



Response to Cabinet Office Dec 2020 Green Paper on Transforming Public Procurement

Submission by the Open Contracting Partnership¹ Feb 2021

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¹ OCP works internationally on transformational procurement reforms in over 30 countries. We receive funding from the UK Government to support procurement transformation in developing countries but have used our own, unrestricted resources (i.e. not from the UK) to put together this submission.

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1. Introduction

A. UK is an early adopter of open contracting that needs to make up for lost ground

The Open Contracting Partnership (OCP) strongly welcomes the publication of the Green Paper and in particular the bold and ambitious commitments for open contracting and the adoption of the Open Contracting Data Standard (OCDS) outlined in Chapter 6.

The UK has been an active supporter of open contracting internationally, including through the London Anti-Corruption Summit, its Anti-Corruption Strategy, its foreign assistance to developing countries (including supporting OCP to assist ODA countries) and in its UK Open Government National Action plans. The UK has increased the coverage of the publication of contract data in OCDS, first in Contracts Finder and Public Contracts Scotland and more recently with the launch of Find a Tender which is publishing a much more comprehensive OCDS dataset and which we consider a significant step forward. The UK has also made a series of transparency commitments in its accession to the WTO GPA as an independent member, the UK-EU Trade And Cooperation Agreement² and other trade bilateral agreements.

That said, a number of other countries³ have moved at a faster pace to digitise their procurement process and exploit the potential of adopting a common data standard in the form of OCDS and have invested in improved analytics and data driven decision making. These countries are now benefiting from the availability of high quality procurement data.

The reforms proposed for Open Contracting in Chapter 6 provide an exciting opportunity for the UK to resume its role as an innovative thought leader and a best practice practitioner for promoting open contracting in other countries, thereby supporting its commitment to tackling global corruption as well as gaining better access to foreign markets where open contracting has also been adopted.

B. A procurement system in need of reform and modernisation

There have been growing public concerns about the transparency and fairness of some procurement undertaken in response to the COVID-19 pandemic, damaging the UK's reputation for competence and fairness in its use of taxpayers' money and the crisis response.

Data collected from public contract notices by the [National Audit Office](#) shows that only 1% of the UK's GBP17.3bn of new COVID-19 related procurement to July 2020 were competitive (£10.5bn were through new direct awards and £6.7bn were direct awards through existing framework agreements from lists of pre-approved suppliers). [See also an analysis by the Institute for Government here](#). Some very large direct awards have been questioned, especially when they were huge awards to tiny companies with very limited experience of PPE provision at scale, sometimes even based in a tax haven.

It is also worth noting that other countries have managed to procure PPE whilst maintaining due process. In Sweden, Slovakia, Estonia, for example, the amount of contracts awarded using open competition actually went up during the pandemic.

² Part 2 – Trade, Transport, Fisheries and Other Arrangements Title VI: Public procurement

³ Impact stories - <https://www.open-contracting.org/impact-stories/>

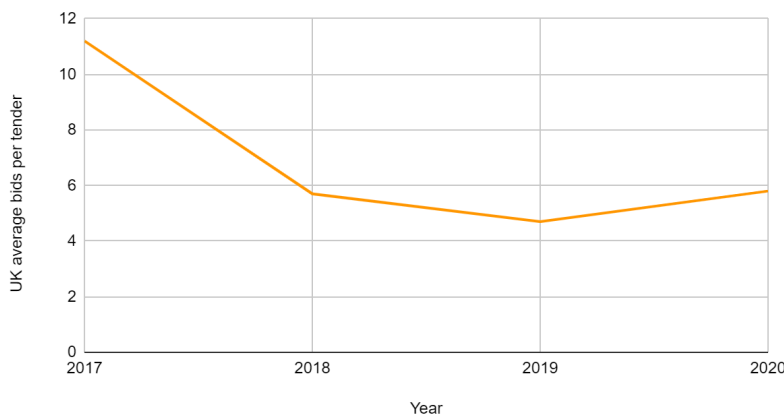
To cope with the supply shock from the pandemic, nothing is more important than having reliable and timely information about who buys what, at what price, and from whom. Despite the emergency and the need for speed, award notices have been published later than normal, past statutory deadlines and over 100 days after contracts were awarded. This has been a major block on both coordination and also helping other public buyers find suppliers.

Some of the other countries required COVID-19 emergency contracts to be published within 24 hours. All the information therein is shared on a public dashboard, thereby helping to connect buyers and suppliers. Open data from those contracts allows analytics to track prices, risks, costs and to flag anomalies. If Ukraine or Colombia⁴ can do this, why can't the UK?

Another questionable feature of the UK's COVID-19 response was that a special high-priority channel for major awards was set up for companies recommended by certain gatekeepers, including ministers, MPs and peers, as well as health officials. In a process where open competition is vital to obtaining quality and value for money, this risks institutionalising favouritism. Indeed, companies going through that channel were ten times more likely to get a contract. There is no evidence that politicians anywhere are particularly well placed to decide who has stocks of PPE and who doesn't. Normally, close connections to a politician are cause for more scrutiny of a contract, not less.

It is worth adding that these challenges take place against a general backdrop of declining competition in the public market (this is a feature that is not limited to the EU). The information in the chart below comes from a EU wide study using information from the Spend Network as part of the TheyBuyforYou⁵ consortium.

UK average bids per tender vs Year

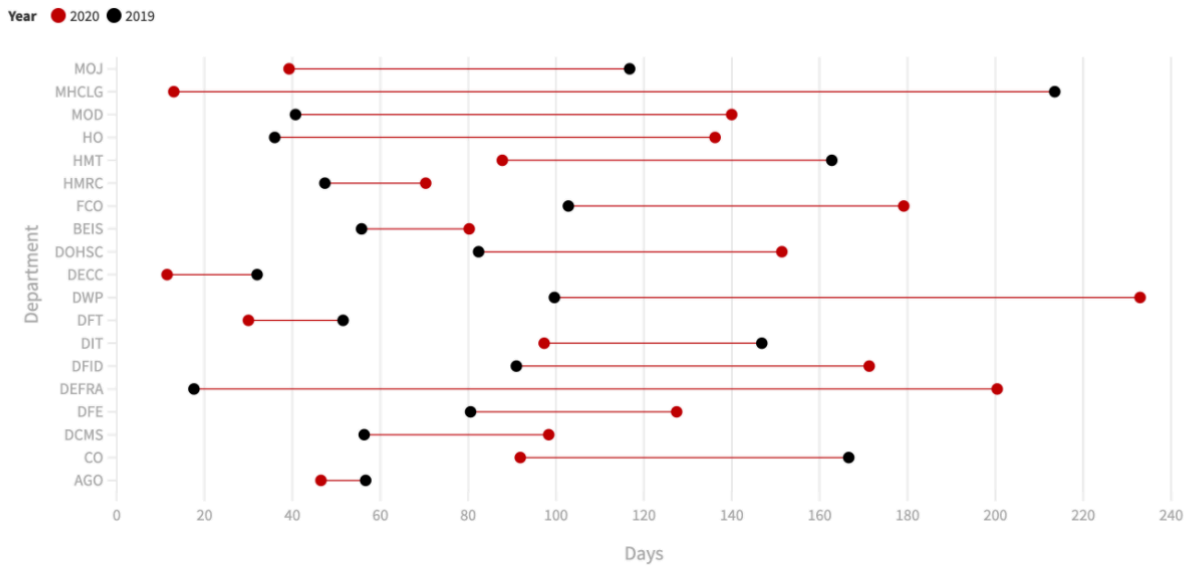


Spend Network also found that: “on average, just three departments met the 30 day guideline in 2020... the average time between the contract start date and the contract publication date was 105 days, more than three times longer than the recommended timeframe”.⁶

