

Formal Response to the Transforming Public Procurement Green Paper

Produced by: The CIPFA Technology Procurement Association and CPRAS

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The CIPFA Technology Procurement Association (CTPA) is a non-profit organisation which bridges the gap between the public sector and the global technology sector. CPRAS provide procurement support facilitating the adoption of innovative solutions by the public sector. This response to the Transforming Public Procurement Green Paper is therefore focused through the lens of technology and innovation procurement.

The CTPA has worked the British Blockchain and Frontier Technology Association and the Government Blockchain Association, as well as other technology groups and a leading procurement law firm Addleshaw Goddard LLP to develop this response.

CIPFA, more generally, is providing a separate response from its Procurement and Commissioning Network.

We have conducted interviews, run surveys and held consultation events to represent the views of over 12,000 private sector bodies and approximately 500 from the public sector including

When we talk about technology or innovation though, we need to be very careful about the terminology because these terms no longer refer to a niche industrial sector. The reality is that we are now in the 4th Industrial Revolution, and that this is being driven by technology and innovation on an unprecedented scale. In fact, the penetration of technology into the fabric of life has become ubiquitous. Examples are legion, but to illustrate with just a few examples...

- Pothole repairs may not seem like a high-tech sector, but tech and innovation have created new approaches to this mundane task which can bring huge cost reductions whilst delivering a more environmentally friendly solution which also requires shorter road closure periods.
- Payroll systems are no longer a low-tech accountancy function. Fintech developers have created flexible payroll systems that can support employee needs far better and reduce their reliance on payday loan and other high-cost lending. In some cases, these innovative solutions are even free to employers.
- Identity is central to so many functions in life. From voting to banking, or from getting a phone contract to renting a home, proving and validating our identity is required. But we do it with paper based systems that take huge amounts of time (and money) and create user frustration and privacy issues... but Digital Sovereign Identity solutions can solve all these issues.

We could carry on for hundreds of pages. The point though is that EVERY aspect of modern life is impacted by technology and innovation and that means that EVERY public procurement exercise needs to consider the benefits that can be delivered by innovative or technology solutions.

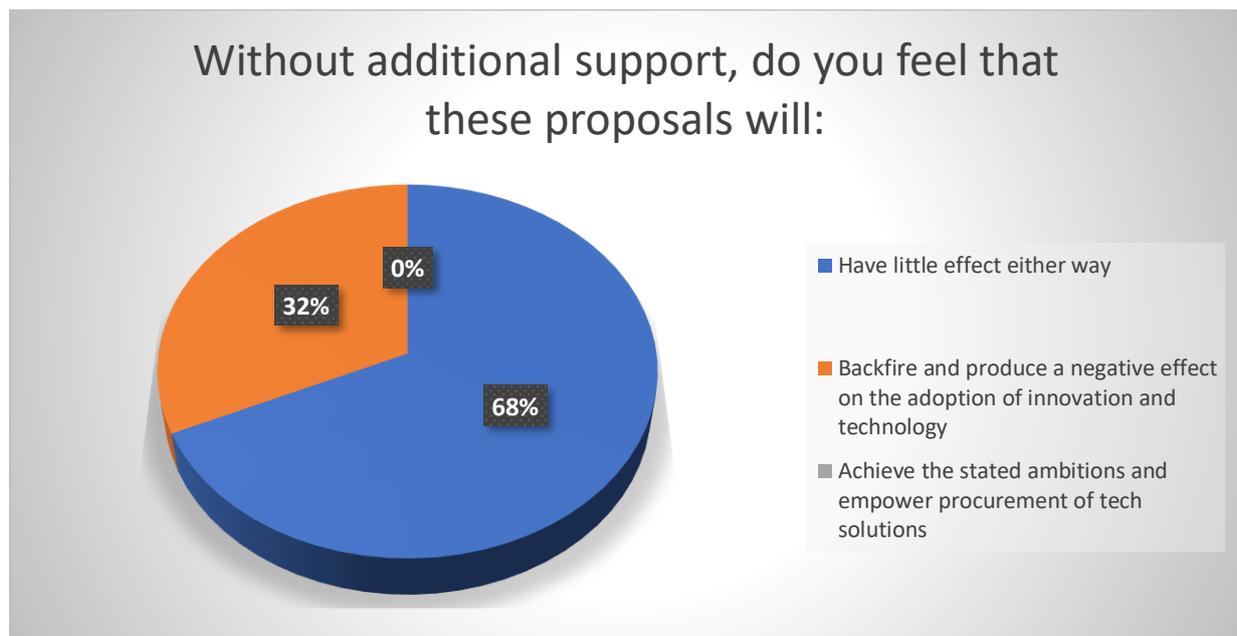
The context is also critically important. Our public institutions are in the front line when it comes to several life-or-death challenges from battling climate breakdown to delivering pandemic responses or tackling poverty, inequality and discrimination. We must make sure that when our public institutions step up to meet these challenges they are equipped with the most impactful tools and solutions available.

