Open Ownership

Beneficial ownership data in **procurement**

March 2021

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Overview

Procurement is the purchase of goods, work, or services. As part of minimum reassurances during a purchase, most customers want to know who they are buying from. This is true when businesses purchase goods, work, or services (procurement), as well as when governments do so (public procurement). Twelve percent of global GDP was spent on public procurement in 2018,[1] with lower income countries tending to spend more proportionally,[2] amounting to USD 13 trillion per year.[3] In order to know who governments are really doing business with, it is essential to know who directly and immediately owns a company (legal ownership), as well as who is the beneficial owner ultimately benefiting from and exercising control over a company.

Knowing a company's beneficial owner can help reveal a legal entity's true ownership structure. Many governments have committed to beneficial ownership transparency (BOT) – that is, the collection of companies' beneficial ownership (BO) data by governments in a register and subsequent publication for public oversight – as part of anti-money laundering and combatting the financing of terrorism (AML/CTF) policies. Beyond this, beneficial ownership data is valuable in helping to manage operational, financial, and reputational risks by revealing who really owns and controls companies. There is a growing recognition of government-run, central, and open registers as a primary source of this data.[4]

Whilst managing risk by using different kinds of ownership information in public procurement is not new, governments' using data collected and published as part of BOT remains relatively unexplored.[5] A growing number of countries, including Bangladesh, Colombia, Egypt and Moldova, have started implementing BOT solely for public procurement purposes.[6]

Typically, governments have procurement policies that aim to prevent corruption and fraud as well as foster fair, equitable competition and transparency to deliver value-for-money services for taxpayers. Governments have more recently begun seeking additional policy aims through public procurement (for instance, to ensure gender equality and social inclusion (GESI), or to foster innovation).

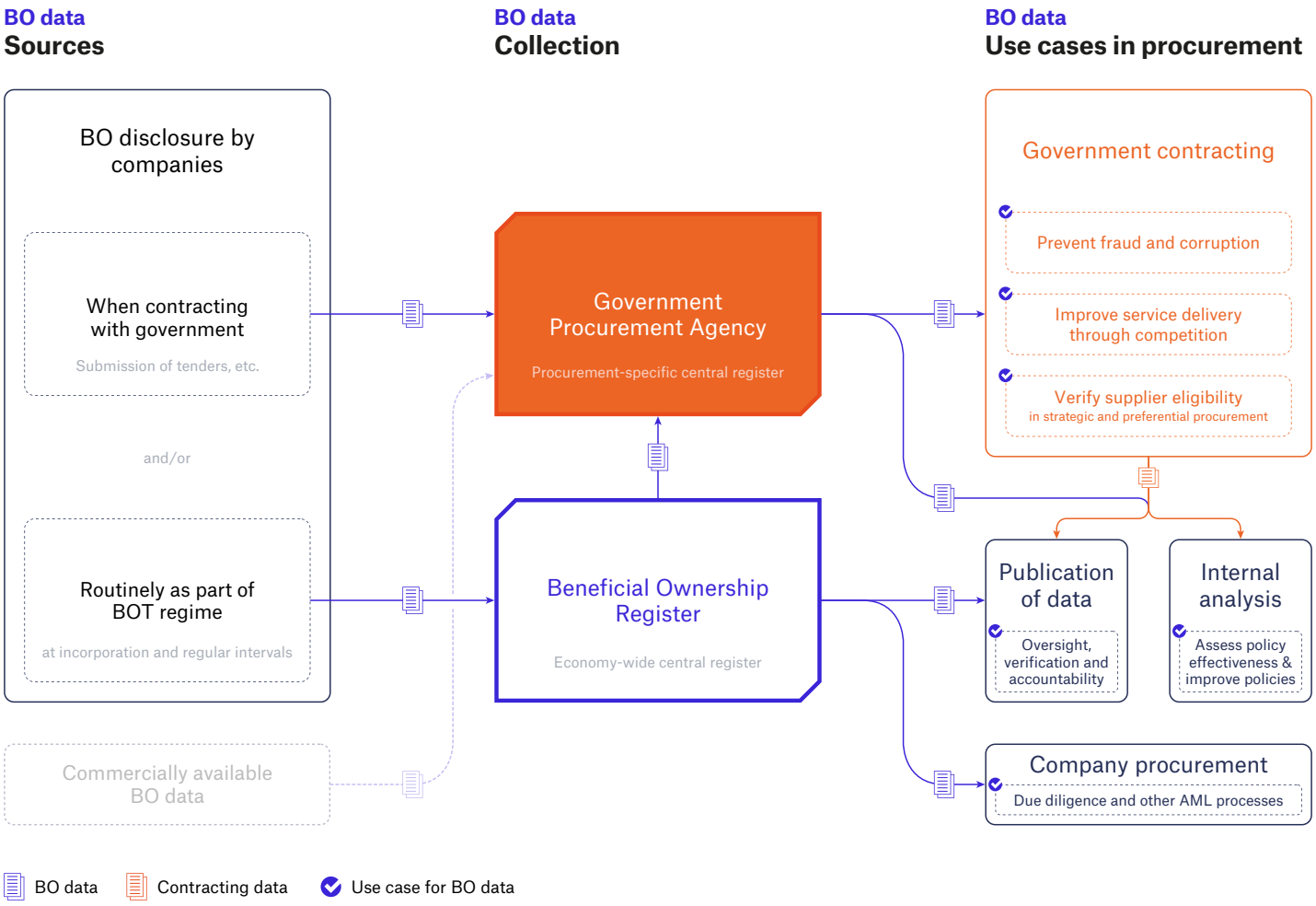
This policy briefing outlines the following ways BO data improves public procurement processes and objectives:

