



Public Sector Procurement:

Advancing Government Framework Agreements

Considerations and Practical Approaches

Foreword

The ability to devise procurement policy frameworks that are agile enough to keep pace with the ever-increasing velocity of technological innovation is an enduring challenge for governments all over the world. Through consistent engagement with policy and procurement stakeholders across the globe, we have observed how governments are navigating the complexities of their unique digital transformation journeys and have developed an awareness of the procurement building blocks necessary to deliver optimal digitization outcomes.

One such procurement building block, as featured in **Building Blocks for a Successful Digital Transformation Strategy**, is the use of government framework agreements. As we explore in **Public Sector Procurement: Advancing Government Framework Agreements**, when implemented with flexibility and innovation in mind, government framework agreements can be a powerful enabler of digital transformation.

We hope this paper serves as a useful resource for public sector policy stakeholders, looking to embrace the potential of transformational technologies like cloud and artificial intelligence.



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Contents

	Forward	2
1	Executive summary	4
2	Introduction to framework agreements	6
3	Understanding public procurement framework agreements	9
3.1	Advantages of framework agreements	9
3.1.1	Cost savings and improved efficiencies	9
3.1.2	Harmonisation and risk mitigation	9
3.1.3	Trusted partnerships	9
3.1.4	Widening access	9
3.2	Disadvantages / limitations of traditional framework agreements	10
3.2.1	Data privacy and security	10
3.2.2	Audit rights	10
3.2.3	Intellectual property	10
3.2.4	Service levels	11
3.2.5	Most favoured customer pricing	11
3.2.6	Supply chain due diligence	11
3.2.7	Duration of certain contractual terms	11
3.2.8	Order of precedence	11
3.3	Examples of more flexible framework agreements	12
3.3.1	Australia	12
3.3.2	United Kingdom	12
4	Re-imagining procurement practices: how to facilitate flexible framework agreements	14
4.1	Learning from the private sector	14
4.2	Relationships of trust	14
4.3	Rethinking the skillset	15
5	Next steps	16
	Appendix 1 – A flexible approach to contractual terms	18
	Appendix 2 – Related Microsoft papers and materials	22

1 Executive summary

Public procurement refers to the process by which public authorities, such as government departments or local authorities, purchase goods or services from vendors. Most countries have enshrined in law the basic tenets under which their governments are required to purchase goods and services, and most also have in place a raft of policies and procedures to support the practical aspects of the procurement process.

Framework agreements have become an important device used by governments to streamline their procurement functions and manage costs and risk. In this paper, we explore the many benefits of framework agreements, as well as ways that framework agreements could be better deployed to overcome some of the procurement friction-points we have observed when doing digital transformation deals across the globe.

To remain relevant and effective, and to achieve their digital transformation goals, governments around the world will need to embrace the benefits of cloud and Artificial Intelligence (“AI”) technologies. Prioritizing the procurement of these technologies, and the innovation that they drive, means rethinking traditional public procurement practices that have generally focused on prescriptive mandatory requirements and fixed-price, fixed-term framework agreements. The traditional approach has worked well for the acquisition of goods and on-premises software, but it is generally not a good fit for the acquisition of Software-as-a Service (“SaaS”), and even less so for Infrastructure-as-a Service (“IaaS”), Platform-as-a-Service (“PaaS”) and AI solutions. As governments look to move services to the cloud and embrace AI, they will need to acknowledge that the use of rigid

framework agreements is often not appropriate for the procurement of solutions which are typically non-customized, shared services that rely upon efficiencies of scale achieved through standardization.

While we are seeing evidence of framework agreements that make some provision for vendors to include terms, engagement with many governments on this topic is in its early stages and more needs to be done to ensure that framework agreements are adaptive and responsive to rapidly evolving technologies. We see the achievement of truly flexible framework agreements as key to providing access to, and successfully deploying, advanced technologies like cloud and AI. To achieve this outcome, governments and providers of advanced and developing technologies will need to work together to share the challenges posed by traditional framework agreements and find suitable adaptations that meet the needs of both sides.

Microsoft continues to collaborate with individual governments on this topic in a thoughtful, substantive and broad-minded manner, using cooperation as an opportunity to drive forward digital transformation programmes and strengthen the way we work and contract with the public sector.



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2 Introduction to framework agreements

The term “framework agreements” describes a contracting structure whereby the parties to a contract agree upfront on the overarching terms and conditions that will apply to future orders, usually for a set duration.

When future orders are “called off” the framework agreement, there is usually limited scope to incorporate additional terms into the contract. Framework agreements are well suited to the public procurement environment because of the contracting certainty and prescribed protections they can bring,

but they also help to level the playing field for smaller vendors looking to take part in competitive government tenders. Framework agreements also have the practical effect of enabling governments to “contract once, procure continually”, which brings with it obvious efficiency and time savings.