A central premise of this response is therefore that having a procurement regime that reflects the pervasive reach of innovation and technology is not only desirable but fundamentally necessary.

It is true that the Green Paper states clearly its ambition to facilitate the procurement of innovative solutions. In fact, innovation is referred to over thirty times within the proposals.

The nature of a Green Paper is always that there are gaps which need to be filled as the process is developed into a White Paper and then, eventually, into legislation. The CTPA response is geared towards assisting with the gap-filling task.

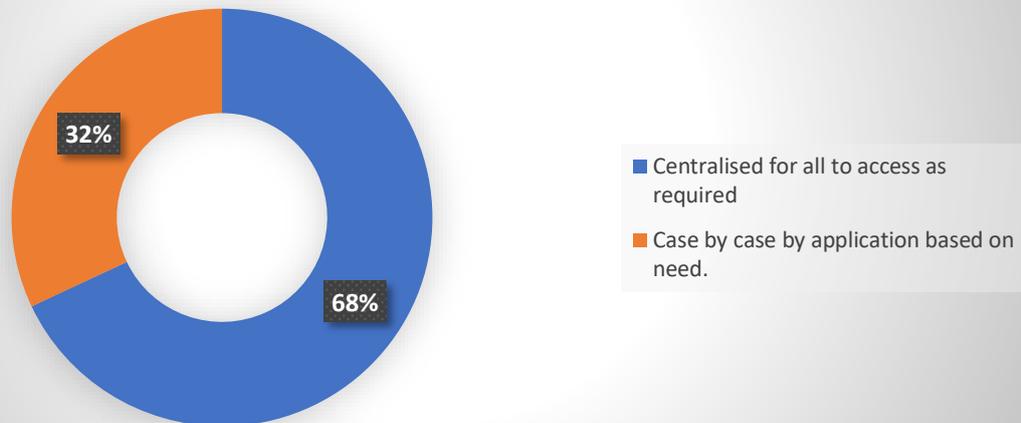
As the proposals stand, our public sector respondents have little optimism, and significant pessimism regarding the outcome:



N.B. There were three options offered, but NONE of the respondents believed that the Green Paper proposals would achieve the stated ambitions without the additional support for Contracting Authorities outlined in this response.

When asked whether this support should be centralised and available to any Contracting Authority or delivered according to need, the feedback was strongly in favour of a Centralised Support service.

Should additional support be provided to Contracting Authorities:



One of the fundamental issues here is the strain that is already affecting non-central-government bodies. This is not a theoretical issue. It is already an established fact that significant procurement opportunities are missed because of the lack of available resources.

In October 2019, a Procurement Framework for modern banking and payments solutions was launched. On this Framework, the payments elements save an average of 30% against current costs, but when we factor in the innovative Open Banking solutions, these savings more than double – and yet, despite Open Banking being a well accepted catalyst for innovation we see less than 1% of non-central-government institutions planning to adopt these solutions. For a small to medium sized authority this means missed savings of about £80k per year. Worse than that, they also miss out on faster settlement times, lower regulatory risk and improved auditability. When we asked them why, the answer was always the same. “We don’t have the internal resources that we’d need.”