- **Prevent fraud and corruption** by helping detect potential signs of bid-rigging and conflicts of interest;
- **Improve service delivery through competition** by managing risk to expand and diversify the supplier base;
- **Verify supplier eligibility in strategic and preferential procurement** where this is based on ownership;
- **Oversight, verification and accountability** by civil society and the public through the publication of data;
- **Assess policy effectiveness & improve policies** by analysing BO data together with other datasets such as open contracting and spend data;
- Improve procurement indirectly on a systemic level by **improving the business environment**, allowing companies to use BO data to manage and reduce risk in their own **due diligence and other AML processes**.

For implementers, the briefing outlines a number of decisions to be made about when, where, and how to collect data, and how best to verify it, all of which will affect if and how governments can use BO data in procurement. Most of the case studies focus on national level public procurement and can be applied to local government procurement, where due diligence is typically lower.

Currently, not many governments appear to be using BO data in procurement. Where governments have implemented BOT, this data is not being used systematically in procurement processes. Doing so would be a relatively basic step that could deliver tangible benefits. For jurisdictions that have yet to commit or implement BOT the examples and research in this briefing provide a useful basis to improve procurement.

Figure 1. How beneficial ownership information improves procurement



Governments can collect BO information in central registers as part of procurement-related interactions with companies or for all companies in an economy (page 17). Economy-wide registers are a useful reference dataset for procurement agencies and are a source of potentially higher quality data (page 18). Commercially available BO data is also a potential data source, although issues with coverage have been raised. They cannot guarantee the coverage that government-run registers can (page 18).

BO data has a number of use cases directly in procurement processes (page 9). Data from public economy-wide registers also have indirect benefits for procurement systems as companies can use this data to manage and reduce risk in their own due diligence processes (page 16). Combining BO and contracting data allows for policy analysis so assess the effectiveness of procurement policies and to inform future policies (page 18). Publishing data allows for public oversight and accountability, and verification. It allows civil society to better understand and analyse government spending, and deters potential wrongdoing (page 19).

Source: Adapted from mySociety and SpendNetwork

Public procurement and contracting

As a significant amount of taxpayer money is spent on public procurement, governments owe it to their citizens to procure efficiently, to ensure a high quality of service delivery, and to safeguard public interests. Most procurement is regulated by both international and national legal frameworks and guided by processes that ensure fair, equitable, transparent, competitive, and cost-effective buying. This typically involves the requirement to issue public tenders for contracts whose value exceeds a certain threshold, for which private companies compete. A contract awardee is subsequently selected along objective criteria.

