connected Places Catapult:
Green Paper Consultation
Response



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Foreword



Unleashing the power of public procurement to drive the growth of innovative businesses is crucial for a flourishing UK economy in the years ahead. We recognise the role of procurement in fostering vibrant innovation ecosystems and believe it is central Connected Places Catapult's mission to support businesses to transform exciting ideas into valuable products and services. The proposed reforms offer tantalising new opportunities to leverage demand for improved public services to stimulate these outcomes, along with the social and economic benefits that arise from them. This joint response represents a collective ambition to drive positive change for public bodies and pioneering suppliers alike, and we look forward to continued evolution in this area.

Nicola Yates OBE,
CEO, Connected Places Catapult



The importance of effective public procurement has never been greater for sub-national government. The University of Birmingham is committed to supporting our city-region as it develops its Covid-19 recovery plans. We know that unemployment will grow, demand for public services will increase and financial resources will be significantly reduced. Intelligent and informed use of procurement as a tool for benefiting regions without increased expenditure can help with this challenge. The proposed reforms are a good basis for improving the use of procurement to drive innovation and deliver better public services. Our joint response is an informed and constructive steer towards an even more effective transformation of public procurement to leverage this opportunity.

Simon Collinson,
Deputy Pro-Vice-Chancellor, University of Birmingham



The reforms proposed in the Green Paper offer opportunities for the delivery of key missions and the development of vibrant local innovation ecosystems. Public buyers can set the standards and provide an early market that allows the development and diffusion of socially desirable technologies. Key to recovery and levelling up will be using this purchasing power to drive innovation, particularly in the health and green urban domains. This response to the Green Paper provides a series of evidence-based suggestions to move in this direction.

Luke Georghiou,
Deputy President & Deputy Vice-Chancellor, University of Manchester

Executive Summary

The government is right to promote strategic procurement as a powerful tool for driving demand-side investment into innovation and addressing competitiveness objectives for global Britain. We believe this should be the lead message when the new procurement rules are announced, focussing on encouraging the use of innovation procurement at all levels of public organisations in order to deliver the challenging goals set by the governments low carbon economy ambitions. However, the proposals fail to acknowledge that the UK already has a strong and internationally competitive record in deploying innovation procurement, which can be used as a foundation upon which to strengthen our global position further.

The proposals need to do more to recognise that transformation of public procurement practice towards a truly innovation-friendly culture will be extremely challenging. This is a field in which risk aversion is deeply embedded. For this reason, we recommend that the reformed procedures available for contracting authorities include the competitive, flexible procedure, but also provide a smaller range of defined procedures based on current best practice. Pre-commercial procurement procedures should be included in the legislation, and guidance should be produced to encourage their widespread adoption. The pre-commercial procurement procedures should also include new elements that allow successful suppliers to transition from development into full deployment of their solution without the need for multiple tenders. Formalising these changes would not only encourage adoption of pre-commercial procurement, but also represent a UK competitive advantage over current EU procurement rules.

The proposed reforms could do more to encourage small enterprises to tender and to reform those practices that currently make public procurement unappealing to many of these organisations. This is essential to support the supply-side of innovative markets and create lively ecosystems where companies offer emergent services to meet the needs of public bodies can thrive. To this end, we recommend that the definition of public good as a principle of public procurement be extended to explicitly consider innovation. Furthermore, the proposals in the green paper should ensure that the development of innovative solutions encourages organisations to form partnerships to deploy scaled up products and services, including support from universities and research organisations.

Although the green paper recognises the need for guidance and training to embed a new culture around UK procurement in public bodies, little detail is provided on how this might be conducted or what funding will be provided to enable the more expansive thinking required to drive best practice. Innovation procurement is a challenging area and many commercial departments currently struggle to engage with it. We recommend the establishment of a best practice centre in innovative procurement to build up a knowledge base with case studies, training and practical advice on contract development, acting as a focal point to enable the culture change envisaged.

We welcome the opportunity to respond to this consultation and are keen to continue engaging with government on all aspect of innovation procurement best practice and reform.

1 Introduction

This document provides a response to ‘Transforming Public Procurement’ Green Paper¹ and is submitted on behalf of Connected Places Catapult and our academic collaborators at the University of Birmingham (City REDI) and the University of Manchester (Manchester Institute of Innovation Research). This joint response has been provided as a result of a joint research project, bringing together expertise on public procurement of innovation and regional development to provide an evidence base and comprehensive analysis to quantify the benefits of innovation procurement. This document is not intended to represent the institutional views of the universities involved.

Connected Places Catapult is a neutral, government-backed, technology and innovation centre that provides impartial ‘innovation as a service’ for public bodies, businesses, and infrastructure providers to catalyse step-change improvements in the way people live, work and travel. We connect businesses and public sector leaders to cutting-edge research to spark innovation and grow new markets. We run technology demonstrators and SME accelerators to scale new solutions that drive growth, spread prosperity, and eliminate carbon. Our Challenging Procurement programme encourages place leaders to rethink the role of innovation procurement in delivering organisational objectives and supporting the changes that make such a shift possible and provides support to innovative suppliers looking to work with public bodies.