If this level of opportunity is already being missed on such a widespread basis, it becomes imperative that we don’t add any further strain on individual authority’s procurement resources. To the contrary, we need to prioritise supporting ALL these authorities so that the procurement can focus on ensuring optimum impacts in the localised context.

A further exacerbating factor is likely to be the lack of legal clarity. Recognising that case law will take years to develop, many Contracting Authorities have expressed concern that this will inevitably translate to a period where the additional risk of litigation will deter local procurement exercises and create a higher reliance on “off the shelf” procurements via Frameworks and Dynamic Purchasing systems.

The Westminster Frontier Technologies Association provided this insight:

Litigation risk is well addressed in this Green Paper insofar as the specific proposals for streamlining the process and reviewing the level of damages that can be sought. Unfortunately, this positive step is countered by the fact that the rest of the proposals will increase the risk of Awards being challenged. There is no doubt that the net effect will be a reduction in

appetite for bespoke procurement projects and a corresponding withdrawal of engagement from innovative SME's.

Public sector authorities though, do need to adopt transformative technology solutions more desperately than ever before as they struggle to meet rising demands with increasingly pressured resources. But with staff under greater pressure than ever, right across the sector, the opportunities to identify, evaluate, benchmark, procure and implement innovative tech based solutions are few and far between. So anything at all that increases the financial or human resource burden on procurement teams must be replaced by centralised support infrastructure.

Unfortunately, for the time being, this goes against some of the stated principles of the Green Paper. For instance, we see as early as Clause 9 a statement that “Contracting Authorities should be held to account for ensuring their commercial teams have the necessary skills and experience to ensure tax payers’ money is spent effectively and efficiently.”

We don't believe that this is the correct approach at all.

Let's consider that public money is public money whichever pot it originates from. In that context, how can it be wise to impose such significant additional responsibilities, risks and costs on every contracting authority? Our own recommendation, would be to turn this around and create a single support function that serves all Contracting Authorities. In our view, Clause 9 would therefore be better stated as “We propose creating a commercial support team to ensure that all procurements are conducted with the necessary skills and experience to ensure tax payers’ money is spent effectively and efficiently.”

This view was widely supported by the responses we received from our consultation event. We asked: Should a solutions database for innovation and technology applications be available free of charge to ALL Contracting Authorities? 46% answered “yes”.

Clause 13 does say that: “To support this, the Government will, subject to future funding decisions, provide a programme of training and guidance on the reforms”.

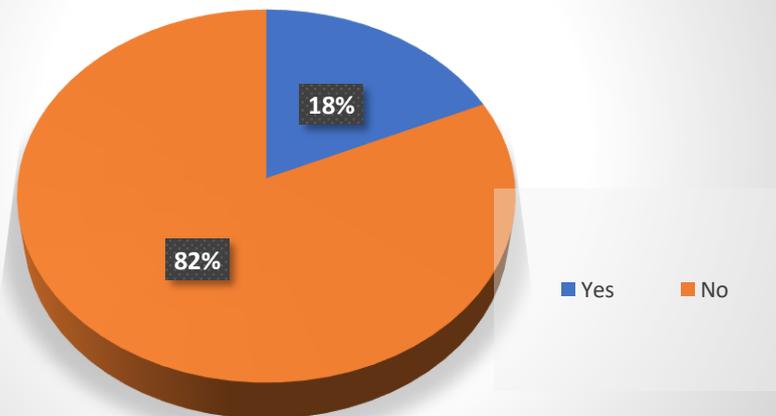
The obvious point here is that no new regime should be legislated with such a contingent promise of possible support at some unstated time in the future, but that's what this next phase of developing the White Paper must address.

Perhaps even more significant though is that, if and when this training and guidance does become available, it applies to the process so it is, in essence, another drain on resources while staff are forced to undertake additional training so that they can complete the new processes properly. This is antithesis to the ambition as stated by Lord Agnew in his Ministerial Foreword where he says: “I now want to create a regulatory framework that delivers the best commercial outcomes with the least burden on our businesses and public sector”.