Government frameworks are often grouped into “lots” by product or service type, and sometimes by region, with the idea being that vendors offering certain types of goods or services can bid to join the lot that best suits the solution they are proposing. The number of vendors signed up to a particular framework agreement will differ depending on the product or service being procured. Some framework agreements are signed with only one vendor offering complex, end to end services, while others are designed to be open to thousands of potential bidders¹

Frameworks that rely on sole vendor participation are set up to enable one chosen provider to deliver goods and/or services for a set duration. Frameworks involving multiple vendors differ by allowing for the pre-qualification or selection of several vendors to supply goods or services. These vendors are assessed and given the green light based on their skills, knowledge, and adherence to pre-defined standards. Within such a framework, the multiple approved vendors are then given the opportunity to compete for individual contracts or projects. A benefit of either approach is the creation of lasting partnerships with trusted vendors, which can result in a more consistent and operationally efficient procurement operation.

Each government will develop their own framework agreements, but generally, vendors are required to

prove their capability to deliver the necessary goods and services at a specified quality level. Vendors may also have to factor into their bids, information about how their services will enable governments to achieve particular goals, such as creating social value or advancing towards carbon net-zero targets. Governments review all vendor submissions and allocate framework positions based on the criteria outlined in the framework’s official documents. After securing a position on a particular government framework, vendors are then able to submit bids for contracts offered by public and third sector organizations that are indicated as participants within the framework. This process enables small and medium-sized enterprises (“SMEs”) to hold positions on government frameworks, alongside well-known, established companies such as Microsoft.²

Once established, frameworks are operative for a specified period, typically ranging from one to four years. After this period elapses, they are usually put out to tender again, providing an opportunity for new vendors to submit proposals for inclusion. Government framework agreements may also include a maximum spending cap. This spending cap is disclosed during the contract notice, which is released as part of the framework’s development cycle. Should spending surpass this threshold, the entity managing the framework may be required to initiate a new tender process, inviting both existing and prospective vendors to compete for a place in the new framework.

Whole-of-government framework agreements are widespread across digitally mature governments, and Microsoft supports this type of centralised approach to contracting as an important contribution to the effective implementation of wider digital transformation strategies. However, our observation from practical experience is that a strict reliance, or insistence, on terms and conditions can engender a degree of inflexibility and a one-size-fits-all approach to contracting that is not necessarily compatible with the acquisition of the innovative technologies that are becoming more widely used in public life. In this paper, we propose some key considerations for the successful evolution of the public procurement process through the creation and adoption of more flexible framework agreements.

1. Crown Commercial Service, [What is a Framework - Procurement Essentials](#) (14 December 2021)

2. Crown Commercial Service, [What is a Framework - Procurement Essentials](#) (14 December 2021)





3 Understanding public procurement framework agreements

3.1 Advantages of framework agreements

Many governments across the world use framework agreements to streamline their procurement processes. A centralised procurement function utilising framework agreements offers many advantages for public sector organisations, including:

3.1.1 Cost savings and improved efficiencies

By centralising purchasing, organisations can take advantage of bulk buying and achieve advantageous discounts due to larger order volumes. This also reduces duplicate spending across different departments. A central point for procurement also streamlines processes, reducing the time and effort required for sourcing, negotiating, and purchasing. It also helps to reduce the administrative burden on other departments, allowing them to focus on their own core activities. All of this contributes to quicker turnaround times and a more efficient procurement cycle.

3.1.2 Harmonisation and risk mitigation

Centralisation allows for the harmonisation of procurement processes and policies, ensuring greater consistency across government. Using framework agreements can also lead to a consistency of supplies and services, which can simplify the initial procurement and on-going provision of services. A centralised approach can help in identifying, assessing, and mitigating risks associated with procurement activities by setting risk management standards and procedures. Centralised procurement also provides better visibility over spending and supplier performance, which improves compliance with government policies and external regulations and helps reduce the risk of fraud and misuse of funds.

3.1.3 Trusted partnerships

One of the key drivers behind the introduction of framework agreements for most governments is to establish a pool of pre-vetted vendors to help reduce friction in the procurement process. Dealing with suppliers on a more consistent basis means that government organisations can build stronger, deeper relationships, leading to better service, reliability, and possibly further cost reductions.

