10 March 2021

Via email: procurement.reform@cabinetoffice.gov.uk

RE: Transforming Public Procurement

To Whom It May Concern:

I am writing to you with our enclosed response to the Green Paper on 'Transforming Public Procurement.

Engineers Against Poverty ("EAP") is a UK-based charity that bridges the divide between research, policy and practice. Our work focuses on how public infrastructure contributes to improving quality of life, particularly for poor and marginalised people. In recent years we have provided policy advice and practical guidance to international agencies, governments', multinational companies and civil society organisations principally on the transparency and social value of public infrastructure procurement. This includes managing the Infrastructure Transparency Initiative (CoST) which currently operates in 20 countries with support from the Foreign Commonwealth and Development Office and is endorsed by the G20.[1]

The recent National Audit Office report into COVID-19 Pandemic has highlighted some of the weaknesses of the UK's public procurement system with real concerns about the lack of transparency, conflicts and interest and inadequate documentation leading to deficient service delivery and poor value for money for the taxpayer. Improvements are required to the UK public procurement regulatory framework to avoid these outcomes in the future.

We broadly welcome the aspiration and approach of many of the proposed changes to the UK public procurement regulatory environment. As a small charity, we have often found it difficult to bid for public contracts and may potentially benefit from a more flexible regime. However, it is important that there are safeguards in place to manage the risks that this can create.

We also welcome the Government's efforts to improve "*every part of the infrastructure project life cycle*"[2] with the proposed changes to the public procurement regulatory framework along with the guidance in the Construction Playbook critical to realising this aspiration. However, transparency needs to be central to these efforts, particularly as evidence from CoST indicates that less than 40% of the Open Contracting for Infrastructure Data Standard (OC4IDS) is commonly disclosed to the public. We believe the adoption of the OC4IDS alongside the Open

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[1] The G20 endorsed CoST in 2019 as part of a Compendium on Infrastructure Integrity. Available at https://www.g20-insights.org/wp-content/uploads/2019/07/G20-Japan-Integrity-and-Transparency-in-Infrastructure-Development_web.pdf. Accessed on 10 March 2021.
[2] HM Treasury. National Infrastructure Strategy, November 2020, p. 78.

Contracting Data Standard would help the Government to meet its aspirations to generate data that can be used and shared as well as improving the transparency at each stage of the project life cycle in a sector that is key to stimulating the economic recovery and is critical to the Governments levelling up agenda.

We would also strongly urge the Government to reconsider the definitions of its procurement principles especially transparency and value for money to ensure that the taxpayer is uttermost in the minds of decision-makers and that social value is fully considered by officials preparing a procurement and companies, social enterprises and charities who then respond in their proposal.

The enclosed response has been developed by my colleagues John Hawkins and Maria Prado. It focuses on those questions where we have expertise and knowledge. Please feel free to contact us if you require any further information about our response.

Yours faithfully,

Petter Matthews
Executive Director

Response to the Green Paper on Transforming Public Procurement

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

Broadly yes. However, we believe that the definition of value of money needs to reflect, more clearly, the Government's aspiration to achieve social value from public procurement. We believe this is best achieved by adding social value into the definition of value for money as proposed below by the Open Contracting Partnership (OCP) in their response to this Green Paper.

> "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."

This definition is in line with a "fairer, greener and faster" procurement stated in the new Infrastructure Strategy as well as the Green Paper goals of addressing economic inequality, the climate emergency and society wellbeing.

We would also propose that the definition of transparency is reconsidered with a focus on taxpayers and businesses having a clear public record of how public money is spent. We therefore would support the proposed definition below of transparency in the response to this Green Paper from OCP.

> "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."

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?

It is important that expertise is drawn from civil society as well as the private sector and government. Our experience of multi-stakeholder working indicates that this will help to offer a broader range of views and is more likely to ensure that social value is more prominent in the thinking of the panel.

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

The UK Infrastructure Commission has stated that "*collecting data alone will not improve the nation's infrastructure. The key is to collect high quality data and use it effectively*".[3] The Government can utilise and share more infrastructure data by adopting the [Open Contracting for Infrastructure Data Standard (OC4IDS)](). We very much support the Governments adoption of the Open Contracting Data Standard (OCDS) developed by our partners at the Open Contracting Partnership (OCP) as the data standard to apply to UK procurement in general. Infrastructure procurement, however, has nuances and complexities that require the use of an open data standard that is tailored and specific to the sector.

Developed in partnership with OCP, the OC4IDS combines the best of the CoST Infrastructure Data Standard ([CoST IDS]()) which defines the project data to disclose to the public at each

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[3] National Infrastructure Commission. Data for the public good. Available at [https://nic.org.uk/app/uploads/Data-for-the-Public-Good-NIC-Report.pdf.]() Accessed on 10 March 2021.

stage of the project cycle, with the OCDS approach of standardising how the data is published. It goes beyond procurement by publishing data on the scope of the project, its' environmental and social impacts plus the reasons for any changes to the cost and duration of a contract, creating a standard for publishing open infrastructure data that can be effectively shared and used with purpose.

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

We very much agree that transparency should be embedded throughout the commercial lifecycle. In fact, we believe it should go beyond this to include the full infrastructure project lifecycle. Evidence from a [report](#) by CoST illustrated that significant improvements are required in the disclosure of infrastructure data in the UK with less than 40% of the CoST IDS commonly disclosed to the public, lower than Argentina, Lithuania and Scotland[4]. The study also demonstrated that the simple task of gathering information from a single project becomes a puzzle of piecing together fragmented project data.

