



THE ART OF THE POSSIBLE IN PUBLIC PROCUREMENT

New Horizons for Empowering Innovation

FOREWORDS



Paul Wilson **Chief Business Officer**

It's really refreshing to read this report and welcome how it positions public procurement as an empowering tool for getting important work done well. It makes a great case for the public sector to use the methods supported by the Procurement Act 2023 to apply more innovative solutions to major challenges.

We all want to see new technologies used much more effectively for the public good, across transport, infrastructure, education, data, and other public services. And innovative supplier businesses are creating solutions that could meet that demand. In many cases, though, the demand for innovation and the supply don't match up as well as they should. But that will change. The Procurement Act of 2023 now gives procurement teams more freedom and flexibility to use new solutions to deliver for citizens.

This report points the way forward. It follows and updates *The Art of the Possible in Public Procurement* by Julian Blake and Frank Villeneuve-Smith (2016) which successfully encouraged many public sector leaders to do more with procurement. This report builds upon that impact, and points to the new opportunities now available. It gives insights, practical guidance and real examples of successful innovation procurement.

I hope this guide inspires public sector leaders to integrate procurement fully into their business development strategies. And I hope it reassures their procurement teams so they engage with innovative suppliers with new confidence, enthusiasm and ambition.



Rikesh Shah

Head of Innovation Procurement Empowerment Centre (IPEC)

As we embrace the 2023 Procurement Act's push for innovation, the Art of the Possible report from the Innovation Procurement Empowerment Centre (IPEC) takes centre stage. Crafted by industry leaders Malcolm Harbour, Rebecca Rees and Julian Blake, the report shines a light on the vital role of the UK public sector, which channels £300 billion through procurement, including a £70 billion contribution from local government.

As challenges mount and budgets tighten, sparking innovation in market spending becomes a must. Swift tech progress reshapes market engagement, ushering in fresh solutions from start-ups, scale-ups, academic institutes, and corporates, transforming how we approach procurement.

As I step into the role of Head of IPEC, working closely with the Advisory Group, and our dedicated team, we recognise the need for practical support alongside policy development. Embracing a 'centre of excellence' model, IPEC focuses on:

- **Fully Funded Cohort Programme:** Boosting skills across roles.
- **Community Network:** Sharing case studies and tackling challenges together.
- **Evidence Base Development:** Collaborating with academics to pinpoint effective innovation areas.
- **Advocacy and Thought Leadership:** Standing up for the importance of innovation in procurement.
- **Stakeholder Engagement:** Consistently engage with stakeholders in the market, stakeholder groups, politicians, and the public sector. This ensures a deep understanding of crucial challenge areas, enabling IPEC to consistently offer relevant solutions.

For IPEC to thrive, we seek your support. Whether it's spreading the word, active community participation, or advocating for market innovation, your involvement is key in tackling national and local public sector challenges.

CONTENTS

01	Introduction	5	02	Unlock Transformative Power	6
03	Exploiting Rules as Enablers	11	04	Exploit the Competitive Flexible Procedure	20
05	Innovation Everywhere	25	06	Building a Sharing Community	26
07	Conclusions	29			

“A strong and reformative Act which will give procurement teams across the whole public sector greater commercial freedom and flexibility to design procurement processes that meet their organisation’s exact needs and drive innovation”.

From Cabinet Office Announcement of Royal Assent to the Procurement Act 2023

1. INTRODUCTION

Driving innovation through procurement was a key policy in the 2021 UK Innovation Strategy and in the 2023 Science and Technology Framework. Both highlighted the promised reforms in the 2023 Procurement Act as a major opportunity to boost innovation. But this objective will not be achieved unless there is a concerted drive to implement and deliver the potential of these reforms. Great ideas must be threaded through the whole UK economy, including the public sector, at national, regional, and local levels. Policy makers must focus on the best ways to transform these ideas into the practical outcomes that will deliver real benefits for citizens and society as a whole.

Innovation ambitions often collide with the realities of constrained public finance and resources. Plans for implementing new ideas and making services more efficient and effective must jostle with the everyday realities of organisations working under enormous pressures. Making changes through public procurement can often seem like an unwelcome additional challenge. Often, the only demands being made on those working in procurement are to reduce costs.

The aim of this report is to help everyone engaged in making and executing public investment in new products and services fully aware of the potential for change offered by the new legislation. It's called "The Art of the Possible" because legislation is often cited as a barrier to implementing anything new. The focus of this report is to show the power that can be unlocked by using the new legislation in a creative and strategic way, while complying with all the rules.

It also called "The Art of the Possible" as it follows in the footsteps of a first report using that title, published in 2016 by the social enterprise agency, E3M. It was co-authored by public benefit lawyer Julian Blake of Stone King, and Frank Villeneuve-Smith of HCT Group,

a community transport social enterprise. This first report was seeded by frustration with the obstructions that enterprising and innovative public service proposals encountered under the pre-2015 rules. The first report promoted the purposive, permissive, facilitating, and flexible nature of the 2015 reforms, encouraging commissioners to take advantage of their possibilities. Julian Blake has contributed updated text that focuses on Commissioning Public Services, ensuring that this new report provides a comprehensive view of the opportunities presented by the launch of the Procurement Act 2023.

The first report was well-received because it resonated with practical experience. It was cited by the Local Government Association for its readable and clear guidance on way the new rules could be used. Most of the issues raised then were about implementation, not law. Much of the 2015 advice still resonates in 2023. It clearly showed the potential that could be unlocked to deliver more innovative procurement.

Much progress has been made since then, and many of the changes that encouraged innovation have been sensibly retained in the 2023 version. But we are far from achieving the promised transformation. A headline in the first report lamented that "achieving change is like pushing on a piece of string".

The team that produced this report hope that it will build on the impact created by its predecessor. They have aimed for clarity, conciseness, and practicality, while covering a much broader scope. They have set out the directions that must be taken by leaders in policy and execution to accelerate change.

The reforms in the 2023 Act must be exploited to accelerate the transformation of public procurement to deliver more value, boost Britain's innovation economy and improve public services.

2. UNLOCK TRANSFORMATIVE POWER

Change the perception of procurement

Unlocking the power of public procurement to drive innovation through the UK economy will not be achieved unless the perception of procurement is changed.

Decision makers in the public sector should position procurement as an innovative and creative tool. It is too often seen as an administrative and legally driven process. To realise best value from the market, innovation through procurement needs to be used as a strategic lever at all levels in any public authority.

The rollout of the 2023 Procurement Act offers an unrepeatable opportunity to highlight procurement as an indispensable tool to deliver better public services. Public sector leaders can take advantage of the heightened awareness of the rule changes, facilitated by Government supported training, to ignite an innovation culture within their organisations. They should make it clear that they expect all procurement decisions to embrace the innovative potential of the new rules.

CASE STUDY 1

INFUSE

Launched in 2020 in the Cardiff Capital Region, the Innovation Future Service (Infuse) programme aimed to revolutionise the approach of public service professionals toward civic needs through innovation and collaboration. Focusing on transforming the mindset and culture around procurement, the programme introduced a 4-week 'Procurement Lab' for all participants, fostering diverse experiences and challenging preconceived notions about their roles in procurement. To address the frustration and confusion among local authority staff regarding their perceived insignificant role in procurement, the programme advocated an holistic organisational approach by involving various competencies within organisations. This was coupled with a shift from a process-oriented to a project-based approach in public service delivery. To identify opportunities for collaboration, a jigsaw-based game was introduced to encourage participants to identify two stakeholders at each stage of the procurement cycle, emphasising the importance of engaging diverse stakeholders throughout the entire process. In addition, cultural change was facilitated through practices such as "reverse mentoring," "learning cafés," and "data action stories." These initiatives aimed to transform mindsets and enhance communication, fostering a more innovative and collaborative public service environment.