3.1.4 Widening access

A framework agreement approach to contracting has also allowed for greater access for SMEs to participate in tenders for government contracts. Being accepted onto a government framework can widen access to government work and brings with it the reputational benefits of being a vetted and trusted government supplier. The corollary of these vendor benefits is that it gives governments access to a wider range of vendors and products.⁴

It is, however, important to recognise that although the introduction and implementation of framework agreements has been successfully embraced by many governments across the globe, this does not mean that they operate seamlessly. In Section 3.2 below, we examine common concerns and blockers for vendors in engaging with traditional framework agreements and discuss proposals for overcoming these issues.

3. Advancing AI Procurement and Adoption in the Public Sector (Microsoft)

4. Crown Commercial Service, [What is a Framework - Procurement Essentials](#) (14 December 2021)

3.2 Disadvantages / limitations of traditional framework agreements

We have explored certain benefits of using traditional framework agreements in the public sector, such as simplified procurement processes, harmonised terms, reduced risk and greater transparency and access for both customers and vendors. However, there are also some significant incompatibilities between the way in which traditional framework agreements operate and the requirements of subscription-based and rapidly evolving technologies such as cloud and AI services, which require a more flexible approach. The same characteristics of framework agreements that bring benefits can therefore create friction for governments and vendors alike.

As discussed in our paper, Public Sector Procurement Fit for the Digital Age,⁵ the structure that the traditional framework agreement was created for (and is best suited to) is the provision of bespoke physical goods and services. Framework agreements are much less suited to “as-a-service” solutions. Vendors of these services tend to offer all of their customers the same standardised product and related service levels, privacy commitments and intellectual property licences. Contractual terms designed for either non-digital projects or traditional IT outsourcing deals are therefore often fundamentally incompatible with public cloud or AI “as-a-service” solutions. As an example, vendors of standardised cloud services generally cannot accommodate individual customer-mandated privacy and security requirements and the inclusion or mandating of these terms in requests for proposals (and framework agreements) can create insurmountable barriers to vendor involvement.

Regardless of how strategic a procurement may be, or how much value a vendor places on its relationship with its customer, a misalignment on terms and conditions or requirements can prevent a vendor from participating in a procurement. As a worst-case scenario, where the terms of a framework agreement do not permit sufficient commercial flexibility, a vendor may choose to “no bid” or to back-off the increased risk through other means; for example, putting in place third-party arrangements that are likely to increase costs and, at times, risk for the purchaser. This was the case recently in Ireland where a €60 million government tender for public sector cloud services was cancelled because it received too few applications. Many technology companies which had been expected to bid declined to do so, citing “fundamental difficulties” with the proposal, which made it untenable to apply. The issues included unfavourable commercial terms such as fixed pricing and a fundamental misalignment in the application of data processing provisions.⁶

While the centralized aspect of a framework agreement is appealing, we have identified that there remains an insistence, including among the 70% of OECD countries that have adopted specific framework agreements to deal with the procurement of cloud services, on providers accepting outdated legacy contractual terms. The following are some common examples of such terms:

3.2.1 Data privacy and security

Vendors may be required to ensure compliance with government-mandated data privacy and security requirements. Such a mandate can lead to unworkable requirements for vendors in relation to data handling. Our observation is that this has, not infrequently, led to situations where government-mandated contractual terms are incompatible with the cloud or AI solution’s functionality, or are misaligned with the high standard of vendor privacy and security practices.

Encouragingly, in recent years, there has been some shift away from this prescriptive approach by government customers toward increased flexibility in accepting the incorporation of vendor’s data privacy and security terms in framework agreements. This represents an acknowledgement that most vendors will prioritise providing secure and legally compliant data processing services, if nothing else, because their reputation (and therefore their revenue stream) is heavily dependent on getting this right.

3.2.2 Audit rights

Government agencies can require levels of access to providers’ systems at frequent intervals to conduct audits, penetration testing and vulnerability scans. These requirements present logistical and technical difficulties, and were more suited or appropriate to traditional outsourcing deals.

3.2.3 Intellectual property

Government agencies often insist that any intellectual property rights created pursuant to the framework agreement must vest in the government customer. We also see a requirement for “as-a-service” solutions to be subject to a wide, perpetual and irrevocable licence. This insistence represents a misunderstanding of what the customer actually requires in practice, which with cloud and AI services is usually a limited licence to receive the services for the duration of the contract term. We have also seen government agreements which include the grant of rights to publish code as open source. Again, this should not be applicable or necessary in the context of cloud and AI services and would generally be considered unacceptable for most suppliers (except, potentially, in the context of bespoke software development).