Manchester Institute of Innovation Research (MIOIR) is a research institute based in Alliance Manchester Business School at the University of Manchester, UK. MIOIR is a centre of excellence in the field of innovation studies. In the area of research and innovation policy, the Institute has in recent years contributed to the conceptualisation and analysis of public procurement of innovation.

City REDI was established by the University of Birmingham to support regional economic growth policy and practice through engaged and relevant research, with expertise in international business, local economic development, innovation and investment, skills supply and labour markets and with a cross team focus on a smart specialisation approach to city region growth.

Key contributors to this response include Dr. Oliver Kirsch (Connected Places Catapult), Malcolm Harbour CBE (Connected Places Catapult), Dr. Elvira Uyarra (University of Manchester), Prof. Raquel Ortega-Argilés (City-REDI, University of Birmingham), Oishee Kundu (University of Manchester), and Raj Ragiwala (Connected Places Catapult).

For more information on our Challenging Procurement programme or regarding the detail of this response to the Green Paper, please contact Dr. Oliver Kirsch (oliver.kirsch@cp.catapult.org.uk).

¹ Cabinet Office. (2020). Transforming Public Procurement (CP 353). <https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

2 General Comments

The purchase of goods, services, and works by UK public authorities is a powerful demand-side tool which can be used to meet a number of policy objectives, including stimulating innovation, driving growth across the economy, improving social value and promoting the emergence of pioneering suppliers^{2,3,4}. We are enthused to see the Transforming Public Procurement Green Paper embed the creation of “opportunities for innovative companies to win business and improve public services” as a central objective of these reforms. We hope that this prominence represents engagement and appetite across government. Public procurement is important for levelling up, given the significant spatial distribution of public procurement activities and its potential to transform placemaking, local economies and labour markets. The sheer size and nature of local public procurement, closer to end user needs in areas such as education, health and the environment, is also well placed to address pressing societal challenges^{5,6}.

The recent OECD STI outlook 2021 highlighted the increased effectiveness of direct measures (contracts, grants, awards) to stimulate radical innovations and innovations for the public good, compared to indirect measures (e.g. tax credits)⁷. This is an important point considering the reliance of the UK on tax credits compared to other countries such as the US. We also hope that innovation procurement mechanisms will be carefully considered as part of the operational design of the forthcoming ARIA agency.

Before responding to the detailed consultation questions, this response considers the issues and opportunities within the proposed reforms with a particular focus on the capacity and likelihood to drive innovation.

2.1 Overall Strategy of the Green Paper

Consultation questions: Q4, Q13

In several areas the Green Paper presents what appears like a strong departure from current rules. However, many of the changes are not particularly radical, with several of the changes merely

² McCann, P. and R. Ortega-Argilés (2013) Modern regional innovation policies, *Cambridge Journal of Regions, Economy and Society*, 6(2), 187-216. doi:10.1093/cjres/rst007.

³ Edler, J., & Georghiou, L. (2007). Public procurement and innovation—Resurrecting the demand side. *Research policy*, 36(7), 949-963.

⁴ Uyarra, E., & Flanagan, K. (2010). Understanding the innovation impacts of public procurement. *European planning studies*, 18(1), 123-143.

⁵ Uyarra, E., Flanagan, K., Magro, E., & Zabala-Iturriagoitia, J. M. (2017). Anchoring the innovation impacts of public procurement to place: The role of conversations. *Environment and Planning C: Politics and Space*, 35(5), 828-848.

⁶ Uyarra, E., Zabala-Iturriagoitia, J. M., Flanagan, K., & Magro, E. (2020). Public procurement, innovation and industrial policy: Rationales, roles, capabilities and implementation. *Research Policy*, 49(1), 103844.

⁷ <https://www.oecd.org/sti/science-technology-innovation-outlook/>

focussing on terminology to clarify procurement objectives (MEAT to MAT) or improving standards (e.g. transparency). Whilst we generally concur with the objectives behind these changes, there are areas where the proposals could go significantly further.

Although the Green Paper presents ambitious goals for encouraging innovation and achieving the associated culture change within commissioning and commercial departments, it offers no integrated strategic vision for how these aims might be achieved. Indeed, the Green Paper openly acknowledges gaps in its analysis and requests more ideas. The Green Paper proposes that strategic procurement will be encouraged by a National Procurement Policy Statement, however the underlying strategy is clearly incomplete. Much of the description in the Green Paper is wrapped in unclear, and sometimes obscure, language. Mechanisms such as the new, competitive flexible procedure have the potential to promote new approaches to market engagement and innovation, but much of the detail on these concepts is outsourced to guidelines that will be produced in the future. This makes it somewhat challenging to assess the likely impact that the new procedure will generate in practice. This approach also creates the risk of an increasingly complex and changing body of documentation with which commercial teams must comply, creating the potential for increased risks aversion unless managed very carefully.