The UK Innovation Strategy spelt out the underlying reason for the weak uptake of innovation procurement. *“The overall culture, expertise and incentive structure of the public sector means there is a low appetite for risk and experimentation”*. Addressing this requires attitudes, skills and processes to be changed across all levels of an organisation, not just in procurement teams. Raising skills creates capacity and capability. The Cardiff Capital region has had the foresight to run a training programme for public service professionals to embed innovative and collaborative ways of working. This has produced a valuable Handbook on “Mindsets and Methods for Innovation in Public Services”.

Accept Innovation as Essential

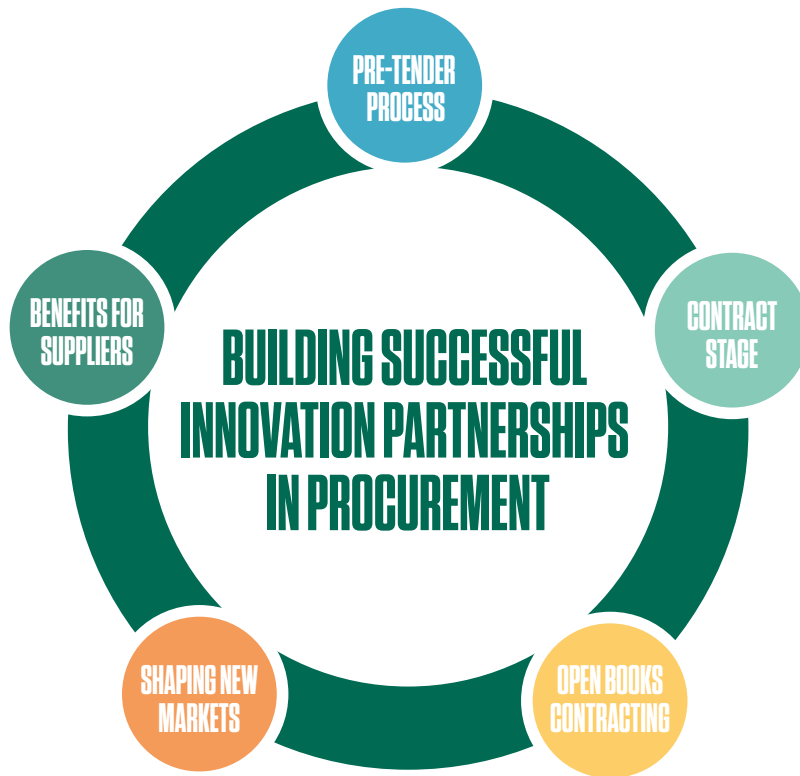
Public sector leaders are facing an ever-widening array of policy challenges. Citizen's expectations are rising with demands for better and more efficient services. Programmes must be developed for transitioning to a net zero-carbon economy and installing resilience measures to counter climate change. There is continued pressure on the effective delivery of health, social and education services. Public budgets continue to be squeezed. Across all these challenges, innovative solutions will be essential in planning and delivering effective responses. Procurement can be an empowering process, and procurement specialists should be embraced in the planning stages of any strategic initiative.



Image source: Infuse 2023

The “levelling up” agenda positions innovation as a key element in building economic growth and resilience in local communities. Their leaders should take advantage of the Act’s raised profile to integrate procurement into innovation and

business development strategies. Innovative organisations deploying procurement tools attract innovative suppliers of all sizes and build new growth hubs. They become “magnets” to build new clusters and centres of research excellence.



ATTRACTING INNOVATIVE SUPPLIERS

More valuable contracts, broader customer base, attraction of innovative suppliers.

CEMENTING PARTNERSHIPS

Collaborative terms and conditions, agreed roles and responsibilities, flexibility for ongoing innovative proposals.

TRANSPARENCY AND VALUE SHARING

Open books contracting, agreed forms of value sharing, mutual benefits for both parties.

TRANSFORMATIVE COLLABORATION

Public authorities collaborating with suppliers, shared development contracts, shared ideas and resources.

ATTRACTING INNOVATIVE SUPPLIERS

More valuable contracts, broader customer base, attraction of innovative suppliers.

CASE STUDY 2

Leicestershire Children's Services

The Children's Innovation Partnership (CIP) is a joint initiative between Leicestershire County Council (LCC) and Barnardo's that aims to improve outcomes for children by developing innovative solutions. The partnership was developed using a creative approach to procurement and contracting, which has been described as a "learning partnership rather than a traditional commissioner – provider relationship". The CIP is an exemplary model of public services developed and delivered in consultation with local providers and service users. Leveraging the flexibilities provided by the 2015 public contract regulations, particularly the 'light touch' procurement and developing bespoke solutions, the Council commissioned the Children's Innovation Partnership and developed a comprehensive awareness of the service and its outcomes. The innovative two-tier contractual framework was designed to procure a design partner with provider potential. Focused on developing inventive solutions to enhance the lives of children and young people in Leicestershire, the CIP serves as a remarkable example of approaching public procurement innovatively to achieve ambitious social and environmental goals.



Understand the Importance of Partnership

Successful innovative procurements are built on partnerships, especially between customer and supplier.

This partnership can be nurtured during the pre-tender process. This is a space in which the customer can engage with the potential supplier, explore the possibilities for innovations and the procedures to be followed to develop solutions. In a subsequent contract, partnerships can be cemented by tools such as collaborative terms and conditions reflecting agreed roles and responsibilities. These can be buttressed by terms that allow the parties to deliver and improve on the innovative proposals throughout the duration of the contract. Open books contracting and agreed forms of value sharing encourage both parties to exploit innovations and productivity enhancements.

Public authorities with similar unmet needs can shape new markets and attract new suppliers who are prepared to invest in new opportunities. They can collaborate with partner suppliers in shared development contracts. By sharing ideas and resources, partnerships become a powerful transformation tool. Innovative suppliers will be attracted by more valuable contracts and a broader customer base.

Public Purpose and Commissioning

Public purpose must be integrated into the mission to transform public procurement. Public authorities are responsible for the delivery of many critical services that underpin the social foundations of a local economy. Where these services are commissioned for delivery by an external supplier, complex and sensitive issues are involved in the procurement process. Demand for support services often exceeds supply; the special needs of each service beneficiary may be different; quality and consistency are paramount. This requires the active stewardship, cultivation, facilitation, support, and regulation of public services by public authorities – commissioning.

The first Art of the Possible Report promoted procurement as a flexible, creative function within commissioning, particularly highlighting the non-prescriptive Light Touch Regime (“LTR”) specifically available for social services. There was also the potential for co-design and collaboration through Innovation Partnerships, a procedure introduced in the 2015 Public Contract Regulation.

The 2023 Act does not make a distinction between procurement and commissioning, except by including reference to the LTR. This was added during the legislative process and the detail remains to be provided in secondary legislation. There is no longer a defined “Innovation Partnership”. But this distinctive approach to public services procurement can be developed through the general flexibility principle the Act strongly emphasises.

Innovative procurement is already demonstrating results in this complex and sensitive environment. Partnership is a key element and social enterprises can play a vital role. The commissioning landscape must continue to be fertile ground for new ideas.

Expand Procurement Horizons

The Public Contracts Regulations 2015 made it clear that commissioners and contractors could embed non-price factors into their procurement contracts. The “Most Advantageous Tender” requirement in the 2013 Act reinforces and encourages those freedoms. Expanding the criteria on which contracts can be awarded is a huge step in unlocking transformative procurement power. Defining the desired outcomes in a broad way, rethinking the objective criteria that must be met, and balancing these to deliver the best value solution makes procurement far more challenging. Programmes exploiting the Procurement Act 2023 need to instill a “horizon stretching” mentality.