5. Public Sector Procurement Fit for the Digital Age

6. The Business Post, [Government cancels ‘commercially unfriendly’ tender after Big Tech backlash](#) | Business Post

3.2.4 Service levels

Framework agreements often include government-mandated service levels and penalties for non-compliance that are incompatible with commercially available “as-a-service” solutions offered with standardised service level commitments and remedies for failure to meet such commitments. It is not feasible to create bespoke service level commitments for standardised services. The same terms are available to all customers and the same levels apply, at a technical level, to all purchasers of the commercially available cloud and AI solution (including public-sector purchasers). By way of contrast, performance measures, such as project management KPIs and related SLAs, as well as payment credits, earn-backs and termination based on availability levels, are vendor management concepts that are more often applied to system integrators or traditional outsourcers.

3.2.5 Most favoured customer pricing

There can be an expectation that the cloud and AI provider will offer most favoured pricing to the relevant government purchaser, which is not commercially feasible given the often-unique nature and structure of deals that cloud and AI providers enter into, as well as pricing differences across geographies. Instead, governments may wish to focus on centralised procurement to take advantage of lower per-unit prices for larger volumes.

3.2.6 Supply chain due diligence

In some cases, a procurement agency may mandate prior approval of a provider’s hardware, software, sub-processors and sub-contractors as a contractual requirement. Again, it is not practical for an “as-a-service” provider to seek the prior consent of all of its customers.

3.2.7 Duration of certain contractual terms

Terms in framework or other procurement agreements requiring, for instance, that the solution is provided on the same terms and pricing for long periods (such as 20 years) do not take into account the rapidly-changing digital world and the fact that technology is continually evolving, often in ways that upend current product offerings. Governments would not necessarily want to be stuck with the same technology two decades on and should ensure that contracts are flexible enough to take into account technology replacements or upgrades, changes in the customer’s own requirements and the inevitable pricing adjustments that such changes will bring. In addition, product functionality and features of “as-a-service” solutions change over time and commitments to maintain current functionality or features for extended periods of time cannot be given to individual customers. Doing so would, in effect, require committing to maintain a bespoke solution.

3.2.8 Order of precedence

The order of precedence provisions in government framework agreements usually mandate that the framework agreement itself takes precedence over any conflicting terms in the call-off contract or order form. This can lead to confusion, even where vendor terms are incorporated into the call-off contract or order, as to which terms prevail. If governments are to accept the concept of vendor terms being incorporated into their standard framework agreements, the agreement itself should clearly set out how the vendor terms can be incorporated so that all parties have a clear understanding as to which terms apply to the arrangement.

Our observation is that an insistence on government-mandated terms and/or non-acceptance of vendor commercial terms is often culture or policy-driven and has little to do with actual risk. The inclusion of vendor terms in framework agreements does not need to increase the risk profile for public sector customers. Instead it reflects the commercial reality of how cloud and AI services are provided. Including such terms (naturally after appropriate due diligence) will provide for the most appropriate, accurate and even innovative outcome, reflecting what is actually being provided.

In **Appendix 1** (A flexible approach to contractual terms) we set out in more detail examples of traditional framework agreement friction-points, as well as some practical suggestions on alternate approaches to such terms.



3.3 Examples of more flexible framework agreements

We note that the procurement agencies in some countries have been open to considering the adoption of certain vendor terms as part of their framework contracting, although we believe there is opportunity for government customers to further accommodate vendor terms. Some examples of more progressive and flexible framework agreements are as follows:

3.3.1 Australia

The Australian Government's Digital Transformation Agency ("DTA") now offers a co-ordinated and fairly flexible approach to the procurement of cloud/SaaS services via its "Cloud Marketplace (CMP)" platform and two framework agreements (i.e. "cloud contact templates framework" and "cloud sourcing contract template").⁷ However, this was not always the case. As we have discussed, the general shift from traditional outsourcing and on-premises software arrangements to cloud/SaaS services necessitated a rethink by many governments of their procurement practices, including the Australian government.

With the advent of subscription-based cloud services, it became clear that the rigid template documents in circulation were not fit for purpose. For example, the then-existing government IT framework agreement described a sourcing arrangement but it was not a volume agreement, which made it more difficult for government agencies to access the volume discounts on offer by their cloud providers. In addition, the sourcing

framework agreement mandated "most favoured customer" pricing, causing issues for vendors.

Achieving a co-ordinated and significantly more flexible approach to framework agreements has taken time, energy and co-operation on the part of both the Australian government and technology vendors. The creation of the DTA in 2016 was instrumental in driving the strategic change in procurement practices that are in evidence today. Equally relevant has been engagement with trusted vendors who have taken the time to work through the various contracting issues with government customers, to understand customers' redlines and, where possible, to adapt their own terms and conditions accordingly. Microsoft's Graham Tanner says, "Our products and terms have evolved and we've been on a journey just as much as the customer to understand [the customer] and take a flexible and expansive approach. It definitely didn't happen over-night, it's been a long process but one that has been enormously worthwhile", Tanner credits.