⁴ See Public Procurement Law Review 2020 Issue 4 - Open Contracting Partnership Improving Emergency Procurement: An Open Data-Driven Approach (2020) 29 P.P.L.R., Issue 4 © 2020 Thomson Reuters and Contributors

⁵TheyBuyForYou <https://theybuyforyou.eu/>

⁶ Spend Network analysis (Source Contracts Finder) <https://spendnetwork.com/how-long-does-it-take-a-department-to-publish-a-contract-notice/>



There are also some green shoots where contracting and SME engagement are going rather well, such as in the Digital Marketplace program run by Government Digital Services (GDS). These have taken a very proactive approach to engagement of small businesses with user-friendly RFPs, agile development methods and active spend monitoring. The evidence is striking:

- The 'SMEs' section on page 40 of the [CCS Annual Report and Accounts 2019-20](#) states that there was £1.23 billion of direct SME spend that year (April 2019 to March 2020)
- Looking at the [CCS dashboard](#), we see that SME spend through the Digital Marketplace in 2019-20 was £893.6 million, which is 73% of the above.
- And, we are given to understand from discussions with GDS and others, that SME spend through the Digital Marketplace from (December 2019 - November 2020) was over £1.05 billion.

This approach can be scaled across the UK if the Green Paper proposals are embraced and fully-implemented and, importantly, if they are treated as a strategic, digital transformation program. The adoption of OCDS throughout the commercial cycle, combined with the powerful analytics it enables, could also provide the Government with valuable and insightful realtime new policy data e.g. on the success or failure of delivering the Green Paper’s stated objective of opening up public contracts to more small businesses and social enterprises. The transactional data could provide drive dashboards revealing which contracting authorities are most successful in contracting small business and social enterprises and which ones need to improve their engagement and processes.

These challenges and opportunities make the case for bold reform to win back public trust and address allegations of cronyism. ***The combination of the strong public criticism, along with the completion of Brexit, and the need to better support our devastated small business sector has created a strong need and opportunity to undertake a once in a generation reform of public procurement in the UK. It is also an absolute economic necessity to deliver the best outcomes to citizens, combined with best value for money, with social value to support the economic recovery of the UK.***

C. The value of holistic reform including improved oversight, performance and coordination

The real value of the reforms is in their holistic nature and we are delighted to see simplification of UK's procurement processes (with some caveats), a move to most advantageous tender criteria, measuring and reporting on performance, an improved, faster complaint and dispute resolution process and the proposal for a centralised procurement oversight function.

These changes will require a significant investment and resources to do them properly. The payoff is potentially huge, perhaps of an order of magnitude larger than the investment, but it will still require upfront support. Please consider that as an investment and not an unrecoverable cost.

Part of that investment will need to be in building the commercial capabilities of public buyers and significant engagement and communication with businesses, especially SMEs to get their support and buy-in too. Almost all the successful long-term reforms we have seen have anticipated this need for investment and communication.

Of course, much of the details on how these will work will depend on the implementing regulations to the primary legislation. These will also require careful crafting and engagement with civil society and business as they develop.

Done well, you can build a new ecosystem and culture in the UK's public and private sector interaction that will also support many of the government's other policy objectives from economic inclusion, to entrepreneurship and innovation, to net zero and green infrastructure as well as offering showpiece reforms for the UK international leadership at the G7, G20 and elsewhere.

D. Truly digital and truly open by default (which underpins other Green Paper innovations)

We contend that a truly digital transformation of the way public procurement is conducted - akin to the introduction of online tax return submission - is needed. It would reap enormous economic benefits as has been achieved in countries such as South Korea and Ukraine and transform the relationship between contracting authorities and economic operators.

The Green Paper sets out a range of laudable objectives, one of which is to reduce the amount of red tape in the existing procurement system. We believe that a fully digital approach to public procurement could be transformational, increasing procedural efficiency, speed of procurement and of course transparency, whilst reducing the transaction cost and resource burden on both buyers and suppliers. This also opens up exciting opportunities to exploit the potential of a more modern digital-rich eProcurement network to automate routine tasks such as the creation of notices, procurement statistics, audit information and pipeline plan creation using historical pricing data etc.

Automation and simplification should be a feature at every stage of the reforms, to deliver the 'tell us once' principle that the paper proposes. This would include the application of a common procurement data standard across government along with better use of the capabilities of many of the eProcurement platforms used in the UK provides an exciting

opportunity to transform the UX of both contracting authorities and economic operators. Costs of transacting with each other can be stripped out leading to better value for money for the taxpayer and a more user friendly environment for SMEs and VCSEs. So we think as well as the data proposals, we should be thinking about automation and simplification at every stage of the reforms too, to deliver the 'tell us once' principle the paper proposes.

To that end, we strongly support the proposals in Chapter 6, including adopting the Open Contracting Data Standard and end-to-end digital transparency of all UK procurement.

These proposals can realise some powerful benefits:

- One procurement data standard for all of government unlocking improved analysis and monitoring which in turn can drive performance benefits;
- Where possible, asking only once throughout the commercial cycle;
- Where possible, create data only once throughout the commercial cycle;
- One version of the truth.

Not only are these data governance principles of huge value to the public sector in general but they will resonate with the businesses who are grappling with a plethora of different eProcurement platforms (approximately 70 within central government alone) with no common way of sharing information.

We've also heard from many businesses on the challenge of not having a single version of the truth in dealing with government, especially around managing complex contracts using the current, paper-based system. We see Chapter 6 and the improved open data as an important enabler for the other proposals in the Green Paper. Imagine trying to monitor performance of contractors if you don't have an agreed version of the truth. Similarly, imagine the challenge of building trust around the flexibilities to award contracts according to the most advantageous tender if you don't have clear public notices and rationales shared in an accessible way with the market so that people can easily find out who won and why they won and learn to improve their offer next time.

And, implemented well, the proposal in Chapter 6 would also deliver on the UK's [Government Transformation Strategy](#) from 2017. Under '[Build better tools, processes and governance for civil servants](#)', the strategy committed to: *"Building on the Digital Marketplace's approach, we will embed user-centred, design-led, data-driven and open approaches in procurement and contracting across government by 2020."*

E. Not investing in the reforms is not an option

We wanted to note a concern about the comment in the Green Paper that '...the Government will, subject to future funding decisions, provide a programme of training and guidance on the reforms'⁷. As we said, realising benefits from the ambitious reforms will depend on investment by the government being made in resources, training and capacity building, change management and the development of new tools such as the proposed new central platform. Given public procurement is the single largest item of government spending, over GBP280 bn and a third of its budget, the government should not be tempted to make false economies by not investing sufficiently in transformational change. Think of it as an investment with a rapid

⁷ Executive Summary ¶ 13

payback. In Ukraine, the Prozorro reforms which brought in end-to-end digital procurement cost US\$5m approximately and had saved the country over US\$2bn and counting, ie. a 200:1 payback.

F. Our response

We have focussed our response to the questions posed in the Green Paper that are directly relevant to open contracting, data driven openness, improved transparency and accountability and/or economic inclusion and better citizen services. That said, we have also commented where we think that the application of a fully open, data-centric procurement system can reinforce the other proposals in the paper. We've also taken the liberty of occasionally commenting on other Green paper submissions too.

As the Green Paper does not deal in great detail on the use of eProcurement technology to support transactional public procurement, our response starts with some observations on the current eProcurement landscape in the UK and how we think the adoption of OCDS at the Contracting Authority level proposed in the Green Paper could, if implemented imaginatively, deliver benefits, alluded to in Chapter 6, beyond transparency and open contracting to contracting authorities, economic operators (particularly SMEs and VCSEs) and, most important of all, citizens.