Figure 2. The five stages in a contracting process

Government contracting can be summarised in five stages. Note that not all contracting processes go through all stages. Direct contracting, for example, will not have a tender stage. Source: Adapted from the Open Contracting Partnership (standard.open-contracting.org/latest/en/getting_started/contracting_process).

Besides ensuring a fair, competitive process for efficient service delivery and value-for-money for taxpayers, procurement can also realise a number of additional, or horizontal policy objectives, referred to as strategic public procurement.[7] In these cases, certain suppliers are preferred over others to help meet specific objectives (also referred to as preferential procurement), and certain characteristics of private enterprises are factored into the selection criteria. Whilst needing to be balanced against other procurement objectives, horizontal policy aims can include stimulating innovation or help certain environmental or social policy objectives. In some other cases, traditional procurement principles may also be disregarded. For instance, in defence procurement, domestic and trusted suppliers are often preferred for national security reasons.

Evidence has shown that transparency in contracting data around the contracting stages improves procurement processes. For instance, publishing more information about procurements reduces single-bid tenders. Single-bid tenders are more expensive for governments, reduce competition, and present governance risks.[8] In addition to decreasing costs and improving competition, and therefore service delivery, a World Bank study has shown that contracting transparency also decreases corruption risks and kickbacks.[9] Open procurement data

allows both government and civil society to conduct analysis on procurement. Linking procurement data to other relevant datasets, such as spending data or BO data, allows for a more comprehensive understanding of how public procurement is conducted. This provides a better and more objective basis upon which policy decisions can be made.[10] As a result, many governments have committed to publishing open contracting data.[a]

Beneficial ownership

The owner of a company frequently refers to the direct legal owner of a company. However, companies are able to own companies, and complex ownership structures are relatively common. The concept of BO is useful in order to understand who actually owns and controls companies, and therefore who you are really doing business with. A beneficial owner is the **natural person** who **ultimately owns or controls** a legal entity, either **directly or indirectly**.[b]