Furthermore, the current proposals in the Green Paper do not get to the heart of the stated objectives - how to integrate innovation and social value into the heart of the process of public buying. In part, this is because the Green Paper is about proposing reforms to procurement law, rather than transforming the approach to how procurement should be conducted in practice. Reforming the legal framework upon which procurement is conducted can instil requirements and consequences that encourage good procurement practice, such as transparency, but the assertion that procurement drives outcomes such as increased innovation is fundamentally flawed. The responsibility for understanding the requirements of citizens and businesses and alignment to government strategic priorities lies with the commissioning process. This places significant emphasis on upskilling and capacity building within commercial teams and commissioners; to some degree the Green Paper recognises this need but fails to provide detail on how this might be achieved.

The Green Paper sets out an objective to unify the various sets of rules regulations governing UK procurement, and thereby create a simpler regime. We welcome the intention to create a single regulatory framework for all public bodies, such that the mechanisms for procurement of products and services are differentiated on the basis of complexity, rather than the purpose or sector in which they operate. However, we note that in some respects the current proposals fall troublingly short. The Local Procurement Act and the Social Value Act are not incorporated into the proposals, and health procurement is also excluded from the Green Papers proposals. We argue that, in order to deliver the desired simplification in practice these exclusions should be reconsidered.

Finally, the Green Paper is largely devoid of supporting evidence and only highly selective examples are presented (regarding under-use of flexible procedures immediately following their introduction in 2016). Areas where the UK has been leading - innovation procurement, social value, Government Digital Service - are not examined. Only one detailed proposal, the relatively new and untested Construction Playbook, is cited as best practice.

2.2 Pre-Commercial Procurement to Promote Innovation

Consultation questions: Q6, Q8, Q40

The Green Paper places innovation at the heart of the narrative and objectives behind the proposed changes, recognising that "public procurement offers significant potential as a strategic lever to drive innovation in the UK". We agree that strategic procurement is a powerful tool for delivering innovation to drive the governments' overall competitiveness objectives for global Britain. However, we argue that it has not been a central consideration in structuring the reforms proposed. Despite 'innovation' being mentioned 35 times within the Green Paper, it is only significantly discussed in chapter 3, when reviewing the procurement procedures. It is not discussed in relation to award criteria or performance monitoring.

Pre-commercial procurement (PCP) is integral to efforts to stimulate innovation⁸. By introducing competing ideas into the commissioning and procurement of public services it provides the flexibility to work with innovative suppliers earlier in the development cycle, so that products and services public bodies' needs^{9,10}. However, it remains an underutilised mechanism. Insofar as the Green Paper deals with these issues, it does so by proposing the flexible, competitive procedure, which in some senses seems to be an 'anti-procedure' that permits public bodies to define their mechanisms, as long as they comply with the six principles of public good, value for money, transparency, integrity, fair treatment of suppliers and non-discrimination.

We recommend that the Green Paper's proposals are revised to include pre-commercial procurement as an explicit, listed procedure within the new legislation. This would place pre-commercial procurement on a clear legal footing and put the UK ahead of the EU where this is not a listed procedure. The flexible procedure may provide the implicit ability to conduct pre-commercial procurement, without giving credence to any particular approach or mechanism, however the failure to explicitly include pre-commercial procurement as part of the procedures within the Green Paper significantly reduces the visibility of innovation. The lack of definition around permissible applications of pre-commercial procurement will also increase the risk aversion around the use of these mechanisms.

The changes proposed in the Green Paper also fail to explicitly address what can feel like wasted effort for the parties involved (contracting authorities and suppliers), when under the current regime innovation processes do not result in long-term contracts for suppliers. Currently pre-commercial procurement and the public procurement of innovation (PPI) are treated as entirely distinct and formally unrelated approaches. Many public bodies express frustration around the practical difficulty transitioning relationships, products and services from initial proof of concept demonstrators to scaled deployment. The Green Paper states that it considers 'powers that enable review and post-contract amendments to contracts when considering variations due to innovation' (point 91). Clarity on the extent to which these variations can be used to resolve the disconnect that often exists between PCP

⁸ Iossa, E., Biagi, F., & Valbonesi, P. (2018). Pre-commercial procurement, procurement of innovative solutions and innovation partnerships in the EU: rationale and strategy. *Economics of Innovation and New Technology*, 27(8), 752–771. <https://doi.org/10.1080/10438599.2017.1402431>

⁹ Yeow, J., Rigby, J., & Li, Y. (2017). The Effect of a Government Target for the Procurement of Innovation: The Case of the UK's Small Business Research Initiative. In Thai, KV (Ed.), *Global Public Procurement Theories and Practices* (Vol. 18, pp. 113–135). Florida Atlantic Univ, Publ Procurement Res Ctr; Natl Inst Govt Purchasing Inc. https://doi.org/10.1007/978-3-319-49280-3_7

¹⁰ Selviaridis, K. (2020). Effects of public procurement of R&D on the innovation process: Evidence from the UK small business research initiative. *Journal of Public Procurement*. <https://doi.org/10.1108/JOPP-12-2019-0082>

and normal procurement would be valuable, as this transition limits the subsequent adoption of innovations.