We share the ambition, but if the strategy to achieve this starts with additional costs and human resources drain for contracting authorities then the most likely outcome is that the opportunities created by this transformation will be largely untapped as contracting authorities are forced to prioritise their scarce resources elsewhere.

At a consultation event attended by over 100 public sector representatives, the view was conclusive:

Do you feel that the Green Paper includes adequate provision for the support that will be needed to be given to Contracting Authorities if it is to meet its ambitions?



Let's consider the example of IoT, the Internet of Things. IoT solutions have seemingly limitless applications, but are we really expecting a procurement manager at a hospital, fire brigade, police force or even at a large council to understand the ramifications of this technology for their fleet management requirements, onsite printing or even energy management systems? How do we expect them to know that there are many different data security protocols behind this technology or to understand the implications of each of these for their local context? We absolutely can't continue with these impossible expectations that already apply a handbrake to the adoption of innovation and technology... and we definitely can't afford to pull any harder on that handbrake.

If, as a nation, we succeed in this transformation of public procurement then all Contracting Authorities will become empowered to break the vicious circles that currently suppress the adoption of transformative solutions. In one giant leap our entire public sector could be given access to the best and most impactful solutions from all around the world. If we fail though, by strengthening the financial and human resource barriers that already limit the adoption of innovative solutions, then we'll be condemning our public institutions to the impossible task of meeting modern challenges with only out-dated tools.

The Green Paper is clearly seeking to achieve the empowering outcome with its strong focus on facilitating the procurement of innovation as well as on the need to maintain the "golden thread" that it says must link all procurement to wider government objectives like delivering environmental and social value.

The ambition is great and CTPA support it entirely, but there is real potential for an own-goal unless the next phase of defining the new regime addresses some of these fundamental issues.

As it stands, for example, the proposal empowers Contracting Authorities to engage in more flexible procurement projects with far more meaningful negotiation throughout. Which is great, of course, but with these increased options come potentially crippling responsibilities.

This isn't just our opinion. As well as speaking to many public sector bodies over the last couple of months, we've also engaged with some of our key technology partners. What they say is very clear indeed. If the right refinements are made then this will be a significant turning point with hugely

positive impacts for the UK and beyond. But without those refinements they (the tech and innovation community) will disengage almost entirely from the public sector.

Here's what the Government Blockchain Association have told us:

At the Government Blockchain Association, we have over 50 working groups. Each of these is focused on a specific area – from voting and Digital Identity to Sustainability & Green Technology. New solutions are emerging all the time, at an unprecedented rate and from all over the world. We are concerned that the Green Paper takes no account of the sheer impossibility that a government procurement department can maintain an up to date understanding of the solutions that are being deployed and the potential impact that these may have on their buying outcome requirements.

Reinforcing this point, a leading technologist who sits on the board of several of the country's most innovative companies said recently that the rate of development is now so fast that it's impossible even for him to keep track of all the innovation and solutions being developed... and he was only talking about keeping up with the innovations created by the firms that he works for.

That's the reality of the technology sector right now. We have already referred to some key tech strands like blockchain or AI... but these are just a few of many. In fact, there are over a hundred tech threads like this. And to make it even more complex, each thread often interacts with several others.

The Green Paper talks of refocusing on "outcome-based procurement" but with literally tens of thousands of viable potential tools and solutions out there, not to mention many times that number of solutions that simply appear to viable, the resources required to maintain a base-level understanding will run to at least £800k per authority per year. This is our own estimate, but it's supported by the statistics released by UKRI regarding their first round of Covid Innovation Grants.

For that competition, which was focused on non-medical innovations that could help to mitigate the effects of the pandemic, they received over 8,600 applications. So, even for a highly specific call for innovation which was made at short notice and with tight deadlines, there were over 8k companies with potential solutions and the time to devote significant resources to complete the application process. The evaluation cost alone for this exercise was well over £1m.