2. Our response to the questions in the Green Paper

Chapter 1: Procurement that better meets the UK's needs

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

Yes, although we suggest some slight modifications to account for efficiency and the principle of end-to-end transparency and what that means to citizens as opposed to 'just' transparency for the government alone.

The Executive Summary lists value for money, the public good, transparency, integrity, efficiency, fair treatment of suppliers and non-discrimination which we endorse but Chapter 1: Procurement Principles of public procurement (27) - (36) omit the principle of procedural efficiency and its definition, The Green Paper makes few references to improving procedural efficiency.

Efficiency is a foundational principle upon which many of the other listed principles have a strong dependency and this should be recognised in both the National Procurement Policy Statement, the legislation and reforms. The principle is obviously important for measuring KPIs and implies monitoring of procedural efficiency across the marketplace. It also implies investing in educating and supporting contracting authorities and economic operators across the commercial cycle throughout the commercial cycle.

We would use the language from the [2016 London Anti-Corruption Summit communique](#) to put a clearer vision of what transparency should mean in practice for ordinary citizens. As Article 9 in the communique states: "We will ensure public contracts are awarded and managed openly, accountably and fairly, consistent with applicable law - making public procurement open by default - *so that citizens and businesses can have a clear public record of*

how public money is spent." We think that the end purpose of transparency is important as a principle as it focuses on public trust.

So, we propose that the principles to be included in the new legislation are revised to include:

- Transparency - end-to-end data driven openness that underpins accountability for public money, anti-corruption, and the effectiveness of procurement - making public procurement open by default - so that citizens and businesses can have a clear public record of how public money is spent [our revised wording].
- Simplicity and user-centred design - processes and tools designed for both contracting authorities and economic operators [proposed new principle]
- Procedural efficiency⁸ - optimum balance between cost of the subject of the contract, procurement transaction costs, level of effort and time taken (from identification to need to fulfilment of that need) [proposed new principle]
- Value for money - procurement should enable the optimal whole-life blend of economy, efficiency and effectiveness and social value that achieves the intended outcome of the business case [our revised wording to reflect social value more clearly].

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. The proposal is very welcome. Such a unit would be critical to deliver the proposed reforms as well as oversee their effective ongoing operation. Rather than a unit, we suggest that the importance of its function could warrant the establishment of a non-ministerial department under the jurisdiction of the Cabinet Office but there are also distinct advantages in the establishment of an independent regulator similar to Ofcom or Ofgem, accountable to either a Minister in the Cabinet Office or directly to parliament.

This would allow the department to focus on a range of activities necessary to embed and deliver the proposed legal principles including transparency without political interference that has regrettably been recently highlighted in the UK Government's management of procurement in response to COVID-19 as highlighted in the recent NAO report: Investigation into government procurement during the COVID-19 pandemic.

Along with the proposed simplification of the legislation and procurement procedures, we believe that there is a compelling argument to match the consolidation of the various existing oversight regimes and mechanisms, ideally acting for the whole of the UK including the devolved administrations.

For an effective and accountable unit, department or independent regulator to drive forward the adoption and embedding of open contracting and OCDS, we would hope it takes on the

⁸ Also see Transforming Public Procurement Law after Brexit: Early Reflections on the Government's Green Paper Sue Arrowsmith University of Nottingham - School of Law Section 2. The objectives of the new public procurement legislation
Date Written: December 15, 2020 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3749359

existing responsibilities other organisations involved in procurement oversight such as the Public Procurement Review Service, Crown Representatives, Single Source Regulations Office, some responsibilities of the Crown Commercial Service e.g. providing a commercial advice team and implementing commercial policy. It should also liaise with and assist other accountability actors like the Public Accounts Committee and the National Audit Office. It could for example undertake (or assist the NAO with) random audits of contracting authorities and economic operators, undertake detailed monitoring of high risk government contracts, and a data driven review process of procurements supported by the adoption of standardised open data. It could also collate and publish results of a contracting authority's independent review of a particular procurement.

In addition to providing oversight across the whole UK procurement landscape, with respect to Open Contracting set out in Chapter 6, we would suggest that it has responsibility for:

- 1) Developing an Open Contracting Implementation Roadmap for 2021-2026;
- 2) Developing an Open Contracting playbook;
- 3) Capacity building for the adoption of OCDS and Open Contracting as set out in the proposed new legislation;
- 4) The Open Contracting Commitments to the existing and future UK Open Government Partnership National Action Plan and coordination with the devolved administrations on their commitments concerning Open Contracting in their own national action plans;
- 5) Supporting the development and maintenance of the proposed new central platform;
- 6) Reporting to the Cabinet Office on the achievement of new Open Contracting KPIs;
- 7) Supporting individual contracting authorities with planning and adopting OCDS publication using their existing platforms (probably initially using the OCDS mapped TED forms used for Find A Tender);
- 8) Working with UK private sector eProcurement platform providers to support their future capability to provide native OCDS creation during the commercial cycle;
- 9) Defining a core set of functional requirements for OCDS for new eProcurement platform procurements by contracting authorities;
- 10) Developing and adopting OCDS-driven red flag tools to identify high risk or non-compliant procurements;
- 11) Management and future development of the Contract and Spend Insight Engine (CaSIE) to exploit the potential for a much larger data set arising from the adoption by contracting authorities of OCDS;
- 12) Development of an OCDS compliant single supplier register and evidence locker;
- 13) Creation of a unified OCDS compliant contract register (integration of Contracts Finder, Find a Tender and possibly the devolved nation contract registers) to provide a single version of the truth for contract notices from all contacting authorities;
- 14) Monitor which contracting authorities are failing in their existing legal obligations to publish contract notices on Contracts Finder and going forward Find a Tender using new OCDS based tools to, for example, identify missing contract award notices for a contract;
- 15) Management and curation of the new procurement data lake perhaps by establishing a data management office.

We recognise the sizable undertaking and investment that all of these recommendations would require, and would recommend that the initial 'beta unit' is set up under the Cabinet Office immediately, with a mandate to optimise the unit's functioning (and independence/authority) over time.

Q3. Where should the members of the proposed panel be drawn from and what sanctions do you think they should have access to in order to ensure the panel is effective?

Whilst we would expect the panel to comprise domain experts such as procurement lawyers, former industry leaders, commercial and procurement experts, and former civil servants we would strongly urge that representatives of civil society organisations and academia with an interest in open contracting are also included, as well as tapping reservoirs of expertise on open data and digital transformation across the wider UK government ecosystem such as from the UK Global Digital Marketplace project under Government Digital Services that is providing this expertise internationally.

At the risk of being misunderstood, it is important that the panel brings in progressive thinking and digital transformation experts and not just procurement lawyers if we are going to fix the system!

Chapter 2: A simpler regulatory framework

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

Yes, but this should be accompanied with consolidation of oversight (see our answer to Question 2) and simplification of bidding instruments and the alignment of contracting authorities' eProcurement systems with the new legislation, including the use of OCDS, so that technology makes following the rules as simple as possible for both contracting authorities and economic operators.

Currently the contracting authorities use a wide spectrum of different bidding documents, contract forms and conditions of contract which represent a significant but hidden cost for economic operators (and contracting authorities). They not only have to use a wide range of differently configured eProcurement platforms to submit their bids, but also have to navigate often unnecessarily complex bidding documents which lack consistency between contracting authority to contracting authority in wording, processes, format, data collected and user experience. There are some examples where standard contracts forms have been developed e.g. [Crown Commercial Service \(CCS\) Standard Template for Framework Contracts for Common Goods and Services](#) and the Cabinet Office's [Short Form Terms and Conditions](#) but these are the exception rather than the norm and are not used across government. This lack of standardisation in the bidding and contracting processes is in stark contrast and is inconsistent with the welcome proposal in the Green Paper to continue and expand the suite of standardised procurement notices outlined in ¶173. This lack of consistency has profound and damaging implications for the Government's commitment to adopt OCDS throughout the full commercial cycle, and increases the risk that data creation will be complicated and duplicated, compromising the quality and quantity of data available. Not only does it create unnecessary transaction costs but can also result in delays in the procurement and increases the scope for misunderstandings and errors and the risks of damaging complaints or contract disputes.