We recommend that the Green Paper explicitly outline the limitations under which pre-commercial contracts can be extended. Many public bodies recognise that where PCP is used, the transition from initial proof of concept demonstrators to scaled deployment is currently not well served. By providing clarity around the ability to continue supplier relations beyond the traditional pre-commercial procurement proof of concept stage, the government could create a mechanism that provides the flexibility to build sustainable partnerships between public bodies and innovative suppliers and accelerate the growth of innovative products and services. Effectively, this approach would replace the current Innovation Partnership procedure, which has not delivered on the intended role to connect R&D and deployment and consequently has seen limited uptake.

2.3 Engaging SMEs and Innovators to Broaden the Supplier Base

Consultation questions: Q9, Q25

The Green Paper states: "The government wants to open up public procurement to a more diverse supply base, making it easier for new entrants such as small business and voluntary, charitable and social enterprises to compete and win public contracts". However, it provides no data on current contracting with SMEs and how it intends to diversify the supply base.

According to a recent study in Europe¹¹, the UK is among the countries with the smallest share of contract value going to SMEs. According to research conducted by Spend Network, contracting with SMEs has decreased consistently since 2018, both in terms of spend and contract counts. Overall value going to SMEs has seen a 17% reduction from 2018 to 2020, while for non-SMEs it has increased by 11%.

The Green Paper does not provide a clear plan for how the government intends to level up the playing field for SMEs or consider the factors that make engaging with public procurement burdensome for SMEs. At the same time, some of the changes proposed may benefit smaller suppliers, including the new flexible procedure making it easier for contracting authorities to engage with the market, including with innovative SMEs and start-ups. Additionally, the proposed 'Central Platform' will merely replace the existing EU standard electronic procurement that avoids the need to re-enter details for each tender. Introducing greater transparency through open contracting data should improve SME participation.

Conversely, the proposed reforms do little to address many of the practical barriers that SMEs experience, including over-specification of contractual deliverables, the frequent requirement to produce large bid documents where significant risk and time must be invested in the bid process^{12,13}.

¹¹<https://ec.europa.eu/digital-single-market/en/news/benchmarking-national-innovation-procurement-investments-and-policy-frameworks-across-europe>

¹² Uyarra, E., Edler, J., Garcia-Estevez, J., Georghiou, L., & Yeow, J. (2014). Barriers to innovation through public procurement: A supplier perspective. *Technovation*, 34(10), 631–645. Scopus. <https://doi.org/10.1016/j.technovation.2014.04.003>

¹³ Pickernell, D., Kay, A., Packham, G., & Miller, C. (2011). Competing agendas in public procurement: An empirical analysis of opportunities and limits in the UK for SMEs. *Environment and Planning C: Government and Policy*, 29(4), 641–658. <https://doi.org/10.1068/c10164b>

Unbundling of opportunities can also be an important mechanism to provide access to smaller suppliers. Intellectual property ownership and licencing also continue to present a major barrier for many small suppliers to engage in innovation activities with the public sector. Addressing these challenges must be a critical focus for the guidance and training provided to support the changes proposed in the Green Paper¹⁴.

Furthermore, there is potential that the proposals lead to significant unintended consequences with particular detriment to smaller suppliers. While the flexible procedure provides buyers much more freedom to engage with suppliers and promote innovation in tenders, the increased flexibility may result in greater divergence across buyers, limiting the extent to which standard approaches are developed and increasing the overall time for suppliers to familiarise themselves with any particular tender opportunity.

The Green Paper acknowledges that a lack of standardisation, transparency and interoperability of data can lead to "missed opportunities to manage spend, bring performance tension to contract management and improve outcomes". The government proposes to legislate to require all contracting authorities to publish procurement and contracting data thorough the commercial life cycle in a format compliant with Open Contracting Data Standard. This is welcome news in that it presents opportunities to avoid fraud and corruption, while also to shaping markets for innovation. However, there is a strong potential for unintended consequences, particularly in relation to innovation procurement. The centralisation of information and provision of mechanisms to exclude suppliers that have performed poorly in the past may work against the most ambitious suppliers. Poor-performance is not a well-defined concept, particularly concerning innovation where unexpected, emergent and tangential benefits are commonplace. Furthermore, many of the impacts of innovative products and services are difficult to measure or have delayed outcomes, making it difficult to see how data will be fairly collected, stored, and adjudicated. These factors have the potential amplify the effects of errors or misuse of KPIs to monitor poor performance, to the detriment of innovative suppliers.