3. EXPLOITING RULES AS ENABLERS

The 2023 reforms highlight the flexibility to embrace new forms of procurement and innovative ideas. But to be transformational, legislation must be understood as an enabler and not an inhibitor of innovative behaviour.

Take the National Policy Statement seriously

The Procurement Act 2023 includes rule changes that encourage best practice in developing innovation procurement solutions. But innovative outcomes cannot be delivered by rule changes alone. Organisations need to encourage engagement with newer and more diverse solutions. Linking procurement with strategic planning will be essential to unlock the full benefits. The new provisions should be regarded as enabling tools to be applied to fit the purpose for which they are required. They should not be treated as “cut and paste solutions”.

The Government’s promotion of a strategic approach commenced in June 2021, well in advance of the 2023 Act, with the publication of the National Procurement Policy Statement (NPPS). This is now embedded in the Procurement Act. It “sets out the strategic priorities for public procurement and how contracting authorities can support their delivery.” It was introduced via a Procurement Policy Note and applies to all contracting authorities (not just central government bodies). It will be anchored into the procurement landscape by section 13 of the Act.

The core policy statement explicitly endorses expanded horizons for public procurement:

- creating new businesses, new jobs, and new skills.

- tackling climate change and reducing waste, and
- improving supplier diversity, innovation, and resilience.

It also includes a “clear message” that procurement teams “do not have to select the lowest price bid” and that in “evaluating tenders they can and should take a broad view of value”. The benefits of collaboration on procurement projects are promoted, along with practical recommendations for project management and delivery. It also has an important section on developing skills and capabilities.

Strategy teams planning a new procurement must review the NPPS as a starting point for their journey.

Integrate Social Value

Social Value became a mainstream concept following the Public Services (Social Value) Act 2012, which introduced an obligation to consider Social Value in procurement policy.

A decade later most public authorities have Social Value policies, and it is a standard practice to allocate between 5-20% of the scoring to Social Value, in both public service and commercial purchasing procurements. This is a progressive advance, as it promotes the social and environmental responsibility of suppliers.

The inclusion of the National Procurement Policy Statement in the 2023 Act takes this a step further by requiring public authorities to have regard to strategic priorities. It takes a very broad view of the term social value.

“All contracting authorities should consider the following national priority outcomes alongside any additional local priorities in their procurement activities:

- creating new businesses, new jobs, and new skills.
- tackling climate change and reducing waste, and
- improving supplier diversity, innovation, and resilience.

Achieving these objectives requires social value to be integrated into commissioning and procurement strategies, not treated as an “add on”. The Strategy notes:

“Contracting authorities should ensure that they do not ‘gold-plate’ contracts with additional requirements which could be met more easily and for better value outside of the contract compliance process”.

Wales has a more integrated approach to social value considerations with its own legislation focusing on “Well-being”. The Well-being of Future Generations Act 2015 and related legislation including the Social Services and Well-being (Wales) Act 2014, set out the principles of: voice and control; prevention and early intervention; well-being; co-production; and multi-agency.

Social Value in England and in the 2023 Act (which recognises the Welsh developments as distinct), is a less cogent subject. There is a concern that the express requirement to focus on the National Statement might have an unintended effect of limiting the focus of local authorities on local policy priorities.

In practice, most Local Authorities have adopted the Social Value Portal’s “Themes Outcomes Measures”, or “TOMs” product, as the means of giving meaning to Social Value in policy terms.

A great deal of work has gone into these TOMs and it provides a clear basis for procurements to embrace wider social contributions as added value commitments, for example including local apprentices in building contracts.

In delivering the broader goals for the 2023 Act, social value delivery needs to be more closely integrated into the desired outcomes of the procurement, whether for products or services. There will be clear opportunities for applying innovative solutions and realizing a wider range of social benefits.

Embrace Small Enterprise

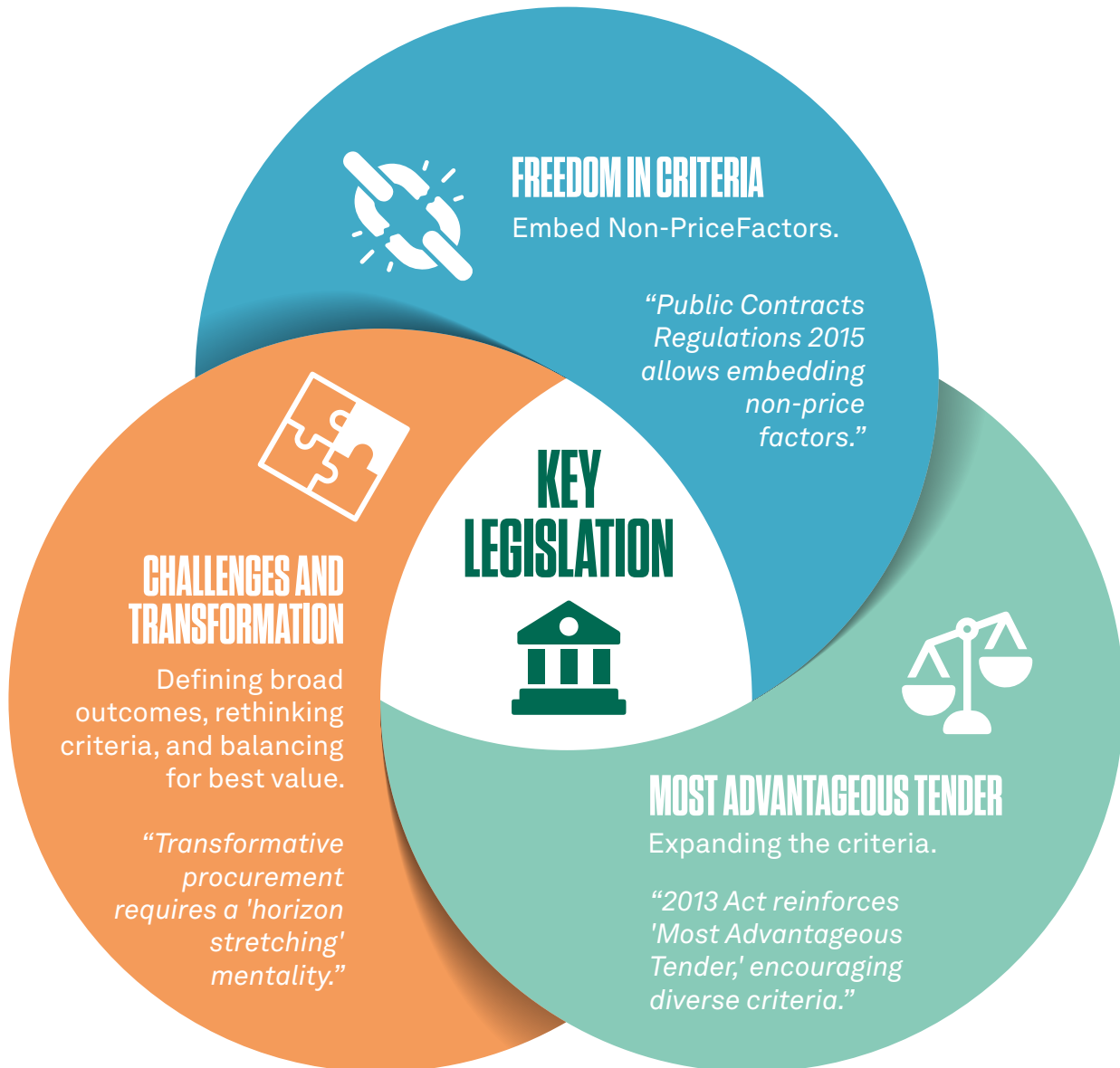
Fulfilling the NPPS mission for public buyers to improve “diversity, innovation and resilience” requires “better support for start-ups, small and medium-sized businesses”. The 2023 Act includes specific requirements for contracting authorities to “have regard to the fact that small and medium-sized enterprises may face particular barriers to participation” and “consider whether such barriers can be removed or reduced”. This requirement applies to all contracts, both above and below threshold.