3.3.2 United Kingdom

In the UK, the G-Cloud Framework is an initiative by the government's central procurement organisation, the Crown Commercial Service ("CCS"), to enable public sector customers to purchase cloud services such as hosting, software, and cloud support using government framework agreements. The G-Cloud Framework is currently in its 13th iteration with preparations well underway for G-Cloud 14. Although there are still some contractual sticking points between vendors and

government procurers, the G-Cloud Framework does recognise the incorporation of wider cloud concepts and the inclusion of certain vendor terms. It allows for limited flexibility in including certain vendor terms, such as data protection terms, which helpfully acknowledges that vendors are often unable to meaningfully modify data protection terms for individual customers. In parallel, Microsoft has sought to work with the CCS to build trust in its products and share the measures it takes to protect customer data.

7. Cloud contract templates for government buyers | Digital Transformation Agency (dta.gov.au)



4 Re-imagining procurement practices: how to facilitate flexible framework agreements

As described above, there is widespread recognition by many governments that a reimagining of the procurement process can play a pivotal role in advancing digital transformation in the public sector. Although governments have legitimate concerns about potential logistical issues around the implementation of new ways of contracting, there is no avoiding the enormous potential that flexible framework agreements could have in assisting governments to meet their own diverse challenges.

While governments work to develop their policy responses to rapidly developing technology, many are simultaneously encouraging a curious and innovative approach to the use of cloud and AI technologies which in turn requires a review of traditional public sector procurement practices, and in particular, framework agreements.

The learning is, however, not one-sided and there is equally an onus on vendors to listen and learn from government agencies, as well as to take the initiative to educate their government customers on the contractual pain points in traditional framework agreements and how they might be improved to the advantage of both sides.

In this section we discuss some of the lessons that we believe are key to establishing the more flexible and fit-for-purpose frameworks that are necessary to drive successful digital transformation.

4.1 Learning from the private sector

There is a perception that public procurement is different from private sector procurement — not least because government agencies provide essential services and deal with vast quantities of sensitive information and government (and often taxpayer) funds — and they must therefore necessarily act with a higher degree of fairness and accountability in acquiring goods and services. However, in certain private sectors, especially

those subject to specialized regulatory regimes such as banking, healthcare and energy, these considerations are equally relevant, and it is worth comparing how businesses navigate risk mitigation in their procurement strategies. The commercial and contractual flexibility with which the private sector procures cloud and AI services has allowed it to upgrade its technology and to innovate — and generally at a faster rate than the public sector. The private and public sectors' end beneficiaries of the cloud or AI may differ (e.g., paying consumers as opposed to the general public or government workers), but their basic risks, and requirements for efficient, resilient, sustainable and secure cloud and AI solutions, are on par. We do not think that there is, or at least ought to be, such a wide gulf between the contractual considerations of a government customer and a private company when seeking cloud and AI solutions to address their requirements.

When it comes to contracting, the big difference between customers in both sectors is flexibility: private sector customers generally demonstrate greater flexibility and willingness to negotiate terms and make vendor terms "work" for them; government customers are more minded to mandate terms, and the contracting process is often less smooth and may lead to an inferior end result. Our experiences lead us to believe that government customers can learn from the approach the private sector has taken to procuring cloud and AI technology — a useful example being companies in regulated sectors, such as financial services companies, who rely largely on cloud-based solutions to provide their services while navigating regulatory considerations akin to the public accountability and transparency concerns that underpin the often rigid framework agreements required by public sector customers.

4.2 Relationships of trust

Different governments (at both a national and regional or state level) will have different priorities and problems that they want to solve. They may be at different stages in their digital transformation journeys and have access to varying levels of investment. Where governments are able to recognise the unique drivers that apply in their particular jurisdictions, they will be able to take an authentic outcome-based approach to procurement and adopt solutions that meet their requirements.

Regular, meaningful discussion between industry providers and government is key to successful long-term partnerships that will facilitate the development of more flexible and future-proof framework agreements. Microsoft is already a trusted provider of cloud and AI technologies to the public sector, but further inspiration can be drawn from Microsoft's track record of successful partnerships for cloud and AI services within heavily regulated sectors, such as healthcare, financial services and critical infrastructure. As discussed above, the successful deployment of cloud and AI technologies in the financial services sector is the result of a willingness, on both customer and vendor side, to be receptive to contractual terms that better reflect the nature of the services being provided.