We believe that proposed consolidation should extend downwards from the regulations and also be systematically applied to developing standardised OCDS compliant bidding documents, contract forms and conditions of contract working in close consultation with representatives of the private sector e.g. British Chambers of Commerce and the CBI. Developing a standard core set of configurable bidding instruments and contract documents would not only make them much easier to use by economic operators, and in particular SMEs, but also would help maintain compliance with both the new unified regulations and OCDS, and be consistent with the proposed approach to using standardised procurement notices. This would provide critical support to the Green Papers aspirations for simplification and reduction in red tape in the commercial cycle that are desperately needed and would benefit all stakeholders and represent a quick win for the reforms.

As noted in the Green paper, there are further statutory instruments in addition to the PCR, UCR,CCR, DSPCR that concern public procurement so careful consideration needs to be given as to whether other legislation also needs revising and their provisions transferred into the new single uniform framework e.g. Local Government Act 1988 and the Public Services (Social Value) Act 2012.

Q5. Are there any sector-specific features of the UCR, CCR or DSPCR that you believe should be retained?

No comment.

Chapter 3: Using the right procurement procedures

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

In principle yes, as it simplifies the procurement system, but with the caveat that the changes could lead to some opportunities for abuse or accidental non-compliance which should be countered by the full implementation of Open Contracting throughout the commercial cycle along with the adoption of an automated red flag system to guide compliance and best practice. The new procurement procedures should from the outset be supported by new OCDS compliant standard bidding documents, contract forms and conditions of contract even if document bidding is retained in the short term pending our recommendation to transition to fully digitalised bidding and digital contracts.

It will be particularly important that there is full transparency and disclosure where the competitive flexible procedure, or direct award where no competition has taken place, is selected.

We welcome the intention to make the open procedure the default and its extension to defence and security procurements. For limited tendering (and the other procurement procedures), we believe that the deadline for issuing a contract award notice should be significantly reduced to 10 days and, in the longer term, we would hope that the process would be automated so that it is issued at the same time as the contract award, without any extra effort by the Contracting Authority.

Quicker publication of notices and pipelines can deliver some quick wins in improving the public perception but also providing valuable market intelligence for both existing and new suppliers as well as sharing valuable information with other contracting authorities.

Q7. Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used?

Yes, providing the criteria for emergency are tightly drawn so it is a genuine moment of national emergency like the current pandemic etc and that the principles of transparency and competitive procurement are maintained as a critically important safeguard. Indeed, rapid disclosure of information helps coordination in a crisis and helps connect buyers and suppliers during periods of market disruption. Measures should be put in place to minimise any abuse in the selection of limited tendering and there should be a full data driven audit trail for decision so value of money is maintained and incentives for abuse are curtailed.

The quid pro quo on using crisis procedures should be fast publication of information which helps with coordination and monitoring. See our answer to Q6.

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

The proposed extension of the adoption of the Open Contracting Data Standard to all contracting authorities provides an opportunity and indeed strong justification for the move from the current model of eProcurement which creates little machine readable data to a fully digital OCDS-ready model of digital bidding used in countries such as Ukraine⁹ and Moldova¹⁰.

The ‘tell us only once’ principle proposed for supplier registration in the Green Paper should be extended to ‘create tender data only once’ etc so that data created in the planning, tendering and contracting process can be used by both government and published as open data.

The availability of high quality machine readable data will create new opportunities for innovation both within contracting authorities and central purchasing bodies as well as the private sector.

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

There is a vital need to invest in commercial skills building for procurement teams to encourage innovation and learning and to make best use of the new flexibilities afforded by the reforms. It will also be critical for buyers to be sensitised to the principles and objectives of open contracting so that they will support the transition and understand the benefits of having a much better quality and quantity of procurement data to support them in their day-to-day work.

It is also important to raise how procurement rules interact with the UK’s Current Freedom of Information regime. In 2019, The UK Information Commissioner’s Office published a very detailed assessment of the “transparency gap” between how FOI works when public services

⁹ <https://prozorro.gov.ua/en>

¹⁰ <https://github.com/EBRD-Digital-Transformation-MTender/MTender/wiki>

are delivered directly by the government and how it works when they are outsourced and contracted.¹¹

As the Commissioner wrote in the introduction: *“My job is to uphold information and privacy rights on the public’s behalf. This requires me to ensure that the legislation regulated by my office fulfils its objectives and remains relevant. In the modern age, public services are delivered in many ways by many organisations. Yet not all of these organisations are subject to access to information laws. Maintaining accountable and transparent services is a challenge because the current regime does not always extend beyond public authorities and, when it does, it is complicated. The laws are no longer fit for purpose”.*

The report cites polling by the Information Commissioner’s Office in 2017 showing that although roughly 80% of people think this kind of information is important, only 23% felt that information about the activities of private companies delivering public services was accessible. In contrast, some 40% to 50% of people thought that the actual parts of government were accessible. The report gives worrying examples where fire safety defects in a public hospital were not covered by the Freedom of Information regime as it was held by a PPP subcontractor.

This creates an asymmetry and a trust deficit in how outsourced versus insourced services are delivered which could be addressed in the Green Paper to establish a level playing field for all actors so that the Freedom of Information regime is applied in the same way to anyone delivering services in the public interest or paid for by the public purse.

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

By creating a more digital and integrated procurement system, combined with the proposed adoption of the Open Contracting Data Standard at a wider and deeper level, it will be possible to gain valuable insights as to what government is procuring and opportunities for innovation for both contracting authorities and economic operators in the way goods, services and works are procured. The proposed new single supplier register should be integrated with the UK companies register along with other government systems e.g. HMRC along with open source tools regarding beneficial ownership.

The OCDS could also be used to provide a similar level of transparency in the disposal of unwanted government assets and use similar competitive tools to maximise the financial return to the asset owner. [See here for how this has been done in Ukraine with Prozorro sale.](#)

We also note [Professor Albert Sanchez-Graells response](#) to this answer that regulating market engagement could be better explored in the paper and innovations proposed to the UK’s effort there too.

¹¹ [Information Commissioner's Office. 2019. Outsourcing Oversight? The case for reforming access to information law Report of the Information Commissioner to Parliament, 2019.](#)

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

Digitisation and automation, applied creatively to the pre-procurement processes, could play a crucial role in enabling contracting authorities to easily access valuable procurement data e.g. previous prices, suppliers, specifications and average lead times for similar procurements that have taken place elsewhere in the public sector. The setting of KPIs at this earliest stage of the commercial cycle would provide a valuable baseline for identifying when things are working well and when there is a need to foster markets for innovative new products and services that are needed to deliver improved outcomes.

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

We believe that there should be a consistent set of rules and procedures for all contracting authorities to provide a more consistent set of standards for all government procurement.

Chapter 4: Awarding the right contract to the right supplier

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, providing there is a robust data centric and open audit trail for the selection of the evaluation criteria and evaluation of bids and should be in the longer term published in OCDS.

Q14. Do you agree with retaining the basic requirement that award criteria must be linked to the subject matter of the contract but amending it to allow specific exceptions set by the Government?

It is difficult to answer this without more information so we will emphasise that there should be a full audit trail for when exceptions are applied and that statistics on these are collected and made public and that contracting authorities are monitored for the use of these exceptions and red flags applied when appropriate. We welcome the intention stated in the Green Paper that “...the Government would only allow the link to the subject matter of the contract to be broken in a limited number of specific circumstances and will publish guidance to ensure effective implementation” and we recommend that business processes are developed to record the justification for the use of such exceptions in a machine readable format and that this information is made publicly available. And of course, clear boundaries to discretion need to be applied in both the legislation and the accompanying guidance.