One additional mechanism that is identified in the Green Paper is the DPS+. While we recognise that DPS+ provides more flexibility than the current DPS, it does not go far enough because no facility for direct award is included to facilitate work with SMEs. A Framework can be set up to include some direct award, through the use of a rate card obtained at the tender stage. However, DPS does not have this mechanism and every piece of work called off must undergo a mini competition with all framework suppliers that can provide the required service or goods. Provision of the same flexibility for direct award within the DPS+ would be of great advantage to all Contracting Authorities, even if direct award is reserved for low value calls offs.

2.4 Commissioning and Culture Change

Consultation questions: Q1, Q11

The Green Paper aspires to transform the approach to how procurement is conducted in practice to open up "public contracts to more small businesses and social enterprises to innovate in public service delivery", however much of the proposal considers only procurement law. The Green Paper states 'Public procurement is critical in translating those decisions into the right contracts' (point 8). While the law can place requirements upon contracting authorities that encourage good procurement practice,

¹⁴ Hoekman, B., Taş, B.K.O. Procurement policy and SME participation in public purchasing. *Small Bus Econ* (2020). <https://doi.org/10.1007/s11187-020-00414-z>

such as improved transparency, the Green Paper ignores the pivotal role of commissioning in translating government policies and strategy into outcomes. It should be remembered that procurement is a part of the commissioning cycle and has little capability to achieve the desired outcome by itself.

The Green Paper cites a low uptake in the UK of flexible procedures (such as competitive dialogue and innovation partnerships). It argues that in 2017, only "three contract notices for innovation partnerships and five for design contests were published by UK contracting authorities". It further notes that the four more flexible procedures account for less than 10% of all advertised contracts awarded in the UK between 2016 and 2018 (points 59 & 60). Taken as face value, these statistics raises questions about whether CAs are in a position to use more flexible tools to support innovation, and would seem to run at odds with the Green Papers central strategy of providing fewer, more flexible procedures.

More critically, the data presented in the Green Paper does not appear to be representative, according to TED¹⁵. Using the search terms 'Type of procedure': Innovation partnership and 'Country':UK to look at contract notices, TED returns 82 results since July 2016, of which 9 notices for innovation partnerships are listed in 2017. Considering that it was only introduced the year before, this is not surprising, and the use of the procedure quickly accelerated subsequently. Notably, this usage is much higher than other countries. For Germany the figure is 73, for Spain 19 (7 in Galicia), 39 in Italy, 3 in Portugal, 24 in Belgium, 33 in Norway, 79 in Finland, 12 in Sweden. We believe that the Green Paper overlooks the strengths that the UK has regarding the commissioning of innovation. The recent European Commission benchmarking study on national innovation procurement investments and policy⁷ ranks the UK as the second-largest country by share of innovation procurement, and fifth largest by share of R&D procurement. This shows a potentially unrecognised strength across UK contracting authorities and an appetite for innovation across many UK institutions. For example, the Green Paper does not recognise existing resources to support these activities, such the GDS Digital Buying Guide¹⁶. The UK has sometimes been at the forefront of experimentation, but some of these initiatives have been short lived and their impact has not been well evaluated. We recommend the Green Paper acknowledge the existing UK strong and internationally competitive record in deploying innovation procurement, and provides more clarity on the long term vision, support structures and evaluation methodologies that will form the basis to further strengthen our global position.

The Green Paper acknowledges the importance of a "more innovation-friendly culture as well as practices among contracting authorities" that may encourage innovative responses, such as the use of performance and outcome-based specifications. While allowing greater flexibility, the impact of the flexible procedure will rely on procurers having the right skills to make use of it. The government should recognise the move towards an innovation-friendly culture in public procurement occurs in a field in which risk aversion is deeply embedded. There is ample evidence that organisational culture, risk aversion and a lack of commercial and technical capacity in public procurement are critical factors limiting PPI implementation¹⁷. The flipside of greater flexibility is increased complexity, which may slow the adoption of the more powerful aspects of the new procedure. The Green Paper also does not acknowledge the differences between local, central and NHS procurement regarding capacity, flexibility and innovativeness.

¹⁵ <https://ted.europa.eu/TED/search/search.do>

¹⁶ <https://www.digitalbuyingguide.org/en/>

¹⁷ Georghiou, L., Edler, J., Uyarra, E., & Yeow, J. (2014). Policy instruments for public procurement of innovation: Choice, design and assessment. *Technological Forecasting and Social Change*, 86, 1-12.

We recommend that the definition of public good as a principle of public procurement be extended to consider innovation explicitly, in much the same way as is proposed for social value. This would place an expectation upon contracting authorities to explicitly consider innovation as part of all commissioning activities and drive a much stronger consideration of these factors during the commissioning and the development of procurement strategy. This could be a powerful mechanism to promote building innovation capabilities for places.