The term “particular barriers” is not specifically defined. However, the new rules selectively target burdensome pre-tender participation conditions – for audited accounts and insurance cover – that discourage small enterprises from entering public markets. These requirements apply for general tender participation and entry to frameworks and dynamic purchasing systems. These are areas where small enterprises have complained about unnecessarily onerous requirements.

On broader entry barriers, the government has committed to investment in a new “tell it to me once” system which will allow a prospective supplier to register all their details once in a standard format. This should reduce the resources required to make offers as standard conditions can be used for every tender.

EXPAND PROCUREMENT HORIZONS

Transformative Procurement Power



CASE STUDY 3

HS2 Innovation Accelerator

Focused around HS2's three innovation challenges: productivity; the environment; and the circular economy; the HS2 Innovation Accelerator, run in partnership with Connected Places Catapult and Innovation Birmingham, aims to bridge the gap in rail innovation by building a thriving SMEs ecosystem. Its success lies in empowering SMEs with added support while fostering partnerships with Tier 1 suppliers. Beyond its conventional role in advancing commercial, investment, and technological readiness, the programme assisted SMEs in navigating HS2's preferred procurement platforms and supply chain frameworks. Treating Tier 1 suppliers as supply chain partners, throughout the process, from challenge inception to SME selection, resulted in 50% of these SMEs securing procurement post-programme. While HS2's procurement is private, this model of engaging suppliers throughout procurement phases and supporting SMEs could be a blueprint for the public sector.



There are other small enterprise friendly changes in the tender requirements. The scale of the project should be proportionate to the results that are expected. The notice time given to prepare tenders should take account of the limited resources within a small business to prepare a complex document. There is a specific duty to consider dividing tenders into sizes that are more attractive for small enterprises to fulfil. The implementation of all the small enterprise friendly provisions embedded in the 2023 Act is expected to be scrutinised through regular Cabinet Office reporting.

To expand their engagement with smaller companies, contracting authorities need to understand the culture of managing successful small enterprises. A particular issue is the impact of diverting resources to responding to a speculative project while trying to run a profitable business with lean resources. Trust and confidence between bidder and supplier must be built through regular dialogue. Show small enterprises and start-ups that you are determined to create a “level playing field”. Make it easier for them to understand the challenges you are facing so they can respond more effectively.

Encourage Ambitions

Within public authorities, cultivate a mindset that every procurement made has the potential to contribute a new idea and generate new economic activity. Don't wait for someone else to be a pioneer. Be ambitious and treat legislation as a friend and not an enemy. Avoid risk aversion and don't be distracted from doing things in a different way. Take advice and ensure that you are drawing on the experience of successful pioneers.

The starting point for an innovative procurement must be well upstream of the detailed process of writing tenders and deciding the structure of a contract. Procurement needs to be part of a strategic

approach of making change. Organisations that understand emerging technologies and the potential for new ideas in enhancing service delivery will be well placed to take advantage of the flexibilities that are offered.

However, ambitions for deploying new ideas will be frustrated without the suppliers and contractors to deliver them. Inputs from suppliers are critical to successful strategies. Let them know about the problems that you wish to solve. Be open to their suggestions for different approaches. The new rules actively encourage this pre-market consultation.

Successful pioneers know their customers. New strategies for service delivery can be generated by engaging citizens and listening to their ideas for change. Innovation workshops, where ideas can be presented and the most promising can be funded to a first development stage, are a great way to encourage more diverse ideas and suppliers. In the digital space, workshops can produce working prototypes – often known as Minimal Viable Products – very quickly. The producers of the most promising solutions can be invited to participate in a pre-commercial procurement.

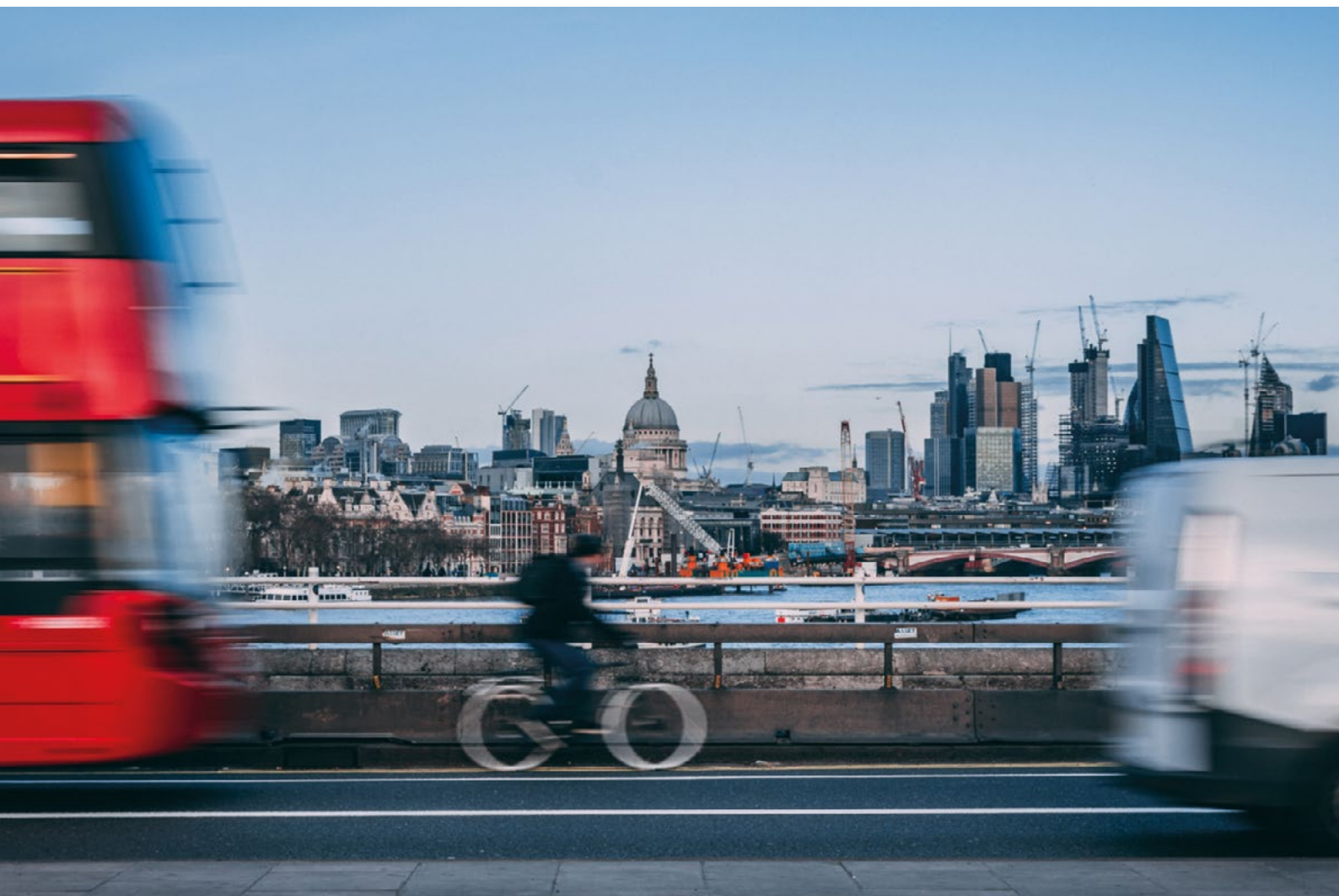
Set Challenging Goals

Procurement ambitions need to be matched by challenging goals and stretching outcomes. Setting really challenging goals for your procurement is a powerful way to energise suppliers and embed innovative thinking in your organisation. The goals should be specified in the broadest way possible. They should be focused on the desired outcomes of the procurement and the unmet needs that the solutions are intended to fulfil. Avoid being overly prescriptive, don't dictate solutions. Be clear on the problem and its context to provide direction.