Q15. Do you agree with the proposal for removing the requirement for evaluation to be made solely from the point of view of the contracting authority, but only within a clear framework?

We agree with this in principle if it is to allow for wider social benefits and value from contracting decisions to be accounted for. Of course, that would need to be properly explained and there should be a full audit trail and all evaluation criteria published for each procurement. Statistics on these should be collected and made public as open, structured machine-readable data.

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, and a list of such occurrences to be collated and made public as open structured machine readable data.

A list of companies that have undertaken self-cleaning should also be published on the new central platform and recorded in their evidence locker.

The guidance on self-cleaning needs to be clear and the threshold set quite high so that the company can genuinely be seen by the public to have acted to address its transgression. We assume that this approval of self cleaning would be subject to scrutiny by the new coordination unit and the process for being determined to have self-cleaned would be robust. The criteria from EU legislation, i.e. that a company must have cooperated with law enforcement, compensated victims and got rid of managers and others responsible for wrongdoing, should be retained.

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

Yes, in principle we support this proposal. The information relating to a list of companies excluded for tax evasion or other unacceptable behaviours should be made public as open structured machine readable data recorded in their evidence locker if they have one and also added to the new centrally managed debarment list.

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

Yes, we support this proposal but believe that information relating to convicted persons/entities that are beneficial owners should be made public as open structured machine readable data, recorded in their evidence locker if they have one and also added to the new centrally managed debarment list.

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, we fully support this proposal but believe that information relating to the non-payment of taxes by economic operators should be made public as open structured machine readable data, recorded in their evidence locker if they have one and also if applicable added to the new centrally managed debarment list

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

Yes, we support this proposal. DPAs should be considered as a ground for discretionary exclusion subject to self-cleaning, and that conviction for Section 7 (failure to prevent) offences such as bribery and facilitation of tax evasion should be grounds for mandatory exclusion. We also believe that such a decision should be made public and that a list of government suppliers that have DPAs should be published on the new central platform.

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

Yes, we agree and propose that the debarment list is managed electronically using data in accordance with the OCDS/OCDS extensions and integrated with the proposed unified supplier registration system so that the evidence locker of debarred suppliers is flagged accordingly. The debarment list should underpin the process of excluding companies from individual procurements and should be able to cope with subsidiaries and related companies within and outside the UK. It should also be integrated with international debarment registers e.g. World Bank etc.

The debarment list, including the reasons for debarment should be made public as open structured machine readable data.

We presume that the list would be managed by the new centralised procurement unit and that the unit would be able to make cross-government debarment decisions on the basis of evidence of corruption/fraud etc. This would also require a process to be put in place for contractors to appeal these decisions and to be given a fair hearing.

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

Yes. Key to its success will be providing clear and effective guidance on how to evidence good performance in a simple but fair way. This will require both clear guidance on how to set supplier performance around KPIs in contracts, an investment in commercial skills to choose and calibrate the set the right KPIs for a particular contract, and a way of collating and publishing information accessible information on that performance that informs the market that the approach is being fairly applied. One assumes that an overall rating would need to be applied to summarise and we have seen examples of that done effectively in some other jurisdictions including by the [Harvard Kennedy School Government Performance Lab](#).

Care (and market education) needs to be taken not to deter participation of SMEs and other new entrants to the market, subject to appropriate due diligence when a newly established company with no trading history win a large contract (which has been of particular concern for some COVID-19 related contract awards in the UK).

An evidence-based data-driven supplier performance evaluation system which should be managed electronically using data in accordance with the OCDS/OCDS extensions. Some eProcurement system providers may not offer this functionality so consideration should be given to developing a separate tool supplier performance management tool that can process shared data from the platforms.

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

Yes, we agree and propose that it is managed electronically using data in accordance with the OCDS/OCDS extensions and that it includes providing transparency of beneficial ownership of the Government's suppliers both within and outside the UK.

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

We have no objection.

Chapter 5: Using the best commercial purchasing tools

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

We have no objection. If adopted, it would be important that the DPS+ to be subject to the same levels of public disclosure of linked open data so that both the list of economic operators on DPS+ agreement and the contracts awarded under the DPS+ publicly accessible. The DPS+ system should offer live advertising notice to allow new suppliers to join regularly.

Q26. Do you agree with the proposals for the Open and Closed Frameworks?

Regardless of the type of frameworks, we would like open data-linked contract call-offs, issued against frameworks, to be published in OCDS using a unique OCDS ID, so that there is full transparency on the award of contracts to an economic operator along with details on whether it was a direct award or came from a mini-competition. Again, the frameworks should be regularly reopened to allow new entrants.

Chapter 6: Ensuring open and transparent contracting

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

Yes, we agree very strongly! We strongly support the proposals in the Green Paper and would argue for full adoption of ‘ask us only once’ principle to embed structured, machine-readable OCDS compliant data from every Contracting Authority across the commercial lifecycle (as opposed to duplication and publishing data only at the end of the process). We would promote the principle of ‘create data only once in OCDS, use it many times for many different purposes and many different audiences.’

We are particularly enthusiastic about greater transparency for the planning and performance stages of the commercial cycle and propose that all procurement pipelines are published on the new central platform in a standard OCDS compliant format. The expansion of transparency — enabled by Open Contracting IDs (ocid)¹² — to the whole commercial cycle should be implemented using the concept of linked data and OC IDs so that it is possible to access a digital audit trail for a procurement from the planning stage right through to its completion.

We agree with the diagnosis of the Green Paper that part of the barrier to improving transparency of the post award phase of contracting is the uncertainty about redacting commercially sensitive information. We think it is therefore important that the legislation and the accompanying guidance clearly specify the elements of information to be published and sets clear timeframes (which links to the next question, Q28) and where-ever possible automates publication by default.

We also note that these proposals would be positive for businesses which: i) struggle with multiple fragmented platforms at the moment, ii) are frustrated by having to enter the same information in multiple different ways; iii) are frustrated by the way that government struggles to maintain a single version of the truth on a contract.

¹² Contracting Process Identifier

<https://standard.open-contracting.org/latest/en/schema/identifiers/?highlight=ocid#contracting-process-identifier-ocid>

Availability of high quality trusted data would enable the proposed oversight unit to routinely analyse the contracting information stored in the new data lake to detect collusion¹³ by scanning the data for certain patterns that could indicate cartel forming, with the goal of further investigating suspicions and, where justified, prosecuting cartel members. We would suggest that Accounting Officers should be made responsible for ensuring that their respective contracting authorities are meeting the required transparency standards and that the scope of audits of these entities is revised to review compliance and this is monitored by the new oversight unit.

We note that some commentators on the Green Paper - such as [Professor Sanchez-Graells](#) worry that “excessive transparency can have anti-competitive effects” and may encourage collusion. We are not worried that the proposals in the Paper are excessive, nor that they will encourage collusion. [Our detailed research](#), speaking to over 70 experts in 20 different countries, showed that increasing transparency tends to have positive benefits including increasing competition.

Empirical research on collusion shows that disclosing contracting information actually decreases cartel duration. Slightly perversely, this is because it allows cheating by cartel members to be detected earlier than by self-reporting amongst members which destabilises cartels faster (as when cheating is detected, they are dissolved by their members). International best practice on disclosure of contracting information already requires the public sector to be transparent about the winning bidder, which is the only piece of information required by cartels to know whether its members adhered to the agreement made.

It is likely that collusion is hard to detect under the current system, whereas improved data and improved analytics will make it easier for the authorities, especially when combined with the new oversight unit.