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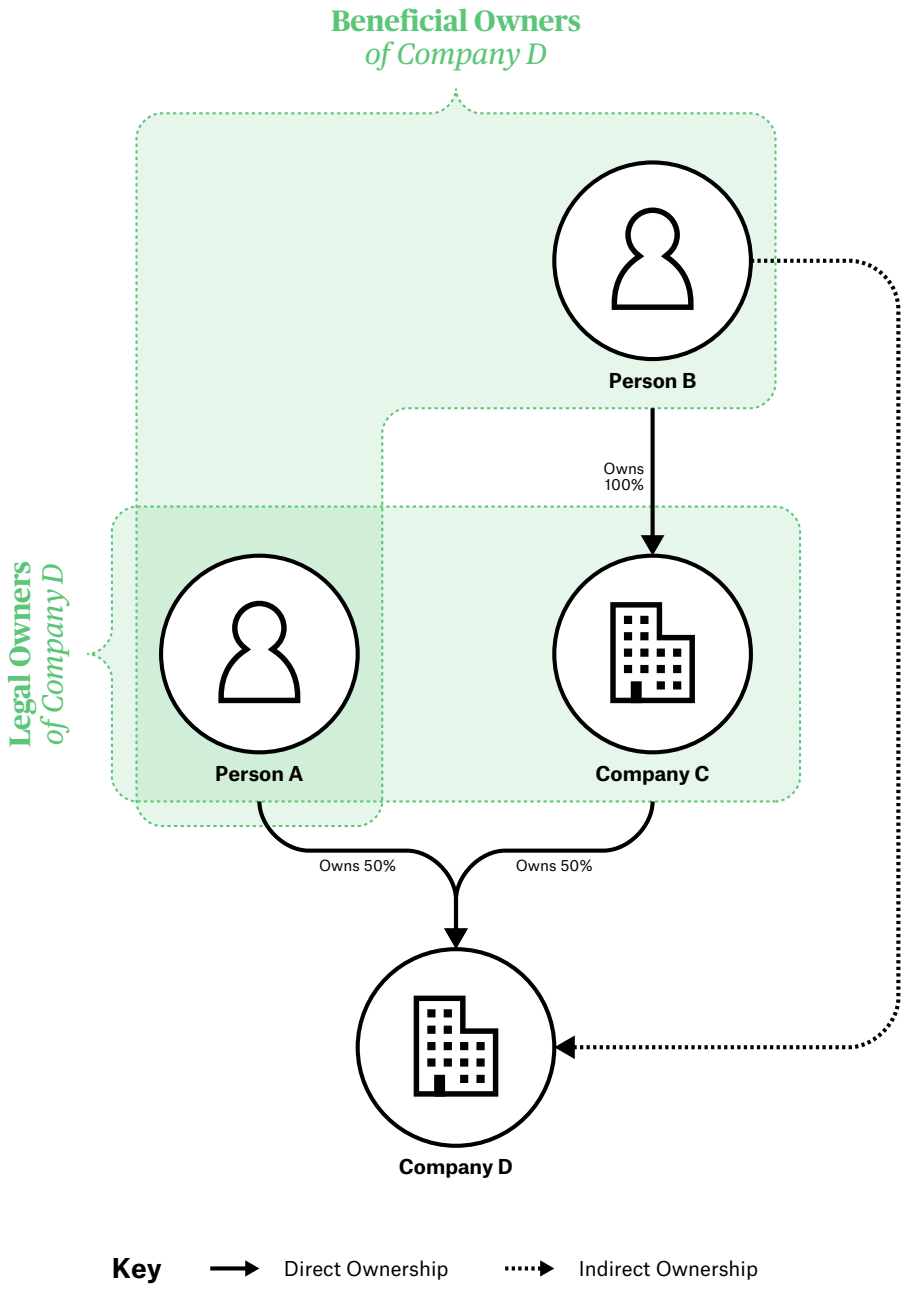
a For more information about open contracting see the Open Contracting Partnership (OCP), which has developed the Open Contracting Data Standard (OCDS) for this purpose. "Open contracting delivers and why it's the smart thing to do", OCP, n.d., https://www.open-contracting.org/impact/.

b For more information on defining BO and the legal aspects associated with this, please see: Peter Low and Tymon Kiepe, "Beneficial ownership in law: Definitions and thresholds", Open Ownership, October 2020, https://www.openownership.org/uploads/definitions-briefing.pdf.

Figure 3. Types of ownership



Person A and Company C are the legal owners of Company D. Person B is the legal owner of Company C. Person A and Person B are the beneficial owners of Company D. Person A exercises his/her ownership directly, while Person B exercises his/her ownership indirectly through Company C. Company C cannot be a beneficial owner as it is not a natural person.

BO is a particularly helpful concept in anti-corruption and AML, as companies can be used to disguise a company's true ownership (for instance, through setting up parent shell companies in secrecy jurisdictions). These companies can subsequently open bank accounts, granting them access to the global financial system whilst keeping links to the people who really benefit – the beneficial owners – hidden. According to a World Bank study, 70% of all grand corruption cases involve the use of anonymously owned companies.[11]

BO data can be collected by governments specifically for procurement, or as disclosures for an entire economy in central registers in order to fulfil a range of additional policy aims. In both cases, this data may be published and made publicly accessible (for instance, to facilitate external verification of the data).[12] In certain cases, companies may not have a beneficial owner that meets the declaration requirements according to the legal definition in a jurisdiction. Even in these cases, detailed and high quality BO disclosures, together with other disclosures, can still provide helpful insights into management and ownership structures, which can, for instance, provide useful insights into risks associated with subsidiaries.

Use cases of beneficial ownership transparency in public procurement

BOT can have both direct and indirect benefits for procurement.[13] It can improve procurement **directly** by using BO data to enhance the information recorded by procurement systems about people and organisations, in order to help make decisions and conduct analysis. **Indirectly**, BOT strengthens procurement on a systemic level.