CASE STUDY 4

Freightlab

Recognising the need for multi-stakeholder collaboration to reduce the adverse impact of freight, TfL launched the Freightlab Innovation Challenge, providing land and seed funding to attract innovators. The challenge engaged key industry players, including John Lewis, Royal Mail, DPD, UPS, and Reef Technologies, creating a unique platform for testing and implementing innovative solutions. It revolutionised public procurement by fostering a three-way partnership involving TfL, carriers, and innovators. By providing incentives such as land, market access, potential changes to regulations, and seed funding, TfL facilitated an open competition that attracted diverse entries. Winning solutions included AI for driver training, noise pollution measurement through specialised sensors, and an environmentally friendly tire. Through the three-way contractual exchanges, TfL gained valuable evidence supporting policy changes with a pan-London impact. The approach showcases TfL's influential role in scaling solutions beyond traditional procurement, leveraging its power to drive policy changes and influence industry practices.



Setting challenging outcomes will also draw in a wider range of potential companies, possibly from different sectors and with different technologies. For the most ambitious challenges, a first step could be working with suppliers demonstrating different technologies to evaluate a range of solutions. During this first stage potential collaborations often emerge. These might involve partnering a start-up company with a larger well-resourced supplier.

Boost Local Economies

Boosting a healthy small enterprise “eco-system” is widely accepted as an important element of economic growth and “levelling up”. There is a national network of small business hubs, underpinned with grants provided by Councils and Regions. Nurturing small enterprises to become public sector suppliers can be integrated into these programmes. Start-ups also need to be encouraged, especially with opportunities to partner with larger suppliers.

The active engagement of innovative small enterprises will be a touchstone for any organisation that wants to change culture and introduce more innovation throughout its organisation. Local and regional authorities who are committed to building more innovative regions will also want to consider how they can embrace start-ups and enterprises with early-stage technology into the procurement process. None of these desirable aims is covered by the 2023 Act. They need to be given specific attention by decision makers when procurement strategies are being decided.

Exploit Preliminary Market Engagement

A common theme of procurement strategies is the crucial role played by pre-tender activity. The reluctance of many contractors to undertake this deep preparation ahead of formal tender release has been clearly identified as an inhibitor to achieving innovative results. Caution about possible legal issues is widespread.

The Procurement Act 2023 addresses this by clearly setting out a wide-ranging and comprehensive scope for market engagements. It also introduces a range of new Notification Requirements, intended to alert prospective suppliers to future opportunities and the opening of a formal engagement programme linked to a tender opportunity.

“These provisions offer significant new opportunities to boost the uptake of innovative procedures. It is essential that these are well communicated and fully implemented.”

Frameworks and Dynamic Markets

Frameworks are extensively used throughout the UK public procurement system. The National Audit Office, in its report on Competition in Public Procurement published in July 2023 noted that *“Frameworks are designed for procuring common goods and services to allow departments to access economies of scale, but they are not always the way to achieve the best competition”*.

Figures quoted in their report showed that for central government contracts awarded in 2021-22 with a value of £10 million or more, 72% were called off from frameworks or dynamic purchasing systems.

Contracting authorities with requirements covered by a framework can select pre-qualified suppliers and invite them to tender for contracts. Competitions can be organised with a short list of framework suppliers. Lower value contracts may be made directly to a selected supplier based on a “catalogue price”. Frameworks are set up on multi-year basis, excluding new suppliers until the next readmission dates.