In recent weeks we have tested to see if there had been any improvements in obtaining data from a random selection of infrastructure projects[5]. Regrettably, the position remains unchanged as we were unable to locate basic information such as project completion reports and the lists of variations, changes and amendments agreed during construction. Tender details, including number and names of firms participating, method and criteria of procurement, and reasons for bidder selection, were also not located in public portals, requiring a request of information to ensure access. In the case of concluded projects, information was even scarcer and needed to be manually extracted from procuring entities' annual reports, press releases or requests to information replies. Even simple information as project and contract values were sometimes not clearly stated, making it hard to understand the process for budget approvals and reasons for increases in cost.

In times of crisis, when accountability is often deferred to a later stage, the lack of a common standard and a systematic disclosure system becomes more worrisome. Requests of information are put on hold as occurred in the UK during the COVID-19 pandemic[6], placing on citizens the burden of waiting for information.

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[4] "the level of transparency in the UK is concerning in comparison to the other cases and to a baseline study carried out in 2010" (…) "Overall data on project delivery is very hard to come by. In the UK, none of the procuring entities interviewed could provide statistics on the number of projects completed on time, on budget and with the expected benefits. This does not imply that all projects go off track, rather that it is not closely monitored" (Jensen, Soren 2019. Infrastructure Governance in High-Income Countries - The added value of CoST in high-income countries: Concluding report, pages 29 and 45. Available at https://infrastructuretransparency.org/wp-content/uploads/2019/11/CoST_HighIncome_digital-_January28.pdf. Accessed on 10 March 2021).

[5] For the purpose of the exercise our team used projects developed by Transport for London and Highways England in order to assess transparency and accessibility challenges in different levels of administration within the same sector.

[6] See UK's Information Commissioner Office position: "We can't extend statutory timescales, but we will tell people through our own communications channels that they may experience understandable delays when making information rights requests during the pandemic" (Available at https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/data-protection-and-coronavirus/. Accessed on 3 March 2021) and "We will continue to accept new information access complaints. We will take a pragmatic approach to resolving these complaints, while reflecting that the majority of public authorities have told us that their capacity has increased" (Available at https://ico.org.uk/media/about-the-ico/policies-and-procedures/2617613/ico-regulatory-approach-during-coronavirus.pdf. Accessed on 3 March 2021).

A key challenge identified relates to public information on major projects such as the smart motorway road schemes. This is because data in these schemes is not disaggregated or broken down into the individual sub-contract work packages where many of the procurement challenges arise. The lack of clarity on supply chain contracting poses serious challenges to assess work packages and their corresponding project and contracting details.

One of the lessons from the collapse of Carillion was that it was operating as a finance company and not a construction company[7] with its suppliers taking the risk and government procurement policies such as on payments and retentions not being applied. Thus, there is a clear public interest in having greater transparency and oversight of these tier two contracts especially on high value complex projects. We would urge the Government to consider applying the OCDS and OC4IDS on these contracts to ensure that there is a golden thread of transparency through the supply chain.

These gaps and challenges resonate with the Government's efforts to improve "every part of the infrastructure project life cycle". Adopting an infrastructure open standard such as the OC4IDS will give the common ground for a new central platform that is intended by the new system. And this is paramount for the Government's efforts to succeed.

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

We are encouraged by the Government mandating contracting authorities to implement the OCDS. However, it could go further by using the unique project identifier in the OC4IDS as the 'golden thread' that joins up contracts into a single data set providing a holistic view of a project. The importance of this is emphasised in point 31 of the Green Paper which stresses the importance of the 'golden thread' from government priorities via the business cases through to procurement specifications and the assessment of price and quality when awarding contracts especially on complex major projects. Take the example of UK's new procurement pipeline published in June 2020 where 340 procurement contracts across over 260 projects were included.[8] Without a unique project identifier that connects project and contract information, officials will face visibility gaps when assessing performance and efficiency.

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

We strongly agree with this proposal which has special relevance for systems that operate through devolved administration. The lack of a systematic and uniform disclosure of infrastructure information is at the heart of the issues highlighted above causing data to be fragmented across various websites, platforms and formats, and creating gaps and challenges for transparency and accessibility. It also impedes the sharing and use of data across government institutions and the ability to make informed decisions.

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[7] Klein, Rudi (2018). Legal: Carillion - no turning back. Available at https://www.building.co.uk/comment/legal-carillion-no-turning-back/5091722.article. Accessed on 10 March 2021.
[8] *The procurement pipeline includes 340 procurement contracts across over 260 projects, programmes and other investments. It also sets out procurements with an estimated contract value of up to £37 billion over the next year"* (Available https://www.gov.uk/government/publications/national-infrastructure-and-construction-procurement-pipeline-202021. Accessed on 10 March 2021).

The data on this central digital platform must be accessible and useable to taxpayers, businesses and importantly other parts of the public sector. We have seen that digital platforms are a powerful tool to inform taxpayers, business and government about the performance of public procurement. The use of OC4IDS in Ukraine is an example of how digital dashboards can provide a curated view of data on thousands of road investments allowing stakeholders to be informed of the bid winners in a region, the level of public investment in that region and the average price of local roads. Key insights can be generated: in this case the dashboard data indicated that between 2016 and 2020, 47% of the road contracts were assigned to five contractors, with one contractor winning 37% of the projects[9]. Allowing data to be collated in a way that enables users' understanding is of key importance to provide clarity to stakeholders (public officials included) on how to improve resource allocation and the governance of infrastructure.

Adopting the OC4IDS will ensure that the new central platform reflects international best practice. It will also reinforce the perception that the Global Britain is genuinely open, transparent, and ready for business.

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[9] Available at https://portal.costukraine.org/graph.html. Accessed on 10 March 2021.