

# Centre for the Study of Corruption



Transforming Public Procurement  
Green paper consultation submission

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The **Centre for the Study of Corruption (CSC)**, founded in 2011, is the UK's foremost academic centre for studying corruption. Located within one of the world's leading universities, CSC is regarded as a highly credible source of independent and objective research and ideas. It is widely recognised for combining world-class academic approaches and research with the practical experience of how corruption can be addressed in the real world. We operate in three broad areas:

- **Research:** undertaking rigorous academic research to address the world's major corruption issues
- **Courses & Teaching:** training the next generation of anti-corruption professionals around the world from undergraduates to PhDs, with three Masters courses
- **Policy:** ensuring that our research informs evidence-based policy and helps change the world.

**CSC's research activities are based around four themes:**

- Corruption in politics
- Corruption in international business
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- Corruption in geographical context – with particular strengths in the UK, Germany & Eastern Europe, China and Africa.

Full details of the published and current research undertaken by our core faculty can be found in the detailed biographies of each faculty member at [www.sussex.ac.uk/scsc](http://www.sussex.ac.uk/scsc)

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# Transforming Public Procurement

## *Green paper response*

### Introduction

This brief submission from the Centre for the Study of Corruption (CSC) is designed to supplement submissions from the Open Contracting Partnership and UK Anti-Corruption Coalition, whose key propositions have our support.

Leaving the EU has created a once-in-a-generation opportunity to reform procurement laws, and the Covid crisis has demonstrated that things can go wrong if good rules are not in place.

The UK spends £292 billion each year on buying goods and services; the [Financial Times has noted](#) that granting access to this pot of government money is one of the few significant cards the UK holds in striking new trade deals. Moreover, in a recovering economy, there will rightly be pressure to strike the correct balance between bureaucracy, efficiency, value for money and anti-fraud and corruption safeguards.

We would particularly like to emphasise the importance of the following principles and practices:

1. **Transparency by default** (para 6) – a key principle that needs to underpin any genuine exercise of this nature.
2. **Beneficial Ownership Transparency** (para 112, Q16) – we strongly support ‘a new mandatory exclusion ground relating to the non-disclosure of beneficial ownership meaning that bidders who do not state their beneficial owner(s) will be automatically excluded’.
3. **Open contracting** (Chapter 6, Q27&28) – a key provision to underpin these reforms, and specifically the adoption of the Open Contracting Data Standard (OCDS) advocated by the Open Contracting Partnership.
4. **Debarment** (para 116) – we strongly support enhanced debarment, including a central register, and the principle that companies under Deferred Prosecutions Agreements (DPAs) can be debarred.
5. **Social value** (para 101) – ‘including social value as part of the quality assessment’ – this will need some checks and balances to ensure it is not ‘gamed’ but is a sound principle.
6. **Emergency response** - the Green Paper asks the right questions but legislation needs to be fully reflective of all the loopholes exposed by the Covid procurement experiences.
7. **Freedom of information (Q9)** - companies often retreat into secrecy by default, arguing that almost everything they do is commercially sensitive. But if they are delivering public services funded by public money, there is a legitimate expectation that they should operate under – and

not block or evade compliance with – Freedom of Information rules. FoI should be applied fully to the private sector when providing or operating public services.

8. **Mandatory exclusions** - failure to prevent bribery and other corruption-related criminal offences should be grounds for mandatory exclusion; this will help ensure fairness between SMEs and larger companies and enhance incentives for companies to self-report wrongdoing.

## Red Flag Monitoring

Our specific area of research expertise on procurement at CSC relates to the monitoring of red flags during the procurement process. The GI-ACE [Curbing Corruption in Procurement](#) project, funded by the FCDO and led by Prof Liz David-Barrett (Sussex) and Dr Mihaly Fazekas (CEU), analyzes big data on procurement and builds indicators of corruption risk. This research has developed and refined a new methodology for identifying corruption risks in public procurement; used it to test the efficacy of reforms to public procurement; and developed a 'cost tracker' – an online portal which allows users to estimate the costs of public procurement inefficiencies associated with 'red flags', and the savings that could be made from reform.<sup>1</sup> This project recently won the IMF Anti-Corruption Challenge.

The Red Flags methodology has also been used in a major EU-funded project, DIGIWHIST (Digital Whistleblower), which compiled and evaluated micro-level data using information from individual public procurement transactions and winning firms' finance and ownership structures in 35 jurisdictions, including all 28 EU member states, the European Commission and six non-EU European countries. Our analysis has been published in leading peer-reviewed journals and also informed the Open Contracting Partnership's [Red Flags for Integrity](#) report. It is now being used by the World Bank in its new Pro-ACT platform, an online tool for analysing risks in Bank-funded spending.

The UK could benefit from this method, using it to identify systemic risks as well as to highlight individual cases which may require further investigation, as well as to test and quantify the impact of reforms.