And even if Contracting Authorities took a view that this would be money well spent – which it would for all except the very smallest – there are simply aren't enough experts to provide this to all of the UK authorities that would need it.

The good news though is that this requirement could be delivered centrally to the Independent Platform proposed in the Green Paper.

But the stakes are high. If this isn't built into the system, then the default position will be that effective procurement of innovation becomes the preserve of only the best resourced authorities. On the other hand, if we get this right then we can deliver on the ambitions of this Green Paper and make the UK a genuine global leader in harnessing technology to help meet the unprecedented challenges that face us all.

Awareness of technical trends though, and the ability to identify specific potential solutions, is just the start though. The Green Paper proposes to provide for more negotiating freedom within the procurement process. Once again this adds a potential burden to both sides of the procurement process.

Here's how the British Blockchain and Frontier Technology Association summarised their members' feedback:

The BBFTA is a global community of Technology firms. Most of our members would stay clear of bidding for Public Sector contracts because of the high resource-drain that the procurement process requires in both cash and HR terms. The Green Paper potentially makes that situation exponentially worse since it creates an environment where tech developers will need to have far greater input into each procurement exercise. Our own recommendation would be for the creation of an independent body to identify and review technology developments and to provide informative educational resources that would enable buyers and sellers to focus most effort on the localised contexts that need to be considered.

In other words, most technology firms are neither equipped nor inclined to engage in repeated negotiations that will inevitably require an educational element in many cases, or else result in an adversarial procurement that serves neither side well.

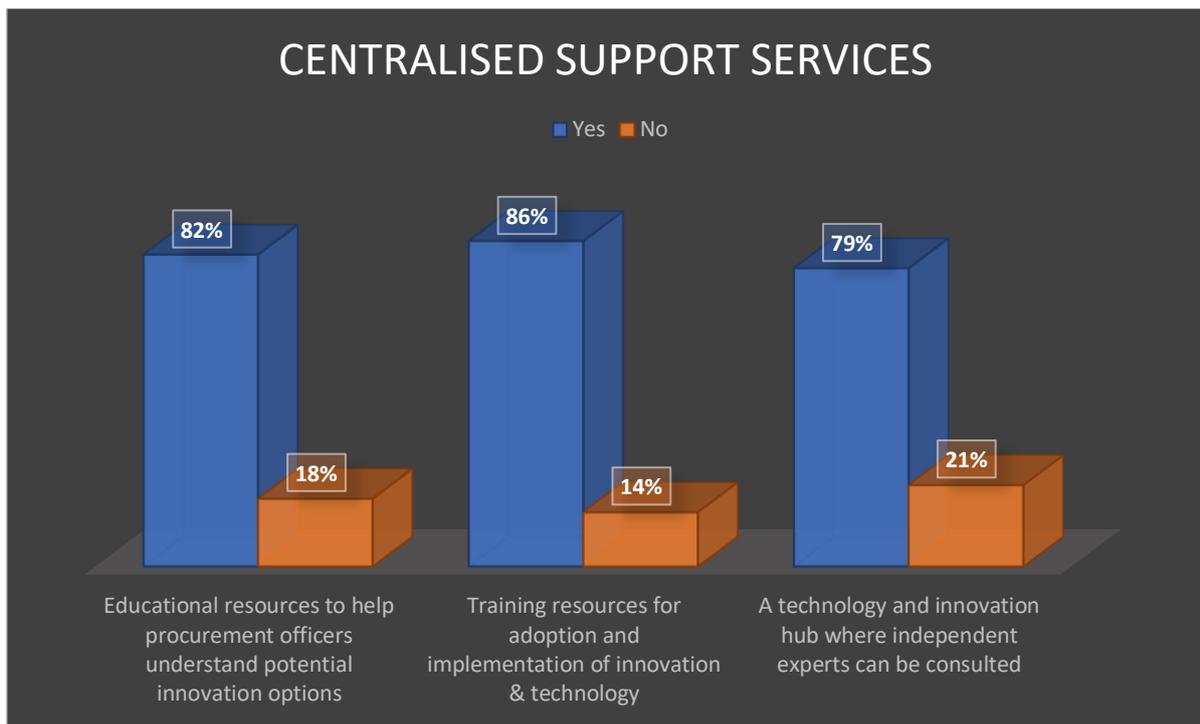
We all know that some technology providers do focus strongly on public sector markets and so they are happy to engage in this educational process. But these tend to be the giants like AWS rather than the smaller companies that are driving 90% of innovation. Also, leaving this work to the potential suppliers skews the whole procurement process and potentially goes against the transparency and inclusion objectives that are repeatedly stressed in the Green Paper.