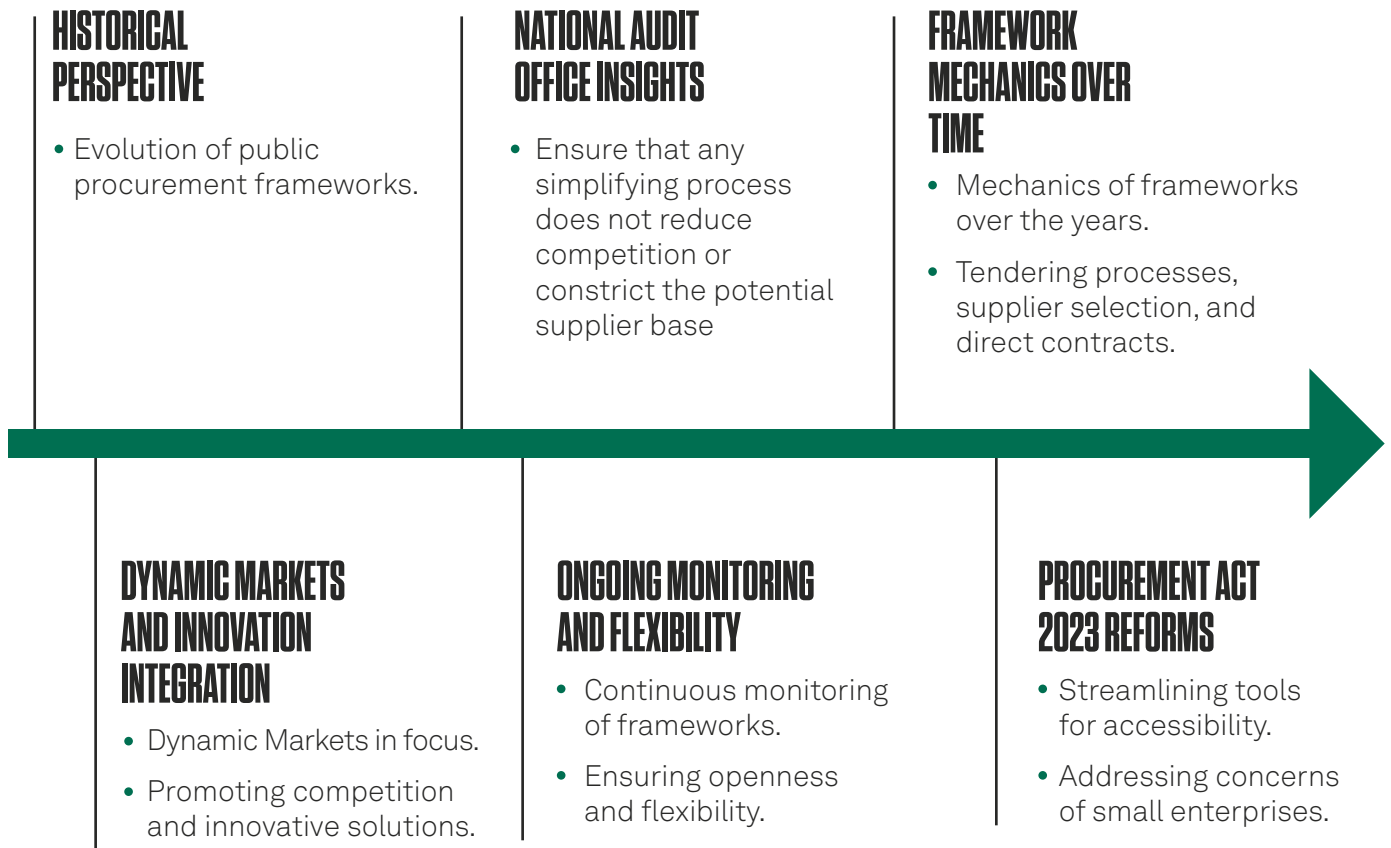
CASE STUDY 5

London Housing Consortium

The London Housing Consortium (LHC) offers a range of procurement solutions to assist local authorities, social landlords, and other public sector entities in the UK. The solutions include frameworks and Dynamic Purchasing Systems (DPS), both of which are freely accessible mechanisms enabling the procurement of works, products, and services related to public sector housing construction, refurbishment, and maintenance. The frameworks provide a structured approach with set terms for contracts, allowing call-offs during the framework's lifespan. Suppliers compete for framework appointments through open competition. Conversely, the DPS is an open-market solution offering pre-qualified suppliers for building works, goods, and services in public sector housing projects. The DPS simplifies compliance with leaseholder consultations, providing opportunities for leaseholder-nominated trades to join and bid for work. Through its innovative procurement solutions, LHC helps its members and other users reduce procurement timelines and foster collaboration among members while upholding quality and adhering to UK procurement rules, promoting a more agile and responsive housing sector.



EVOLUTION OF PUBLIC PROCUREMENT FRAMEWORKS



The Procurement Act 2023 has reflected this widespread use of frameworks and dynamic purchasing systems by making significant reforms to streamline and open access to these tools. It has also addressed the issue raised by small enterprises about excessive complexity and cost to join a framework. Easier access to the Dynamic Markets enhances opportunities for new participants and promote competition.

There is scope for frameworks to contribute to the procurement of innovative solutions. The Crown Commercial Service has already

established the “Spark” dynamic purchasing system focused on the digital sector. The listed suppliers offer emerging technologies in eight categories, categorised as radical or disruptive innovations. They would be potential tenderers to enter competitive flexible procedures.

The role of frameworks in conjunction with other strategies to promote innovative solutions needs to be carefully monitored. The new rules must ensure openness to new suppliers and ensure that flexibility is exploited.

4. EXPLOIT THE COMPETITIVE FLEXIBLE PROCEDURE

“Our ambition is that, over time, these developments will make public procurement into one of the most powerful levers to drive innovation nationally, nurturing creativity and growth in local business communities and at the same time, substantially improving the effectiveness of public services.”

From Cabinet Office 2023 Act Guidance Note “Our Innovation Ambition”

An Artist's Palette for Creative Partnerships

The introduction of the Competitive Flexible procedure is the biggest single change in the 2023 Act compared to its predecessor PCR 2015. Under the previous rules, contracting authorities wanting to undertake procurements outside a conventional tender driven process were given a range of procedures to choose from. These included competitive dialogues and partnerships that could be used to generate the optimum solution for the customer and a good opportunity for the supplier.

It is no coincidence that the first edition of “Art of the Possible” illustrated its cover with artists crayons and a palette of colours. Creative contractors are now being offered an even wider palette of colours within which to design procurement solutions. The first report clearly spelt out the untapped potential in the 2015 rules. Contractors now have big opportunities to build on their experience of using the 2015 procedures palette, while overcoming some of their shortcomings.

The foundation for exploiting these new possibilities is an ambition to challenge the market, underpinned by a clear strategic procurement plan and the satisfactory completion of a robust preliminary market engagement. It will be particularly important to identify a range of prospective suppliers capable of delivering challenging requirements. A competitive procedure will only deliver optimum results if there is strong response from the market and a good range of potential suppliers. The design of the procedure can then be tailored to the nature of the product or service, the intensity of collaboration and the level of innovation needed to fulfil the requirements.

Contracting authorities and service commissioners who have placed contracts under the old rules are well placed to transfer that experience into the flexible procedure.



Procurements involving competitive dialogue between customer and supplier are widely used. They have facilitated the staged improvement of customer offers, with the progressive elimination of potential suppliers, through a transparent structured process. Many customers and suppliers have found this to be an effective process. Contracts are increasingly awarded by assessing multiple criteria, alongside price. The new rules encourage this, allowing contract awards to be made based on the “most advantageous tender”. The Competitive Flexible Procedure will allow this form of contract to be enhanced and more criteria to be evaluated.

How innovative do you want to be?

The choice of procurement procedure can be tailored to every tender. To exploit that flexibility needs full consideration of the level of innovation expected to be required to deliver the optimum solution. A comprehensive pre-market consultation will provide guidance you on making these choices. These should include foresight on near market ready technologies. Consider your ambitions to attract innovative companies. Where related directly to the project, consider ideas from citizens. A series of questions, set out below, indicate some of the factors that you need to consider in making the choice.

- Can your desired outcomes be delivered by existing technologies?
- Can those existing technologies be exploited in new ways?
- Do you need a new design for a product or service?
- Is there a highly promising solution that needs more R&D?
- Or do you want to challenge the market to offer you new answers?
- Are you prepared to be a pioneer market maker?
- Can you work with an entrepreneurial companies and investors?

- When does the solution need to go live?
- How will you manage a rolling development budget?
- Who are the key internal and external stakeholders?

Multistage Procurement

A common theme of procurement strategies is the crucial role played by pre-tender activity.

The flexibility in the 2023 Act encourages multi-staged procurement processes. These flow from assessment of concepts, through development – which may be funded by customer or research grants - to a final contract offer. There are options for working with multiple potential suppliers. Progressive elimination can be based on effectiveness and feasibility of the offered innovations, which can be judged thorough demonstration models.

The early stages, commonly called pre-procurement, are already well tested through Innovate UK’s Small Business Research Initiative Programme and other public funding through Innovation Accelerators. However, the incentives for supplier participation have been weakened because a firm contract to supply the preferred product or service requires a new tender process.

With the agility embedded in the new procedure, full "start to finish" contracts running through design, development and deployment will be possible. This type of supply contract is common in the private sector. It is regularly cited as a key element in the “lean manufacturing” transformation in industries such as automotive and aerospace. It will be critical for successful contract formats, exploiting the flexible procedure, to be widely shared so that their adoption can be encouraged.

In the public sector, design contests are an existing and long-established procedure for new infrastructure and buildings. This type of creative competition can be deployed as a flexible procurement procedure.

CASE STUDY 6

Roadlab

In response to the considerable financial impact of roadworks, costing millions annually, Transport for London (TfL) pioneered an innovative approach to procurement. Adopting the Innovative Partnership Procedure, TfL streamlined the procurement process by incorporating multiple phases, such as R&D and scaling, within a single procurement initiative. This streamlined approach provided clarity and confidence to the market.

By providing a well-defined problem statement, reduced supplier qualification stages, and clear intellectual property negotiation terms at the beginning, TfL created an environment conducive to start-ups. Through an open competition, multiple ideas involving software and physical solutions were selected. In collaboration with utility companies, nine trials were conducted within 10 weeks, with two successful companies securing multi-year contracts with TfL and opportunities to expand their solutions to other cities. This approach streamlined the procurement process, reduced prescriptive requirements, and emphasised problem statements over specific solutions, demonstrating an effective model for boosting the local economy through innovation in public procurement.



Award Criteria

Moving to most advantageous tenders requires more resources to develop the non-price criteria. Some of these will inevitably be based on standardised information related to aspects such as environmental performance or social value metrics. It will be important to ensure that competition is not unnecessarily restricted by standardised performance criteria. Expert resources will be needed to design contract specific criteria that will really stretch the innovative capability of suppliers.