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<sup>1</sup>Fazekas, M., Dávid-Barrett, E., Abdou, A., and Basdevant, O. 2020. The Corruption Cost Tracker: Quantifying the costs of corrupt contracting and the savings to be made from reform, *Government Transparency Institute Reports*: GTI-R/2020:02, September 2020. <http://www.govtransparency.eu/index.php/2020/10/05/the-corruption-cost-tracker-quantifying-the-costs-of-corrupt-contracting-and-the-savings-to-be-made-from-reform/>

## Consultation questions – *brief responses to specific questions*

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

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

*Q7. Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used? Only with appropriate safeguards to prevent abuse.*

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

*Q16. Do you agree that, subject to self-cleaning fraud against the UK’s financial interests and non-disclosure of beneficial ownership should fall within the mandatory exclusion grounds? Yes*

*Q17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion? Corruption-related offences*

*Q18. Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)? Yes*

*Q19. Do you agree that non-payment of taxes in regulation 57(3) should be combined into the mandatory exclusions at regulation 57(1) and the discretionary exclusions at regulation 57(8)? Yes*

*Q20. Do you agree that further consideration should be given to including DPAs as a ground for discretionary exclusion?*

Yes. Given that DPAs are increasingly used to resolve bribery cases, it is important that they are considered as a risk factor which warrants further due diligence.

*Q21. Do you agree with the proposal for a centrally managed debarment list? Yes*

*Q27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?*

Yes. Accountability and oversight of procurement should cover the whole process from planning to implementation. Without this, it is too easy for corrupt actors to avoid regulation and shift corrupt activities to less regulated parts of the process.<sup>2</sup>

Empirical research suggests that increasing transparency brings efficiency gains:

- Drawing on analysis of more than 3.5 million government contracts between 2006 and 2015, Bauhr et al find that tender transparency reduces corruption risks substantially, and that the effect is largely driven by ex ante transparency, that is, transparency that allows for horizontal monitoring by insiders in the bidding process. The results also suggest that the financial benefits of investing in greater transparency are non-negligible: Increasing transparency in five ways (out of 10 items considered) on average could decrease single bidding by 2.5 to 6 percentage points translating into 0.18 to 0.43% cheaper contracts, equaling about EUR 4.5–10.9 billion savings per year across the EU.<sup>3</sup>
- Better advertising of contract tenders increases the number of bidders.<sup>4</sup>
- A study of national tenders in Italy finds that the number of bidders increased by 9.3% as a result of advertising in official bulletins rather than advertising only on the buyers' own local notice boards.<sup>5</sup>
- Increased openness is effective in enhancing value for money in public procurement.<sup>6</sup>
- An analysis firm surveys in 88 developing countries finds evidence that both openness and oversight help to increase competition: firms are more likely to submit bids if they perceive procurement systems to be transparent, particularly in the case of smaller firms, and firms report paying fewer and smaller bribes in countries with more transparent procurement systems, more effective complaint mechanisms and better external auditing arrangements.<sup>7</sup>

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<sup>2</sup> Dávid-Barrett, E., & Fazekas, M. (2020). [Anti-corruption in aid-funded procurement: Is corruption reduced or merely displaced?](#) *World Development*, 132.

<sup>3</sup> Bauhr, M., Czibik, Á., de Fine Licht, J., & Fazekas, M. (2020). Lights on the shadows of public procurement: Transparency as an antidote to corruption. *Governance*, 33(3), 495-523.

<sup>4</sup> Kenny, C. & Crisman, B., 2016. Results Through Transparency: Does Publicity Lead to Better Procurement?, Washington, DC.

<sup>5</sup> Coviello, D. & Mariniello, M., 2014. Publicity requirements in public procurement: Evidence from a regression discontinuity design. *Journal of Public Economics*, 109, pp.76–100.

<sup>6</sup> Estache, A. & Iimi, A., 2008. Procurement Efficiency for Infrastructure Development and Financial Needs Reassessed. World Bank Policy Research Working Paper Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1157130](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157130); Ohashi, H., 2009. Effects of transparency in procurement practices on government expenditure: A case study of municipal public works. *Review of Industrial Organization*, 34(3), pp.267–285; and Kenny, C. & Crisman, B., 2016. Results Through Transparency: Does Publicity Lead to Better Procurement?, Washington, DC.

<sup>7</sup> Knack, S., Biletska, N. & Kacker, K., 2017. Deterring Kickbacks and Encouraging Entry in Public Procurement Markets Evidence from Firm Surveys in 88 Developing Countries, Available at: <http://documents.worldbank.org/curated/en/817871496169519447/pdf/WPS8078.pdf>.

- In Slovakia, the introduction of e-procurement together with requirements to publish tenders on a central procurement repository website achieved an increase in the average number of bids per contract, from 2.3 bids per tender in 2009 to 3.6 bids per tender in 2011.<sup>8</sup>

*Q28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?*

Yes. Collecting and publishing high-quality data is a critical basis for improving oversight and accountability.<sup>9</sup> The Open Contracting Data Standard is a good way of ensuring that data is of sufficiently high quality and can be matched with other datasets to enhance detection of risks and comparative analysis over time and across countries. We support the recommendations of the Open Contracting Partnership in its submission.

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<sup>8</sup> Šípoš, G., Samuek, S. & Martin, K., 2015. Not in force until published online. What the radical transparency regime of public contracts achieved in Slovakia, Bratislava: Transparency International Slovakia.

<sup>9</sup> David-Barrett, E. and Fazekas, M. 2019. 'Why is collecting and analysing data about public procurement so damned difficult? Data scientists explain some common problems'.

<https://ace.globalintegrity.org/dataexplainer/>