The BO data use cases for improving procurement directly can broadly be divided into three categories:

1. **preventing corruption and fraud** by detecting actors (both buyers and sellers) trying to subvert existing legislation and the contracting procedure for personal gain;
2. **improving service delivery** through increased competition and enhanced due diligence;
3. verifying eligibility of suppliers for **preferential procurement** to meet horizontal policy objectives.

In all cases, BO data can be used to enhance information and help **decision making** to realise procurement policy goals. BO information, when combined with other datasets such as contracting and spending data, can also be used to **analyse** to what extent the implementation of a procurement policy has been successful.

Preventing corruption and fraud

"Corruption, the bane of public procurement"[14]

Huge sums of money are spent in public procurement, making it "the single biggest component of modern government."[15] Due to the amount of money and multitude of stakeholders involved, the complexity of the process, and the close interaction between the private sector and public officials,[16] procurement is the largest corruption risk for governments.[17] Specifically, significant corruption risks arise from conflicts of interest between those who award contracts and those who receive them.[18]

Although there is usually a focus on corruption at the awarding and contracting stages of the procurement and contracting process – where it is most common – corruption and fraud can occur at each stage.[19] There are no set definitions of corruption and fraud in procurement, and there can be some overlap in how they are defined in law.

For the purposes of this briefing, we define corruption in procurement as involving the abuse of power of office to steer a contract to a specific bidder without detection. This can be done in numerous ways. At early stages in the contracting process, bids can be tailored to benefit specific suppliers, in some cases to the extent that procurement does not go to tender and is directly awarded. A tender period may be shortened to make it difficult for a range of legitimate bids to be submitted, or inside information may be shared with particular bidders.[20]

At the award and contracting phase, corruption can involve awarding the contract to a company that, according to the set objective criteria, should not win. It can also involve inflating contract values or including favourable contractual terms, such as removing repercussions for the failure to deliver. As corruption involves the abuse of power of those involved in the procurement process, there is always a link and a conflict of interest between those involved and the companies that win. This can involve the payment of bribes in exchange for contracts as well as links between those assigning contracts and the contract awardees (for instance, a right to profits of the winning company). Public procurement is the most common purpose of all bribes.[21]

Fraud

Fraud in procurement can be due to false representation, failure to disclose information, and abuse of position.[22] For the purposes of this briefing, procurement fraud is defined as efforts to subvert the procurement process without the knowledge and complicity of officials. This can be done by multiple bidders co-conspiring to rig a bid as a cartel. Most procurement legislation forbids collusion and canvassing

in order to ensure fair competition. Companies can rig bids by, for instance, suppressing bids (thereby decreasing competition and likely inflating price), or by cover bidding (submitting fake bids in order to steer the selection towards a specific bid). Procurement systems should raise red flags when fraud is suspected, but fraud can be very difficult, as well as time and resource consuming, to detect. Red flags are not proof of wrongdoing, but suggest an investigation of the case is necessary. Companies can also fail to disclose information that allows procurement agencies to conduct proper due diligence, or misrepresent themselves to match the profile of the seller that a buyer is looking for (see Box 2).

All forms of corruption and fraud in procurement have negative effects on competition, value-for-money, and the delivery of services. Not only is this a waste of taxpayer money, but it can also mean collapsing bridges, fake medicines, or protective equipment for medical personnel that is not fit for purpose, undermining trust in government and democracy (see Box 1).[23]

Box 1: Red flags, corruption, and fraud in COVID-19 procurement

In the global rush for medical and personal protective equipment during the COVID-19 pandemic, many governments enacted emergency procurement legislation that prioritised speed of procurement at the expense of traditional safeguards. In the interest of speed, many countries replaced more time consuming tender processes – aimed at securing fair competition and price effectiveness – with direct awards.[24] Governments that dispensed with safeguards against fraud and corruption in their emergency procurement legislation sooner or later saw cases of fraud, corruption, and conflicts of interest. Dozens of procurement cases related to faulty or not-fit-for-purpose protective equipment have emerged during the COVID-19 crisis, many of which have been linked to previously unidentified conflicts of interest with politically exposed persons (PEPs). It is widely acknowledged that more could have been done to prevent fraud and corruption (for instance, by tracking the BO of contracted companies in an effort to "keep the receipts"[25] and that emergency procurement can be both fast and open).[26] At the time of writing, 40 countries accessing IMF COVID-19 related emergency funding mechanisms have made commitments to collecting and publishing BO information relating to COVID-19 procurement in order to "keep the receipts" and audit government expenditure.[27]