The adoption of these strategically important tools to the discretion of the procurer. This creates a strong emphasis on increasing the organisational capability and capacity of commercial teams and commissioners, including procurement skills. If procurement is to fulfil a strategic function (i.e. realise wider economic, social or environmental benefits), the government must be prepared to invest in building stronger capacity in-house. In-house procurement capabilities are one of the key ingredients in fostering an innovation-friendly procurement environment¹⁸. The proposed reforms' success will be heavily dependent on the government producing detailed guidance and training to CAs.

Delivering transformational and innovative services will benefit from developing non-transactional partnership approaches and strengthening skills relating to pre-market engagement and supplier management. Commissioning innovative activities often requires the different parties to work closely from the beginning, both within the commissioning authority and with suppliers and external stakeholders such as service users. All parties must understand what the commissioner is trying to achieve, requiring significant up-front time and costs to deliver the most favourable outcomes. Furthermore, the proposals should ensure that the development of innovative solutions encourages organisations to form partnerships to deploy scaled up products and services, including support from universities and research organisations.

Many commercial teams in local government have limited capacity and capability, following years of erosion. While the Green Paper commits to "a programme of training, guidance and case studies to support public procurers, with the ultimate aim of improving governments commercial capability". It is unclear how the government intends to foster and support this innovation-friendly culture, or how it links to previous efforts to build public procurement capacity.

The Green Paper does not detail how the requisite support and bandwidth will be funded to enact the proposed cultural transformation and outcomes the Green Papers envisages. Extensive training will be required to upskill commercial departments and encourage the expected culture change. Without this support, commercial teams will be unfamiliar with the opportunities provided by the new procedures may choose not take advantage of the increased flexibility and revert to traditional methods.

The Green Paper suggests that guidance will be available through an as-yet-undefined best practice network. We emphasise this need for a knowledge base with centralised expertise and the ability to provide practical support to contracting authorities. This facility is of particular importance in relation to innovation procurement, where uncertainty is inherent and best practice continually evolves.

¹⁸ Uyarra, E., Edler, J., Gee, S., Georghiou, L., & Yeow, J. (2014). Public procurement of innovation: the UK case. *Public procurement, innovation and policy: International perspectives*, 233-257.

We recommend establishing a centre for best practice in innovative procurement that will build up a knowledge centre with case studies, training and advice on market engagement strategies and contract development. Such a resource would create a focal point for knowledge sharing across this complex field and help drive the economic and social outcomes that the Green Paper identifies as objectives.

We would welcome further discussion of the recommendations raised in this response, as well as wider discussion of the implications of the reforms on innovation. In the first instance, please contact Dr. Oliver Kirsch (oliver.kirsch@cp.catapult.org.uk).

3 Responses to Consultation Questions

The following section contains detailed responses to selected questions posed in the Green Paper.

Q1. Do you agree with the proposed legal principles of public procurement?

The core principles contained in the Green Paper are reasonable. The principles are unevenly defined in the current Green Paper, but overall show little substantive change from the transparency, integrity, value for money etc. principles that procurement professionals would expect to follow under the current regime.

Q2. Do you agree there should be a new unit to oversee public procurement with new powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities?

No. The proposed New Unit does not seem to have any more authority to intervene legally than the current Public Procurement Review Service (PPRS). Furthermore, having such a unit based within the Cabinet Office is probably not a good idea as it would interfere with its independence or perceived independence. The Green Paper contains no indication of the potential for different regional units or hubs that could work with the new unit. It remains to be seen how such a move will be viewed by sub-central authorities, particularly local authorities who have historically had much greater autonomy.

It is understood that the unit's primary focus would be to generally improve procurement practice and the commercial capability of contracting authorities. The unit's proposed powers of intervention, to issue improvement notices and potentially impose spending controls on contracting authorities, where contracting authorities' practices fall below the required standards, means the unit will have genuine powers to intervene in local situations.

Q4. Do you agree with consolidating the current regulations into a single, uniform framework?

While we support the ethos of simplification, it is not clear that the current proposal will achieve this aim. Firstly, the current proposals contain significant exclusions and omissions. The Local Procurement Act and the Social Value Act are not incorporated into the proposals, despite their strong overlap with the subject matter. Furthermore, the exclusion of health from the Green Paper's proposals (point 50) is likely to create artificial barriers for suppliers, such as health and social care, can disincentivise innovation.

Additionally, it is not clear that a single regulatory framework covering all sectors and aspects of UCR, PCR, CCR and DSPCR will result in a simpler regime. Many public bodies conduct activities exclusively under one of these regulatory regimes. This combined framework is likely to contain many sub-sections and exclusions,

meaning it will not necessarily be any more simple to use than multiple regulations, and may in fact be much more difficult and cumbersome to navigate.

Q6. Do you agree with the proposed changes to the procurement procedures?

We support the intention to create a single regulatory framework for all public bodies, such that the mechanisms for procurement of products and services are differentiated on the basis of complexity, rather than the purpose or sector in which they operate.