We recommend that government customers and technology providers continue to engage in discussions aimed at fostering a better understanding of the technology on offer and how (as offered by trusted providers) it can align with government requirements and public sector procurement policies. Technology providers that take the time to explain why their terms and conditions work the way they do will be more likely to build trust with government customers. Where customers understand what they are procuring and have confidence in their provider's approach to regulatory and policy compliance, they will in turn be more confident to accept a trusted provider's terms over government mandated terms.

4.3 Rethinking the skillset

Public procurement using framework agreements can sometimes be carried out by staff who may (understandably) not be fully aware of the intricacies of what they are procuring or the commercial implication of the terms they are seeking to impose. In our experience, procurement officials can sometimes be more focused on the procedural aspects of procurement rather than on the outcomes the technology can help achieve. A lack of outcome-focused procurement practice can lead to officials focusing on mandating requirements rather than embracing the innovative solutions that technology can offer. At times, this makes it challenging for the parties to engage in discussion about what

they perceive as unreasonable or unnecessary requirements in contracts.

In our observation, there is also, at times, a tendency to think that flexibility in approach to procurement equates to an increase in risk. Instead, as outlined above, a flexible approach may more accurately memorialize what is being sought and purchased. Empowering officials to use procurement, and the framework agreement itself, to innovate is as much an issue of culture, organization and skills as it is of policy and procedure.

This is of course a two-way street, in that vendors have an obligation to understand the drivers, needs and requirements of their public sector customers as well as share with public sector customers all they can on the technology. A good example of this is Microsoft's engagement with customers around its generative AI product. Early and strong engagement with potential customers allowed Microsoft to identify common risks, such as the generation of content that perpetuated stereotypes, as well as the ability of AI systems to generate responses that, despite being convincing, were factually incorrect. The benefit of obtaining these key insights early in the development of AI systems is it has allowed corrections and additional steps to be added as the technology has developed. At Microsoft, this has led to rapid progress and reinforced the depth and breadth of expertise needed to advance the state of the art on responsible AI, in addition to highlighting the growing need for new norms, standards and laws. By taking a partnership approach, all parties to the contract/deal will increase their skillsets, and in turn, likely reach a more appropriate outcome, including as to contractual terms and conditions.

Employee communication, engagement, and transition strategies are key. Governments should implement communication plans that help employees understand the changes and approaches that may need to be made to adopt flexible framework agreements that can accommodate current and emerging technologies (for example, issuing practical guidance to be used alongside flexible framework agreements). In other words, it is critical that procurement officials understand the technology solutions they require and how to contract appropriately for the best outcomes.

5 Next steps

In a world of developing technologies, relationships between technology providers and government are more important than ever to drive economic efficiencies, improve lives and help solve global challenges.

We encourage the continued use of framework agreements, but with a change of approach to encourage greater flexibility through collaborative dialogue with technology providers, a focus on the desired outcome of the procurement and a departure from the tendency to simply mandate requirements (some of which may not be commercially beneficial and/or technologically feasible).

A flexible approach to contracting (such as incorporating vendor terms that reflect the evolution of cloud and AI technologies and maintain quality/continuity of service) will enable government customers to take the maximum benefit from the most innovative products on the market. It is critical that framework agreements remain agile and adapt along with the advancements in technology.

Microsoft's Worldwide Public Sector Global Market Development (GMD) Team Engagement.

It is our aim to follow-up this paper with a series of workshops and engagements with our public sector community of customers, during which we will engage in deeper discussions on our experiences of working with governments on framework agreements.

As a team, GMD is primed to provide these sorts of insights. GMD is by design an incredibly diverse group, made up of former senior civil servants, technologists, regulatory and policy experts, development professionals, and technology consultants. A team diverse in experience and geographical spread; whose knowledge we activate as we engage with the public sector community to help empower it to maximize opportunities for cloud, AI and digital transformation technologies, co-creating demand for technology that will benefit all market ecosystem players so that all participants; government, citizens, and the community benefit in a true "win-win-win" situation. At Microsoft, our commitment to ensuring that our product and service offerings respond to the explicit needs of our public sector clients, informed by our focused and concerted partnership with public sector elites across the globe, has created a powerful incentive to adopt an informed and strategic approach to procurement.

We have demonstrated this commitment to targeted engagement through the publication of a number of procurement policy assets that are currently leveraged by our public sector partners across the globe. Through our [Public Sector Center of Expertise](#), we showcase these materials and related content, highlighting the impact of public servants who are leading the charge towards digital transformation and innovation.

At Microsoft, we look forward to continuing this exciting journey with our government customers to see what we can accomplish together when we harness the capability of ground-breaking technologies for the common goal of bringing benefit to all.