The new legislation allows for changes in the initial criteria specified for choosing the winning bidder. In a multi-stage process, innovations revealed by competing tender offers may require new criteria to ensure the optimum delivery. The new Act anticipates this by allowing “refinement” of award criteria, including their relative importance, before or during the tender process.

Light Touch Contracts

In the original Art of the Possible report, light touch contracts were described as a “startling freedom”. While not included as part of the original Bill, the potential for using light touch contracts was reinstated during its parliamentary passage. They were identified as a significant benefit, particularly for commissioners of service contracts. The previous light touch regime allowed considerable flexibility in the type of contract under which the service was going to be delivered. The new flexible competitive procedure now covers these provisions. But nonetheless, a commissioning authority may designate a particular service commissioning opportunity as falling under the light touch contract regime.

Service Commissioning with Trusted Partners

The first Art of the Possible report clearly showed the potential for service

commissioners to implement partnership approaches. It described the rules as “*purposive, permissive and flexible.*” These characteristics should apply even more in the 2023 rules since they are completely aligned with the objectives for flexible competitive partnerships.

There are number of good examples where new forms of partnership contracts are delivering complex and sensitive public services, involving both social enterprises and private providers. Service Commissioners should ensure that they take advantage of this pioneering work. Successful projects have been extremely well analysed as the case study from Leicestershire children’s services demonstrates. It also highlights the important contribution that a social enterprise can make as a contractor to a public authority.

In September 2022, the Government Outcomes Lab in Oxford published a report called “Partnerships with principles: putting relationships at the heart of public contracts for better social outcomes”. They classify these partnerships as relational contracts. Their defining feature is the level of pre-contractual engagement required to design and agree a contract, building trust into the process. Relational contracts also need risk sharing reward mechanisms, including techniques such open-book costing and added value sharing.

The GoLab observed that “*difficulties in agreeing issues derive not from the procurement rules themselves, but from a rigid and risk-averse interpretation of them by those who oversee contract award processes.*” The Competitive Flexible Procedure must remove these obstacles.

Essential Requirements

The competitive flexible procedure and light touch contracts allow creative commissioners and contractors to design their own procedures.

But all solutions, however creative they are, must meet the essential requirements of a fair, transparent and non-discriminatory procedure. These are lasting principles – the list below is taken from the original Art of the Possible text.



Equal treatment

People – or in the case of procurement, qualified suppliers – must be treated equally. Everyone has the same access to the same opportunities, procedures, information and is assessed under the same criteria. Making sure that this is the case in any process is an essential prerequisite.



Transparency

The treatment of information – advertising opportunities so suppliers can take part, being clear about criteria so everyone knows what success looks like, publishing decisions so that they are accountable – as such, it is an essential component of the first two as well as a necessity.



Non-discrimination

Closely associated with equal treatment, this principle aims to ensure that there is nothing about a procurement which would exclude someone from taking part in the process because of their characteristics.



Proportionality

How you chose to run your procurement: qualifications requirements, time limits for response – even the extent of the process – need to be necessary and appropriate for what you are trying to do. This principle is particularly helpful. It can act as your guide to making overly procedure-driven approaches more rational.

If your use of the new Regulations reflects these Principles in both fact and spirit, it is likely you will be on the right track. They also help to make your procurement fair.

A Measured Approach to Risk

The phrase “risk aversion” is frequently used in discussions about procurement.

The fear of challenge, internally in terms of institutional compliance and externally in terms of legal compliance is often excessive. It is often a major obstacle to embracing flexibility and creativity and to best value realisation and innovation.

In many cases, a public authority will be able to defend the process because:

- the challenge is not well-founded.
- the authority can show the process was within reasonable parameters.
- the authority has the benefit of the doubt, with the onus of proof being on the challenger.

So, the fear of challenge can be excessive and robust responses to challenge are generally available. The best answer to challenge is a professional, diligent approach. Tactical challenge, as a matter of course, from well-resourced losing commercial suppliers, is a practical problem and cost. It is also a scourge which the public sector should meet robustly.

“Innovators often face internal challenges if they propose to do something that is very different from a previous approach. They should respond by pointing out that it is even more risky to avoid making essential changes rather than respond to future challenges with new solutions.”

5. INNOVATION EVERYWHERE

Transforming National Ambitions

This report has focused on the potential for exploiting the forthcoming implementation of the Procurement Act 2023. However, this is just one step in making UK public authorities more ambitious in their plans for delivering innovative services, products and infrastructure. Transformation must be a continuous process and not just a “one-off” change linked to a new legal environment. The training and development investment in disseminating the new legislation should evolve into a rolling programme of culture change.

Since the launch of the UK innovation strategy in 2021, there has been a welcome rise in the visibility of public procurement as an innovation driver. However, its profile remains low, and adoption continues to be uneven. It was included in the launch ambitions for the new Department of Science, Innovation and Technology, but realising the full potential of public procurement of innovation remains a “work in progress.” The new report by the Cabinet Office, setting out their “Innovation Ambitions” for the Procurement Act 2023, is an encouraging development.

Political leadership – national, regional and local – that encourages procurement of innovation would accelerate the adoption of these transformative reforms.

Innovation is not just applying new Technologies

Deploying existing technologies in new ways is as important an application for innovative thinking as moving into a challenging new solution. A problem-solving innovation in one part of a large organisation can often have significant benefits in another. Communication between procurement teams adds value because they work in different delivery areas and can share experiences, so that successful approaches are spread strategically across organisations.

It's important that departmental silos are crossed in any innovative organisation. The delivery of complex social services through a trusted partnership structure could be developed in other areas of service delivery. These relational contracts could well prove to be an optimum delivery vehicle for many services that could be exploited far more extensively.

6. BUILDING A SHARING COMMUNITY

A Problem Shared is a Problem Halved

Many local authorities are considering actions to resolve difficult problems and have identified unmet needs that they wish to fulfil. Sharing information about these needs can be an ideal basis for joint activity between authorities. This can be particularly effective when considering innovative solutions. New suppliers can be cultivated by inviting responses to unmet needs and challenging the market to respond. Sharing the cost of running a multi-stage procurement and supporting innovators to a first or second stage of demonstrated ideas reduces risks and increases benefits for both authorities and bidders.

On a smaller scale local authorities regularly come together to solve shared problems, with some proceeding through joint tendering to shared services. Project support from government through research grants targeted at key technologies can encourage new partnerships.

Sharing Best Practise

Delivering innovation through procurement is already evident in actions across the public sector. However, best practice sharing is not well developed. “Procurement Playbooks” have been published for specific sectors, but no detailed summary of common lessons has been available. The Local Government Association has a long-standing best practice group and has published research on a range of procurement topics, including the encouragement of innovation and embedding social value.

As the Procurement Act 2023 is Implemented there will clearly be issues that need to be addressed. For authorities exploring innovative solutions, experience with exploiting the Competitive Flexible Procedure will be invaluable. For the supplier community, the delivery of improved market access, the encouragement to supply innovative products, and the simplification of tendering formalities all need to be carefully monitored.

The Cabinet Office has established a very comprehensive and detailed training programme and participation for procurement professionals is essential. However much of the transforming potential for the new rules clearly relates to culture and behaviour. Risk appetites must be raised, particularly in sensitive areas like pre-market consultation. Monitoring progress through live cases of innovative strategies, particularly where they have been frustrated by internal challenges, will be essential.

Openness to New Ideas

Companies and individuals with great ideas for improving public service often report difficulties in finding a friendly interlocutor who will take their ideas seriously. Public authorities should be encouraged to set up effective contact points at which ideas can be sent to them and then, as appropriate, be circulated round an organisation. Of course, such a contact system is very valuable in engaging citizens. Funds can be offered by innovation agencies where a really promising idea needs support to prove its feasibility. Such initiatives bring innovation close to citizens show them how their local government team is responding.