If Contracting Authorities have to solve this issue themselves, then consultancy rates of £650 - £1,000 per day will apply. Given the sheer numbers and diversity of stakeholders in many public organisations, this would likely add up to an expensive additional cost.

So, once again, we risk creating a default position which is likely to paralyse the effective procurement of innovative, tech-based solutions. Or we can centralise this as another support function for all contracting authorities.

The view from our consultation event was strongly supportive of the importance of this centralised support:

When asked about what kind of centralised support services are required, we saw the following feedback:



Related to this, but not covered in the Green Paper, is the need to create the appropriate internal implementation resources that are sometimes necessary for technology solutions. The question whether to buy or make this capacity is simple to answer, but only if the option to make it exists.

Our consultations revealed that the independent platform proposed by the Green Paper should also commission learning resources so that Authorities can upskill existing personnel rather than buying in high cost consultancy for each procurement. Of course, this isn't about teaching staff to code on the blockchain or to write AI algorithms, it's about understanding the demands of these technologies through the lens of the likely adoption and implementation challenges so that solutions can be delivered most appropriately for the local context.

To summarise, we need to consider the Peter Parker Principle that: With great power comes great responsibility. The Green Paper sets out great new powers to procure innovation, but those powers come with expensive responsibilities to understand and engage with the fastest moving sector on the planet.

If we adopt the proposals without refining them to centralise key support areas then we will create an environment where authorities are disincentivised from finding and securing the most impactful and transformative solutions that technology firms can offer... an environment where many of these firms become more unwilling than ever to engage with Contracting Authorities.

On the other hand, if we provide the right support systems then these proposals could empower our councils, hospitals, emergency services, schools, universities and even central government departments to acquire the best tools in the world to help combat climate change, poverty, pandemics and perhaps new challenges that we haven't even imagined yet.

ADDENDUM

A further issue that needs to be considered and incorporated into the White Paper that will now, no doubt, be produced, is that the proposals need to “take their own medicine”. Despite the many references to promoting the adoption of technology, there is no mention about how tech can support the procurement landscape itself.

For example, 2020 has undoubtedly highlighted the need for transparency in Public procurement. Both the UN and the [Organization for Economic Co-operation and Development \(OECD\)](#) estimate that 10-30% of a public contract’s overall value is commonly lost to corruption. Sadly, despite its heavy focus on technology and innovation, the Green Paper makes no reference to how technological developments can, themselves, solve many of the problems that currently beset Public Sector procurement. Regardless of the truth behind allegations of cronyism and corruption, we need to move to a system where the allegations themselves could never be made - simply because the system would be proof itself against these problems.

And yet, the potential to use or even develop Blockchain solutions was not mentioned once in the Green Paper, despite the fact that this technology could apply an incorruptible audit layer within all Public Sector procurement. The use of Blockchain technology at the same time could bring far greater transparency to the procurement process and so engender more trust in the process and its results i.e. who and why a particular organisation has been awarded the tender.

In fact, [the World Economic Forum](#) has partnered with the Inter-American Development Bank and Colombian Inspector General's office on the most comprehensive study of Blockchain technology for public procurement and for public-sector corruption. So why, when we are ‘transforming’ Public Sector procurement, is this PoC not even referred to in the Green Paper? If we are genuine about the transformation that we are trying to create then this omission needs to be rectified and addressed in the coming White Paper.

CONTACT

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