We recommend that the Green Paper's proposals are revised to include pre-commercial procurement as an explicit, listed procedure within the new legislation. This would place pre-commercial procurement on a clear legal footing and put the UK ahead of the EU where this is not a listed procedure. The flexible procedure may provide the implicit ability to conduct pre-commercial procurement, without giving credence to any particular approach or mechanism, however the failure to explicitly include pre-commercial procurement as part of the procedures within the Green Paper significantly reduces the visibility of innovation. The lack of definition around permissible applications of pre-commercial procurement will also increase the risk aversion around the use of these mechanisms.

To deliver improved impact of these mechanisms it is also important to address what can feel like wasted efforts for both contracting authorities and suppliers when innovation processes do not result in long-term contracts for suppliers. We recommend that the Green Paper explicitly outline the limitations under which pre-commercial contracts can be extended (see Q40 for more detail)

Q8. Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?

The responses to Q6 and Q40 include our recommendations to improve the visibility and uptake of pre-commercial procurement and innovation activities. Formalising pre-commercial procurement to increase the use of these tools to drive trials and pilots is central to our recommendations. Regulatory flexibility and guidance to enable continuation of development and deployment post trials is critical. Additional concepts of interest include the following:

- Mechanisms with specific support for SMEs, such as innovation labs, living labs, fab labs¹⁹, to convene multiple innovative suppliers and other relevant bodies, such as research organisations or universities, to develop ideas.
- "*Knowledge partnerships*" between different research organisations and higher education institutions, which can support partnerships between regional firms, a regional university and recent graduates²⁰.
- Schemes such as the Open Disruptive Innovation scheme²¹ to drive digital developments that are needed after the Covid-19 shock.

The potential for local government procurement to drive innovation, is not sufficiently acknowledged in the context of the levelling up agenda, and neither is the potential of local and combined authorities to act as laboratories for experimentation for local, potentially global solutions to complex societal challenges. This is a long-standing issue; the House of lords... noted a lack of strategy or roadmap to extend central procurement reforms to the rest of the public sector, noting that "the

¹⁹ McCann, P. and R. Ortega-Argilés (2016) Smart Specialisation, Entrepreneurship and SMEs: Issues and Challenges for a Results-Oriented EU Regional Policy, *Small Business Economics: An Entrepreneurship Journal*, 46(4), 537–552.

²⁰ McCann, P. and R. Ortega-Argilés (2013) Modern regional innovation policies, *Cambridge Journal of Regions, Economy and Society*, 6(2), 187–216. doi:10.1093/cjres/rst007.

²¹ <https://ec.europa.eu/digital-single-market/en/open-disruptive-innovation>

Government's laissez faire approach to the dissemination of best practice in procurement from central to local government appears to be overly optimistic" (p.42)²².

There is also a need to consider the non-legislative measures, such as the innovation funding that needs to be directed into these activities to stimulate the sea change described in the Green Paper. The upcoming ARIA agency is one interesting opportunity to provide new funding, and the procurement mechanisms by which this body engages with industry and research partners will be an important proving ground for the proposed reforms.

Q9. Are there specific issues you have faced when interacting with contracting authorities that have not been raised here and which inhibit the potential for innovative solutions or ideas?

Improved flexibility and guidance is required to enhance the ability of Contracting Authorities to make an award following successful completion of a pre-commercial procurement/pilot stage (see our responses to Q6 and Q40 for more detail).

Additionally, the proposed reforms do not address many of the practical barriers that SMEs experience, including over-specification of contractual deliverables, the frequent requirement to produce large bid documents where significant risk and time must be invested in the bid process. Intellectual property ownership and licencing also continue to present a major barrier for many small suppliers to engage in innovation activities with the public sector. Addressing these challenges must be a critical focus for the guidance and training provided to support the changes proposed in the Green Paper.

Q10. How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?

We assume this question relates to sharing data on procurement processes, contracts and outcomes, rather than the more general opportunity provided by sharing of other public data where data ownership and IPR restrictions may limit access and availability.

Regarding the availability of procurement data, introducing greater transparency through open contracting data should improve SME participation, as they will have much greater visibility of the opportunities that public bodies are offering. However, regarding post-award performance there is also potential for negative feedback for innovative activities, as accurate measures of performance can be difficult to define and measure (see Q22).

Q11. What further measures relating to pre-procurement processes should the Government consider to enable public procurement to be used as a tool to drive innovation in the UK?

Greater clarification should be provided on pre-procurement consultation and analysis protocols, and what is and is not permitted as part of pre-procurement activities. Currently this is a very grey area, and the resultant uncertainty results in the under-use of these mechanisms by Contracting Authorities, due to the fear of being challenged. This is a significant detriment to innovative activities, as the exploratory discussion during pre-market engagement is critical in understanding market capabilities and building the right supplier relationships to seed new approaches and ideas.

²² House of Lords. 2011. Public Procurement as a Tool to Stimulate Innovation. Science and Technology Committee – First Report. London.