More generally, there is an abundance of empirical research on the positive benefits of transparency to improve public trust, competition and value for money in procurement. [OCP has seen it as a key enabler to drive systematic change, even in difficult environments.](#)

A paper from 2019 [by academics at Yale, Chicago Booth and MIT Sloan](#) found the publication of procurement data on the EU’s [Open Data Portal](#) increased the number of bids received by 12%, decreased prices by 8%, and that public officials were more likely to award government contracts to new vendors after the increase in open data accessibility. They did note a concern that more contract amendments may occur if contracts were only awarded on lowest price, but other proposals in the Green Paper would mitigate that concern. [Academic analysis of more than 3.5 million government contracts across Europe](#) shows that publishing more information about contracts decreases the risk of single bid tenders. This matters because single bid contracts are both a governance risk and are over 7% more expensive. Publishing five more pieces of information about each tender would save Europe up to 3.6 billion Euros. [A World Bank survey of 34,000 companies in 88 countries](#) found that competition was higher, and kickbacks were fewer and smaller in places where transparent procurement, independent complaint procedures and external auditing are in place.

¹³ A network approach to cartel detection in public auction markets www.ncbi.nlm.nih.gov/pmc/articles/PMC6658564

Finally, we note the need to address the asymmetry of information between insourced and outsourced government service delivery as noted by the [Information Commissioner in her Outsourcing Oversight report of February 2019](#). We've spoken more about that in Q9.

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

Yes. We strongly agree with requiring OCDS implementation to reap the benefits of standardisation and highly quality interoperable data. We think full, end-to-end, comprehensive and automated implementation of the Open Contracting Data Standard can be the backbone on which many of the other proposals in the Green Paper can be implemented and delivered.

The UK currently operates a highly decentralised, unregulated and mostly disconnected range of eProcurement platforms at national, central and local government levels that are provided by about 14 different proprietary eProcurement system providers along with those operated by central purchasing bodies e.g. Crown Commercial Services but there are no common data standards apart from those inherited from the now lapsed EU procurement legislation e.g. NUTS¹⁴, CPV¹⁵ and the OJEU¹⁶ TED notice forms are now published on Find a Tender resulting in lack of standardisation, transparency and interoperability. Where transparency does exist it is fragmented, covers only part of the commercial cycle, is not centralised nor available in a citizen friendly format. This is an unnecessary blocker to the full participation of SMEs and the ability of the government to measure this, and the SME success rate.

Many of the contracting authorities continue to rely on document based bidding using their eProcurement systems mainly to exchange complex bidding documents, bid clarifications and the creation of a limited amount of data (not always structured) e.g. bid price schedules in Excel. Procurement pipelines are often created and maintained outside the contracting authorities' eProcurement system, again often residing in unstructured Excel spreadsheets or even PDFs and are difficult for economic operators to find or analyse. This has a negative impact on procedural efficiency and transparency, unnecessarily limiting the amount of transaction data created during the commercial cycle. This also means that contracting authorities have to recreate data for notices that may already be available as non-machine readable data, again posing an unnecessary burden, delaying the publication of notices as well as providing opportunities for data quality and quantity issues to dilute the transparency of the commercial cycle.

Comprehensive OCDS implementation could address this. We would argue for an ambitious interpretation of the mandate to implement the OCDS upgrading of eProcurement systems to create data in OCDS format and publish it automatically at source. The Open Contracting Partnership is ready to support the Cabinet Office in exploring the options based on the current eProcurement landscape and maturity level of Open Contracting and developing an Open Contracting Road Map for the UK to this end. This would harness and drive the benefits being sought in the other parts of the paper. Conversely, restricted conversion of existing TED form

¹⁴ Nomenclature of Territorial Units for Statistics

¹⁵ Common Procurement Vocabulary

¹⁶ Official Journal of the European Union

data and publication in OCDS, as is being done for Find a Tender, would not achieve these objectives.

It is important that OCDS publication is automated wherever possible to implement the principle that we cited in our introductory remarks to ‘create data only once in OCDS, use it many times for many different purposes and many different audiences.’ Integrating and mainstreaming OCDS in this way should make publication of key information automated and immediate, addressing the unacceptable lag in publishing public notices that we noted in our opening remarks. This would also help stop widespread duplication and manual creation of data in the current system.

We propose in the longer term that the UK adopt digital bidding documents, in accordance with OCDS, so that data is created during the commercial lifecycle and published in the proposed new central platform. This will take careful design, so in short-term, quick wins include contracting authorities automatically publishing their existing data sets and notices as OCDS releases.

We responded to some concerns mentioned about commercially confidential information in the previous question. The evidence favours disclosure and making the default to publish clear and unambiguous.

Unambiguous requirements to publish data including the fields mentioned in paragraph 166 of the Green Paper would help shortcut a lot of discovery and time taken in current litigation and disputes bringing other benefits as well.

Lastly, we recognize that publishers should see a direct benefit from their publication too, using automation and digitization to minimize costs and also to provide them with user friendly analytics to help them manage their contracts better and live validation and checking of their data.

Q29. Do you agree that a central digital platform should be established for commercial data, including supplier registration information?

We strongly support the establishment of a central digital platform, which we believe should be designed to provide a single version of the truth for all public procurement data and information and provide a user-friendly interface to enable the interrogation of data. At its heart should be a virtual contracts register providing that single source of truth of where a contract is along its commercial lifecycle that anyone can see.

We think the design emphasis should be on the platform aspect of the work, thinking in terms of designing a highly functional tool (or set of tools) rather than just a website (or a dumb pipe) so that it supports both contracting authorities and economic operators in transacting efficiently while providing a high degree of transparency.

OCDS data should be published by both via API (as per Find a Tender) and used to power more user-friendly data exploration format — for example, the Dozorro platform as in Ukraine (and partly funded by the UK government aid programme).¹⁷

The value of offering a single source of accessible open data (and truth!) across government is that different users can also take the data and consume it in their own way. This will also allow the govtech sector to innovate and feed the information back to users in smart new ways too.

It could also be a very useful resource for contracting authorities to share and access data from, so they see the benefits of their own publication of data. It could, for example, allow them to analyse contracts placed by other contracting authorities, prices paid, and suppliers used. In the longer term an upgraded CASiE or similar BI tools should be fed from the same data set for internal analysis by creating a single data lake for restricted and open data.

It should also be an essential tool for the oversight unit to undertake its activities and could offer advanced analytics to power users. Core to reaping these benefits would be a user centred design process and we would be happy to share best practices from elsewhere in the world.

Chapter 7: Fair and fast challenges to procurement decisions

Q30. Do you believe that the proposed Court reforms will deliver the required objective of a faster, cheaper and therefore more accessible review system? If you can identify any further changes to Court rules/processes which you believe would have a positive impact in this area, please set them out here.

Yes. We strongly approve of speeding up and simplifying challenges and complaints as long as it is fair. Currently, uncertainty and the threat of a challenge is a major block on innovation. We also note that complaints and their resolution under the expedited process would be important information for systematic disclosure (and monitoring) to improve transparency across the commercial cycle.

One further change that should be considered is adjusting who has standing to make a challenge. There should be an option of a public interest challenge to a decision. Allowing wider standing for a challenge has positively contributed to trust in other jurisdictions and should be considered in the UK. Again, the more this can be dealt with in an expedited way with an emphasis on pre-contractual remedies rather than damages the better for the efficiency and trust in the system (and indeed that is how public interest challenges have worked well elsewhere such as in Georgia).

Q31. Do you believe that a process of independent contracting authority review would be a useful addition to the review system?

Yes, providing a clear audit trail is retained for the review and the outcome of the review is available to all contracting authorities. Please see our answer to Question 2.

¹⁷ <https://dozorro.org/>

Q32. Do you believe that we should investigate the possibility of using an existing tribunal to deal with low value claims and issues relating to ongoing competitions?