Appendix 1 – A flexible approach to contractual terms



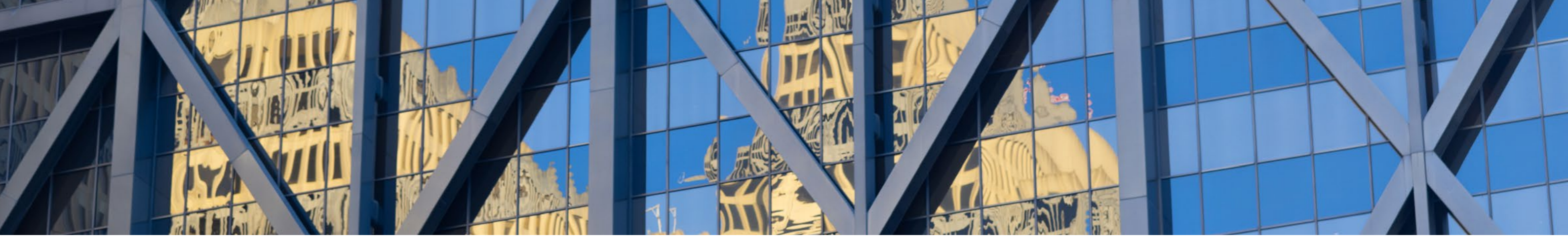
Microsoft whole-heartedly endorses the many benefits of government framework agreements and encourages their continued use, but with a departure from the tendency to simply mandate requirements (some of which may not be commercially beneficial and/or technologically feasible) and a focus instead on the desired outcome of the procurement.

Having a flexible approach to contracting (such as accepting vendor terms which reflect the evolution of cloud and AI technology and maintenance of quality/continuity of service) will enable government customers to take the maximum benefit from the most innovative products on the market. It is critical that framework agreements remain agile and adapt along with the advancements in technology, and contracting authorities should keep in mind the need to evaluate bids on the basis of criteria related to an ability to deliver the desired outcome.

The following are some specific suggestions for governments to consider when drafting and negotiating government framework agreements for cloud-based and AI services:

Topic	Issue	Suggested approach
Inflexible frameworks	Once a particular framework tender is closed, there is often no further opportunity for government customers to add new or enhanced services. This means that government customers may miss out on helpful enhancements until a new framework agreement is enacted.	Government framework agreements should include a broad description of the services being procured and allow for the inclusion of enhancements to, and new versions of, such services without having to re-tender for the services.
Fixed service terms	Service descriptions and terms are fixed for the duration of the contract.	Include a mechanism to enable certainty for what has been procured, but allow for terms to be updated for new/updated services.
Incorporation of vendor terms	In reality, cloud and AI services are constantly evolving and improving and a lack of flexibility to amend vendor terms is problematic.	Provide for greater flexibility to incorporate vendor terms, particularly those that deal with how the product/services work in practice.
Order of precedence	Framework agreements often take precedence over the call-off agreement or order document. There is a risk that either: (i) any incorporated/amended terms are not effective; or (ii) there is confusion as to which terms apply to the arrangement.	Clearly define how the incorporated terms can be amended and negotiated to ensure clarity as to which terms apply.

Topic	Issue	Suggested approach
Contract length	A maximum contract length is often mandated (e.g. 1 year) which may not enable the customer to take advantage of some of the commercial benefits that come with multi-year commitments.	Provide for greater flexibility with regard to contract length, allowing the parties freedom to contract for longer periods to reflect market practice.
Fixed pricing	Prices cannot be increased during the term of the framework agreement. In reality prices of cloud services may vary depending on factors such as volume commitments, and when orders are placed.	Provide for greater flexibility with regard to pricing, including for when a service is ordered.
Scalability	Framework agreements sometimes do not provide for a mechanism by which the services can be increased or decreased in volume (which is one of the key benefits of AI, SaaS, IaaS and PaaS).	Provide for flexibility to allow for the parties to agree on volume changes (with consequential adjustments to pricing) during the term of the agreement.
IP licence	Framework agreements sometimes insist that: (i) any intellectual property rights created pursuant to the framework agreement vest in the government customer; and/or (ii) the vendor grants a wide, perpetual and irrevocable licence to its software. This represents a misunderstanding of what the customer actually requires in practice, which with cloud and AI services is usually a limited licence to receive the services for the duration of the contract term. We have also seen government agreements which include the grant of rights to publish code as open source. Again, this should not be applicable in the context of standard cloud and AI services and would generally be considered unacceptable for most suppliers.	Intellectual property licensing for cloud and AI services should be limited in scope to ensure there is no confusion as to the extent or term of the licence grant in respect of the relevant services.