Q12. In light of the new competitive flexible procedure, do you agree that the Light Touch Regime for social, health, education and other services should be removed?

No - currently, SME's do well by winning contracts under the LTR regime. This may be jeopardised because currently below threshold contracts can be reserved just for SME's, whereas the new procedures are for all organisations to bid for. Additionally, it would help SMEs if the current thresholds could be increased if LTR is to be removed, so that Contracting Authorities can engage SME and Social enterprises organisation within their below threshold activities.

Q13. Do you agree that the award of a contract should be based on the "most advantageous tender" rather than "most economically advantageous tender"?

This proposal appears to be entirely semantic. We support the objective of refocussing contract award criteria towards a more balanced combination of price and quality (including social value), rather than the cheapest bid.

Q22. Do you agree with the proposal to make past performance easier to consider?

This would be helpful were accurate data is available where genuine KPI's were used and measured. However, there is potential for unintended consequences in relation to innovation procurement⁹. Exclude suppliers that have performed poorly in the past may work against the most ambitious suppliers, particularly given that poor-performance is not always a well-defined concept. This is particularly true for innovation activities where unexpected, emergent and tangential benefits are commonplace. Furthermore, many of the impacts of innovative products and services are difficult to measure or have delayed outcomes, making it difficult to see how data will be fairly collected, stored, and adjudicated. These factors have the potential amplify the effects of errors or misuse of KPIs to monitor poor performance, to the detriment of innovative suppliers.

Q23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?

This would help SME's a great deal, however the procedures explained in the Green Paper do not appear to simplify the overall process for SME's, and are likely to be as burdensome and difficult for suppliers to engage with as current processes.

Q24. Do you agree that the limits on information that can be requested to verify supplier self-assessments in regulation 60, should be removed?

This should not be removed, as some checks are still needed, especially where grants are awarded.

Q25. Do you agree with the proposed new DPS+?

The DPS+ is better than the current DPS but it does not go far enough because there is no direct award included. A Framework can be set up to include some direct award, through the use of a rate card obtained at the tender stage (normally day and half day prices) which each supplier submits at the time of tendering. These normally represent the highest cost and the supplier is able to go below these rates during any specific further (mini) competition.

However, DPS does not have this mechanism and every piece of work that needs to be called off has to include a mini competition with all framework suppliers that can provide the required service or goods.

Provision of the same flexibility for direct award within the DPS+ would be of great advantage to all Contracting Authorities, even if direct award is reserved for low value calls off, such as up to £25,000 in value.

The advantages are that this would reduce the cost of conducting mini competitions, it would provide the ability to use suppliers regularly to form good relationships and speed up the process for low value requirements.

The negative impact could be that some suppliers may not get direct awards if their rate card prices are very high. This could be mitigated by offering all suppliers the opportunity annually to review their prices.

Q40. Do you agree with the proposed changes to amending contracts?

Making clearer when contract amendments are legal would be very helpful to Contracting Authorities. Currently pre-commercial procurement and the public procurement of innovation (PPI) are treated as entirely distinct and formally unrelated approaches. Many public bodies express frustration around the practical difficulty transitioning relationships, products and services from initial proof of concept demonstrators to scaled deployment. The Green Paper states that it considers 'powers that enable review and post-contract amendments to contracts when considering variations due to innovation' (point 91). Clarity on the extent to which these variations can be used to resolve the disconnect that often exists between PCP and normal procurement would be valuable, as this transition limits the subsequent adoption of innovations.

We recommend that the Green Paper explicitly outline the limitations under which pre-commercial contracts can be extended. Many public bodies recognise that where PCP is used, the transition from initial proof of concept demonstrators to scaled deployment is currently not well served. By providing clarity around the ability to continue supplier relations beyond the traditional pre-commercial procurement proof of concept stage, the government could create a mechanism that provides the flexibility to build sustainable partnerships between public bodies and innovative suppliers and accelerate the growth of innovative products and services. Effectively, this approach would replace the current Innovation Partnership procedure, which has not delivered on the intended role to connect R&D and deployment and consequently has seen limited uptake.

However, our experience with multi-phase innovation projects highlights a particular difficulty that can arise with the interaction with transparency requirements. Innovation activities have indeterminate outcomes by their nature. Although the purpose of the activity should be clear at the outset, the features or performance of emergent products and services will not be known at the point of publication of the tender notice. As innovative products and services mature and near the point of widespread deployment, public bodies will typically want to add specific performance criteria to contracts, such as uptime guarantees. The nature of these requirements are typically not known at the outset of the innovation activity, and the addition of these requirements may be seen as contravening transparency requirements. Similar arguments can be made about evaluation criteria used to assess suppliers as they progress through a multi-phase innovation activity. Consequently, guidance on the extent and detail of information that must be published in the tender notice should be carefully considered, if mechanisms to continue beyond pre-commercial procurement/R&D activities are to be offered.

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