We would prefer to see a dedicated tribunal established for public procurement disputes that cannot be resolved amicably. We think that this is better than using an existing tribunal as special expertise is warranted and it makes sense to have an expert, expedited progress as the impact of such disputes is significant for the taxpayer, for service delivery for citizens, and it deters innovation as anything different can be subject to challenge.

Q33. Do you agree with the proposal that pre-contractual remedies should have stated primacy over post-contractual damages?

Yes, we welcome the proposal to move the focus of supplier remedies away from damages and towards measures which enable corrective action e.g. for a procurement to be re-run, decisions to be set aside, or documents amended where a breach has been identified. This should maximise the chance that a faulty or compromised procurement process can be corrected at the earliest opportunity to minimise costs for the taxpayer of damages for legal actions brought by an aggrieved bidders (and out of court settlements e.g. Department for Transport Out-of-court settlement of £33 million with Eurotunnel¹⁸).

Also, as such costs can be considered as a type of avoidable waste, we propose that the new oversight unit maintains and publishes a national register, including costs incurred by the taxpayer of both pre-contractual and post-contractual disputes and shares lessons learned to avoid future mistakes.

Q34. Do you agree that the test to list automatic suspensions should be reviewed? Please provide further views on how this could be amended to achieve the desired objectives.

Suspensions and their rescission should be made publicly available.

Q35. Do you agree with the proposal to cap the level of damages available to aggrieved bidders?

Yes. The move to a quicker review system with an earlier resolution or hearing should shift the focus of supplier remedies away from damages and towards measures which allow for elements of a procurement to be re-run with prior decisions to be set aside or documents amended where a breach has been identified.

There is officially no primacy in the current system to suggest that the award of damages is to be preferred over these measures although this does often occur in practice so we agree with shifting the focus back to remedy.

Q36. How should bid costs be fairly assessed for the purposes of calculating damages?

No comment except to say that we would like such calculations and costs incurred to be put in the public domain as it involves the expenditure of taxpayers' money arising from some failure on the part of the Contracting authority to undertake the procurement properly (and so is a matter of public interest).

¹⁸ National Office Report Department for Transport Out-of-court settlement with Eurotunnel MAY 2019
<https://www.nao.org.uk/report/out-of-court-settlement-with-eurotunnel/>

Q37. Do you agree that removal of automatic suspension is appropriate in crisis and extremely urgent circumstances to encourage the use of informal competition?

We accept the proposal providing that, as stated in the Green Paper, this would not apply when the proper process for these contracts has not been followed e.g. when the mandatory notice has not been published.

Q38. Do you agree that debrief letters need no longer be mandated in the context of the proposed transparency requirements in the new regime?

We see value in the open publication of this information which currently is only made available to the bid participants and propose that the new notice is created in compliance with OCDS and linked to the contract notice. We assume it can also be used to simultaneously publish the same notice on both Contracts Finder if appropriate (or the devolved nation platform) and Find a Tender. Suppliers should be able to receive an immediate automated notification of the publication of the notice particularly as it may trigger the 10 day standstill period for some procurements.

Chapter 8: Effective contract management

Q39. Do you agree that businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?

Yes.

There should be a specific right for public bodies to look at the payment performance of any supplier in a public sector contract supply chain?

Yes.

That private and public sector payment reporting requirements should be aligned and published in one place?

Yes. We believe that information on the performance of both suppliers in paying their subcontractor under publicly funded contracts and contracting authorities paying their suppliers should be made publicly available.

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

Yes, provided that there is full public disclosure for contract amendments made by contracting authorities. We would emphasise the value to all actors of having a clear public version of the contract and its amendments so there is a single source of truth. Government version control is often lacking currently.

Q41. Do you agree that contract amendment notices (other than certain exemptions) must be published?

Yes, we believe that transparency concerning the amendment of contracts along with the justification needs to be significantly improved as does the availability of data to understand and learn why these are taking place. This should also be considered as a KPI to monitor and publish openly for both contracting authorities and suppliers. It is an important determinant of procedural efficiency of the procurement process, particularly as the majority of amendments arise because of unforeseen cost increases or delays to implementation of contracts, both of which are likely to have a negative impact on the public interest and public finances.

Q42. Do you agree that contract extensions which are entered into because an incumbent supplier has challenged a new contract award, should be subject to a cap on profits?

No comment, except that information relating to contract challenges should not be confidential and such occurrences should be made publicly available.

Annex 1: A vision for open contracting and digitalised procurement in the UK

A. Open Contracting Global Principles, Data Standard and their application in the UK

We are delighted to see the new expanded commitments for the adoption of Open Contracting and the OCDS in Chapter 6 of the Green Paper. And, more generally, we have mapped the ambitions in the Green Paper [to the Open Contracting Global Principles](#) and saw a high level of alignment.

The paper does not go into detail about the fields of data that could be collected and published. We have explored this more in the table below where we explain how collecting and publishing good quality open data across the commercial cycle could add huge value to the other ambitions in the Green Paper, going far beyond transparency for its own sake to drive better government and business interaction.

Green Paper ¹⁹	OCP comment on how good quality open data can support other Green Paper objectives
OPEN CONTRACTING STAGE - PLANNING	
<ul style="list-style-type: none"> Strategic planning 	<p>This is very welcome as we believe that transparency should start with the planning process to enable the earliest intervention if there are issues of concern about the procurement. Transparency and accessibility will be enhanced if the commercial pipelines are available in one place instead of dispersed across many different contracting authorities' websites as is the case at the moment.</p> <p>We believe that the publication of contracting authorities' procurement pipelines in a consistent OCDS compliant format would provide businesses with earlier notification of up and coming opportunities particularly if it is possible to provide more detailed information than is provided at the moment It would also facilitate better coordination and collaboration between contracting authorities in identifying opportunities for joint procurement.</p>
<ul style="list-style-type: none"> Market research 	
<ul style="list-style-type: none"> Setting priorities 	
<ul style="list-style-type: none"> Access to market 	
OPEN CONTRACTING STAGE - TENDER	
<ul style="list-style-type: none"> Competitive tendering 	<p>The OCDS dataset used should be suitable to identify both the level of competitive tenders issued by contracting authorities as well as the response rates.</p>

¹⁹ Chapter 6 - Open Contracting Data Standard ¶173

<ul style="list-style-type: none"> ● Cross-border procurement 	Will this data be used to provide statistics on suppliers' participation of foreign and for GPA reporting?
<ul style="list-style-type: none"> ● Red flag analysis 	We would suggest that red flags are also applied at the commercial pipeline stages
<ul style="list-style-type: none"> ● Transparent feedback mechanisms 	We hope that civil society will be included in the feedback mechanisms and monitoring of tender activities.
<ul style="list-style-type: none"> ● Easy to release anonymised data and lessons learnt. 	We hope that the amount of anonymised data released will be kept to a minimum as this may have a detrimental effect on transparency.
<ul style="list-style-type: none"> ● Fraud management 	Use of an automated OCDS driven red flag system (currently being piloted in the Kyrgyz Republic under a project being implemented by the European Bank for Reconstruction and Development) ²⁰ could be used to support fraud and collusion detection.
OPEN CONTRACTING STAGE - AWARD	
<ul style="list-style-type: none"> ● Efficient supplier management 	The introduction of a unified OCDS supplier register will contribute to optimising supplier management and statistical analysis during the award phase.
<ul style="list-style-type: none"> ● Efficient complaints mechanism 	It may be worth considering developing a single platform to manage all complaints.
<ul style="list-style-type: none"> ● Links to beneficial ownership data 	This should also be considered for the tendering stage
<ul style="list-style-type: none"> ● Red flag analysis 	Use of an automated OCDS driven red flag system (currently being piloted in the Kyrgyz under a project being implemented by the European Bank for Reconstruction and Development) could be used to support fraud and collusion detection.
<ul style="list-style-type: none"> ● Trade / cross border analysis 	We see significant potential for using OCDS data to both analyse and report on the UK's GPA commitments ²¹ and is already mapped to the GPA reporting standard.