It's also very important for decision-makers to be continually briefed about technology developments. As Universities are becoming more and more engaged with city and rural regions, there are great opportunities to engage academics informally to promote ideas and boost the innovative culture within procuring organisations. Universities can also help to raise the recognition of alternative approaches to service delivery, such as direct contractual engagement, subsidy, and joint-venture investment. The GoLab at Oxford is a good example of University engagement.

IPEC – a Beacon for Change

The Innovation Procurement Empowerment Centre was launched by Connected Places Catapult and Innovate UK in 2023.

In 2024, as the Procurement Act promises transformation of the procurement landscape, it will be stepping up its activities to help councils and local authorities take the lead in exploiting potential opportunities. It will be the network hub for advocates and empowered procurement enthusiasts who champion the cause of innovation in procurement. Through its digital platform, events, and publications, it aims to connect like-minded professionals and facilitate a continuous exchange of knowledge and insights.

In conjunction with its research team, it also aims to build up a knowledge bank on the operation of procurement legislation, providing advice and support for the innovation community in local and regional government.

CASE STUDY 7

Multi Council Tendering

In 2017, Staffordshire County Council used a joint tendering arrangement with neighbouring councils Stoke on Trent and Telford and Wrekin to increase their purchasing power and overcome their struggle in securing a new sexual health service provider (due to budget cuts). A comprehensive needs assessment was taken by the three councils, which led to a shared service specification. Adding specific requirements for each area was done on exception, allowing them to address both shared and specific needs. The resulting draft specification was then published and shared with interested providers, who met with commissioners to express their views and suggest required edits. The resulting economies of scale have benefited both the councils and the service provider, leading to the service provided being better than each council could have achieved on their own. It gave the provider the flexibility to move their staff when and where needed across the patch. Collaborating created a larger geography, widened opportunities for potential providers, allowed for greater economies of scale and greater potential for sharing resources and best practice. It put in place a sustainable, long-term solution.



7. CONCLUSIONS

A chance to transform attitudes

The co-authors hope that they have encouraged a reappraisal of procurement as a catalyst, an enabler of innovation and a facilitator of better services for citizens. Too often they have heard complaints that the “rules” stop ambitious projects. They have continued to fly the flag for the “Art of the Possible” because that is the ambition that they would like to see applied to every problem. They have demonstrated that good public procurement is a strongly constructed, well drained foundation on which great new works can be constructed without fear of collapse. Those new works will be driven by clear strategy, great ideas, good planning and painstaking project management. Procurement is an enabler and a process which allows best practice to flourish.

Great examples, showing what can be achieved will become beacons, pointing to a new culture in public organisations in their approach to procurement. As emphasised throughout this report, procurement is a strategic, creative and productive activity. A good legal framework, which we will have in place within the next year, is a crucial enabler. Many welcome changes that encourage innovation will then be in operation. To achieve transformation, there is no time to waste.

Exploiting local decision making

The focus of this report has been procurement decisions made by local organisations close to their citizens. Regional and local authorities have big responsibilities, but they can effect change quickly. They are not encumbered by some of the “baggage” that can be a constraint on large national organisations.

With the welcome focus on devolution and “levelling up”, the freedom of local authorities to innovate and experiment can be enhanced through the policies advocated by the “Art of the Possible”. Flexible procurement enables local entrepreneurs to be supported by an enlightened customer to develop world beating products. Developing strong “eco-systems” in which young companies can flourish is cherished objective for many local plans. This report will hopefully encourage those ambitions and provide pointers for their fulfilment.

The importance of partnership

Innovative solutions which improve public well-being and raise productivity are built on partnerships between customer and supplier. Successful delivery requires trusted relationships between specialists in the commissioning or procuring authority and their counterparts in the companies delivering the solutions. Best practice can be spread through partnerships between authorities in different parts of the country to share ideas and undertake joint activities.

This report has been produced by a partnership between experts drawn from different parts of the procurement spectrum, and the many practitioners who have shared ideas with us. They have reported on some great examples of work that has been carried out. We are grateful to Connected Places Catapult for enabling us to do this work together.

AUTHORS



Malcolm Harbour CBE

Served as MEP for the West Midlands for 3 Parliamentary terms 1999 - 2014. In 2008, he was Rapporteur for the first Parliament report on innovation procurement. From 2009, as Chairman of the Internal Market Committee, he led the negotiations on the 2014 EU procurement reforms. Since 2015 he has been engaged on innovative procurement projects with the Local Government Association and the Connected Places Catapult, leading to the launch of the Innovation Procurement Empowerment Centre in 2022. Before EU politics, he spent 32 years in the motor industry, holding diverse posts in product engineering, strategy, marketing and sales.



Julian Blake

Julian Blake is a specialist public benefit lawyer, with Stone King LLP, who co-authored “The Art of the Possible in Public Procurement” in 2016, to highlight the need for more purposeful, creative and flexible public service commissioning. He advises public benefit sector, public sector and private sector clients, focussing on collaborative models, including Innovation Partnerships, Alliance Contracts, Place-based Community Partnerships; and multi-sector, multi-stakeholder projects, applying the principles of: Social Enterprise. He promotes the mature social enterprise model in public services through E3M <https://e3m.org.uk/> and is a member of the VCSE Crown Representative’s Advisory Panel to Government.



Rebecca Rees

Rebecca Rees is a partner and Head of Public Procurement at the international law firm, Trowers & Hamlins. Rebecca is a leading national expert in public procurement law, consistently ranked as among the world's leading government contracts lawyers. (Who's Who Legal and Chambers and Partners). She has significant experience in advising clients in the public, private and third sectors on public procurement, subsidy control and building safety strategy issues. Rebecca is also a Visiting Fellow at the Centre of Construction Law at Dickson Poon School of Law at Kings College London and is currently undertaking a PhD in public procurement, focusing on price evaluation models at the University of Nottingham.

RESEARCHERS

Oishee Kundu, a Research Associate at the University of Bath, specialises in technology adoption and public procurement's role in innovation. A founding member of the Consortium for Research in Innovative and Strategic Public Procurement (CRISPP), she collaborates with the University of Manchester, University of Birmingham, and Connected Places Catapult. Known for effectively communicating academic research to diverse audiences, Oishee developed a board game at Cardiff University to raise awareness about public procurement among school children. Her research, featured in journals like *Public Management Review* and *Science and Public Policy*, showcases her commitment to advancing understanding in the realms of innovation and public services.

Bin Guan, an urbanist at Connected Places Catapult, brings a town planning background and extensive experience in the built environment domain. Since joining the catapult in 2016, he has developed a diverse project portfolio, encompassing areas such as local government digital transformation and the innovation funding landscape. As a key contributor to the catapult's Place Leadership programme, he played a pivotal role in delivering the inaugural cohort of the Innovation Places Leadership Academy and actively contributes to the Innovation Procurement Empowerment Centre.

Ghaith Nassar is a service designer and researcher with the Human Connected Design team at Connected Places Catapult. In their work, Ghaith enjoys involving communities to co-identify challenges, and co-create systemic and strategic interventions, based on understanding and reconfiguring our connections with each other, the technologies we use and the planet.

Before joining Connected Places Catapult, Ghaith led work with UNESCO on reviving earth architecture in the Jordan Valley, co-founded the first green architecture studio in Palestine, led a facade design centre, and co-built the biggest queer grassroots community group in Palestine.

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Email us
info@cp.catapult.org.uk