Topic	Issue	Suggested approach
Data protection	<p>Framework agreements sometimes mandate that: (i) the government customer's data protection provisions will apply and the government customer can change the relevant provisions at any time; (ii) the supplier is required to obtain prior written consent from the customer for any sub-processing of data (it may also mandate a prescribed written agreement that the vendor must enter into with its sub-processor); and/or (iii) the customer's requirements in respect of security measures to protect personal data will prevail.</p> <p>In reality, for these standardised services, it would be impractical to adhere to bespoke customer data protection provisions, to obtain consent from all individual customers to a change in sub-processors and/or to comply with each of its customer's bespoke requirements in respect of security measures to protect personal data.</p>	<p>Discussions between the customer and vendor on the vendor's approach to data protection compliance, including any technical and procedural measures that it takes to protect personal data.</p> <p>Microsoft, for example, has a robust approach to data protection including a process for publication of sub-processors and notification of changes to the same, the implementation of Standard Contractual Clauses and a track-record of heavy investment into cyber security robustness.</p> <p>Customers should be willing to consider accepting vendor terms where the vendor can provide reasonable evidence as to the adequacy of its protections.</p>
Liability	Fixed high liability caps with broad indemnities on the part of the vendor (including for example unlimited indemnities) can be problematic.	Flexibility to negotiate the liability caps depending on the value of the contract and practical risk.
Audit	Government agencies can require levels of access to providers' systems at frequent intervals to conduct audits, penetration testing and vulnerability scans. These requirements present logistical and technical difficulties and are often wholly disproportionate to the service being provided to the government (which in many cases is the same as that provided to customers in the private sector).	<p>Most vendor terms will state that the findings from the vendor's third party audits will be provided to the customer on request and that the vendor will make available evidence of all required certifications.</p> <p>Customers should consider accepting vendors' audit provisions as well as vendor certifications.</p>

Topic	Issue	Suggested approach
Service levels	<p>Framework agreements often include government-mandated service levels and penalties for non-compliance that are incompatible with commercially available SaaS / PaaS and IaaS solutions offered with standardised service level commitments and remedies for failure to meet such commitments. It is not feasible to create bespoke service level commitments for standardised services.</p>	A cloud and AI provider should be expected to meet the published service levels that it makes available to all users of its services.
Most favoured customer pricing	<p>There can be an expectation that the cloud and AI providers will offer preferential pricing to the relevant government purchaser. Instead, governments may wish to focus on centralised procurement to take advantage of lower per-unit prices for larger volumes</p>	A most favoured customer provision does not make sense in the context of most cloud and AI services, which are offered globally, with price differentials based on geography.
Business continuity and disaster recovery ("BCDR")	<p>Framework agreements sometimes require the vendor to agree a customer's BCDR.</p> <p>Vendors cannot tailor their plans to accommodate specific requirements of each customer.</p>	The parties should take a flexible approach, including accepting a vendor's BCDR plan, after appropriate due diligence.
Termination for convenience	<p>The customer sometimes has a right to terminate the framework agreement and/or call-off contract on short notice (e.g. 30 days).</p> <p>Such a provision will not be commercially appropriate, and may impact the vendor's ability to provide a commercially advantageous offer to the government customer.</p>	Notice period for termination should be negotiable depending on the services and commercial agreement in play.
Exit and termination assistance	Framework agreements sometimes provide for detailed exit plans and on-going assistance post termination.	Customers should discuss particular requirements with the vendor to see if they can be accommodated but should not mandate provisions that the vendor will not be able to adhere to.

Appendix 2 – Related Microsoft papers and materials

Title	Description & Intended Use
Building Blocks for Digital Transformation	This paper sets out best practice public sector procurement policies and strategies and can be used by customers who are keen to get their procurement setting optimized for the era of digital transformation.
Public Sector Procurement Fit for the Digital Age	This paper explores what a modern approach to public sector procurement looks like and includes some great case studies as well as a look at how governments can take the step to modernize their approach to cloud and AI procurement.
Advancing AI Procurement and Adoption	This paper explores “how to procure” AI in the public sector context, as well as the key legal, contractual and ethical issues we know our public sector customers want to discuss, when thinking of embracing our AI solutions.
GDPR and Generative AI: A Guide for Public Sector Organizations	The paper provides an in-depth exploration of the key obligations under the GDPR, which public sector organizations need to consider when procuring generative AI services such as Copilot for Microsoft 365 and Azure OpenAI Service.
Microsoft Copilot Copyright Commitment	This blog explains Microsoft’s copyright commitment, which extends Microsoft’s existing IP indemnification coverage to copyright claims relating to the use of our AI-powered Copilots, including the output they generate, specifically for paid versions of Microsoft commercial Copilot services and Bing Chat Enterprise.