²⁰ Open Data OCDS red flags monitoring application for the electronic procurement system: <https://github.com/EBRD-KyrgyzRepublic-ODSMandPAPP/Kyrgyz-Republic-Open-Data-OCDS-Transformation-Analytics/wiki/Home-page>

²¹ How open data helps WTO GPA objectives <https://www.open-contracting.org/wp-content/uploads/2019/11/OCP2019wtogpaguidance.pdf>

OPEN CONTRACTING STAGE - CONTRACT	
<ul style="list-style-type: none"> • Cost analysis 	This will depend on recording pricing data at a detailed level to establish the market rate/ss across government and any price variation waste.
<ul style="list-style-type: none"> • Understanding what government buys 	Spend visibility should also include understanding what government buys, for which UK government entity, from whom, when, for how much and how often.
<ul style="list-style-type: none"> • Trade / cross border procurement analysis 	We see significant potential for using OCDS data to both analyse and report on the UK's GPA commitments and is already mapped to the GPA reporting standard.
OPEN CONTRACTING STAGE - IMPLEMENTATION	
<ul style="list-style-type: none"> • Results-based contracting 	A key tenet of Open Contracting is that civil society monitoring of contract implementation can provide valuable feedback to contracting authorities to improve the supervision of the implementation of contracts.
<ul style="list-style-type: none"> • Implementation monitoring 	
<ul style="list-style-type: none"> • Transparent contract management 	
<ul style="list-style-type: none"> • Red flag analysis 	Use of an automated OCDS driven red flag system (currently being piloted in the Kyrgyz under a project being implemented by the European Bank for Reconstruction and Development) ²² could be used to support fraud and collusion.

Procurement documents should also be published openly and completely with a link to the OCID.

Outcomes from a digital and data led approach to implementing the Green Paper

Guided by the objectives and ideas outlined in the Green Paper, we have proposed some headline outcomes that we feel could be achieved provided the new legislation is accompanied by a fully digital first (and OCDS compliant) approach.

A. A fully decentralised but interoperable network of eProcurement platforms sharing and exchanging standardised data, with publication in a central open data platform

The proposed adoption of OCDS at the Contracting Authority level provides an opportunity to create a new unified data lake for public procurement with a single version of the truth whilst maintaining a competitive and open market for the supply of eProcurement systems to

²² Open Data OCDS red flags monitoring application for the electronic procurement system: <https://github.com/EBRD-KyrgyzRepublic-ODSMandPAPP/Kyrgyz-Republic-Open-Data-OCDS-Transformation-Analytics/wiki/Home-page>

contracting authorities. It should also provide opportunities for automation, innovation and sharing of information between different actors and drive up the quality and quantity of procurement related data, not just for transparency purposes, but also for optimising the performance of the commercial cycle as well as its oversight.

B. Create data only once and use many times

Extending the idea in the Green Paper that economic operators should only submit data once in a new evidence locker in a single supplier registration system, the same principle should be used throughout the commercial cycle where possible.

C. Realise financial savings

The benefits of open contracting extend beyond transparency and the adoption of a data standard can contribute towards the delivery of significant financial savings which could offset the cost of the reforms and capacity building needed. The proposed move from MEAT to MAT will give contracting authorities the freedom to take a more holistic view of cost and benefits as part of the evaluation criteria but combined with higher levels of competition, financial and measurable savings in the cost of goods, works and services are still achievable. There should also be direct financial savings for both contracting authorities and economic operators in minimising the transaction costs for the preparation of tenders and bids as well as the award and contracting stages of the commercial cycle. Stripping out these unnecessary costs should also help economic operators offer lower cost bids

D. Transparency from outside; visibility inside

The adoption of OCDS can provide the proposed oversight unit and contracting authorities with dramatically improved real time spend visibility that can be used to analyse the procedural efficiency of the commercial cycle at the contracting authority and supplier down to the transaction level or aggregated upwards to give a high level strategic overview.

E. An improved buyer and supplier user experience (UX)

The adoption of OCDS provides an opportunity to standardise the user experience for both contracting authorities and suppliers by digitising more of the commercial cycle and reducing the reliance on document based bidding.

F. Simplification of processes and elimination of red tape - digital bidding

Simplification of the process can extend to simplifying the bidding process using a similar approach to online tax returns where the user is guided through a structured process and workflow. It also offers the longer term opportunity for the burden on contracting authorities to be reduced as procurement notices can be automatically generated using the data created during the bidding process.

G. Improved compliance by embedding legislation in a fully digitalised commercial cycle

The digitalisation that the adoption of data standard enables can also support the embedding of the legislation into the bidding process making it more difficult for accidental or deliberate errors to be made. It can also be done in a way to make bidding easier for SMEs and VCSEs as they are guided through the bidding process and any data omissions flagged up before bid submission.

H. Improved planning and procedural efficiency

Sharing information on upcoming procurement plans not only gives businesses time to plan ahead themselves, but it can also allow pre-market solicitation of ideas as to what to buy, allowing government to shape procurement to better meet users' needs. Better cost estimates built on historic data will make the process more efficient for government and potential suppliers.

I. Improved competition

Giving suppliers fair and equal access to the data will improve competition and allow for more diversity in suppliers and enable innovation. As mentioned, a study of more than 3.5 million government contracts across Europe determined that every additional item of information shared about a tender decreases the risk of a single bid contract. This matters because single bid contracts are both a governance risk and over 7% more expensive than the norm.

J. Improved accountability

There is hard evidence that collecting information knowing that it will be shared improves government's own behaviour. Sharing in public allows other actors like CSOs or think tanks to track the money and the results from that spending better themselves, feeding back their insights and advice. This can occasionally be embarrassing for government officials if there is misspending but it's also necessary for public trust and ultimately improves procedural efficiency.

K. Improved integrity

There is strong evidence from a survey of thousands of businesses worldwide by the World Bank that an open and transparent process both deters malfeasance and encourages increased competition which in turn leads to more eyes on each contract award.

L. Innovation

Open data and openness to feedback plays an important role in communicating effectively with the marketplace and citizens. It enables more efficient market research and broader consultation with vendors and the community.

M. Improved oversight

Openness improves the procurement process. The Ukrainian citizen monitoring platform Dozorro currently unites 22 civil society organizations that are actively monitoring procurement and use the platform to identify suspicious activity. Of over 5,000 cases of suspicious activity reported over a six-month period, around half were resolved, including over 1,200 cases where tenders were re-awarded as a result of the feedback – a fix rate of 25% of all cases.

N. Sustainability

Openness, participation and cooperation across government, business, and civil society helps sustain reforms and deepen their impact. There are a lot of vested interests and bureaucratic inertia to be overcome; bringing in new allies helps build a wider constituency of support for reforms that last.

O. Cheap and fast development

Open contracting systems are quick and cost-effective to build because they rely on open source, non-proprietary software that can be repurposed and adapted with extensions, for different uses and contexts. Tamper- and idiot-proof: The 'deluxe model' of open contracting reforms involves building a transactional platform that removes the risk of human error or manipulation.

All of the above should be underpinned by the following principles:

- One procurement data standard for all of government;
- Where possible ask only once throughout the commercial cycle;
- Where possible create data only once throughout the commercial cycle;
- One version of the truth .

Not only are these data governance principles of huge value to the public sector but they will also resonate with the businesses who are grappling with a plethora of different eProcurement platforms (approximately 70 within central government alone) with different data standards and no single version of the truth available from government to better understand the shape of the market and where they are best placed to compete.

- Ends -