In the UK, research by the *New York Times* revealed that of USD 22 billion spent in 1,200 published contracts, USD 5 billion went to politically connected companies. The contracts analysed included a company receiving its first of nearly USD 274 million in protective equipment contracts within three weeks of being set up, and a number of companies that delivered materials that were deemed unusable by the National Health Service.[28] A government audit report found many instances where departments "failed to document the justification for using emergency procurement, why particular suppliers were chosen, or how any potential conflicts of interest had been identified and managed."[29] Due to the lack of transparency, it is unclear whether corruption has occurred, but it is clear that with so many companies involved in procurement with politically connected ownership, there should have been red flags raised to prompt closer inspection and documentation of potential issues.

In the Netherlands, the public prosecutor charged two men with defrauding the German government in a facemask contract. The pair had set up a website with false information about facemask production and received a deposit of EUR 880,000 of a EUR 4.4 million contract for 11 million facemasks, but delivered none.[30] The supposed supplier, when visited by the buyers, knew nothing about the contract.[31] The fact that the company's ownership was different from that of the bank account should have raised red flags.

Using beneficial ownership data to prevent fraud and corruption in procurement

BO data can help prevent corruption and fraud in two key ways:

1. detecting undisclosed or hidden **conflicts of interest**;
2. raising red flags for potential signs of **collusion and bid rigging**.

Conflicts of interest

BO information can help check for conflicts of interests that may escape more superficial checks by identifying links between those holding positions of power, such as PEPs or procurement authorities, and the (hidden) ownership and control of companies. When a red flag is raised, signalling a bid may have a potential conflict of interest, additional checks can be built in to ensure contracts are awarded fairly. If the BO data is structured and machine-readable, these checks can be automated, saving procurement officers time and making procurement more efficient. For instance, it can be combined with PEP data to identify their involvement in supplier companies (see Box 1).[32]

This data can be used by governments to help make decisions on contract awards, and may also be published and used by the general public to hold the government to account (see Box 1). The publication of BO information of suppliers also serves as a deterrent. For its Social Fund and its Regional Development Fund, the EU uses ARACHNE, an "integrated IT tool for data mining and data enrichment"[33] for due diligence, which uses a commercial BO dataset but is not published for public oversight. Both Ukraine (see Box 6) and Slovakia (see Box 7) collect BO data themselves in central registers. Slovakia collects BO data specifically for procurement and publishes it for public oversight. Ukraine has implemented BOT across all sectors of the economy and collects BO information on all legal entities, and uses this data to check for conflicts of interest in procurement.

Collusion and bid rigging

BO data can also help detect certain forms of bid rigging. The submission of bids from different companies that share ownership is often not illegal. In the interest of fairness and non-discrimination, procurement officers are very unlikely to be able to make contract award decisions based on ownership – and may be legally prevented from doing so. In many cases, they do not collect or access ownership data at all. However, what is illegal under antitrust legislation in most jurisdictions, though certainly not all, is if companies are operating as a cartel,[34] artificially inflating prices, price gouging,[35] or colluding and canvassing with other companies. This can sometimes be difficult to prove, so a procurement system should be able to identify when multiple bids share (beneficial) ownership, and raise red flags for closer inspection of these bids.

The US Government Accountability Office's (GAO) review of 32 cases of defence procurement identified cases of "price inflation through multiple companies owned by the same entity to falsely create the appearance of competition"[36] (see Box 4.1). If fake bids are submitted through firms with a common owner, this is much harder to detect without BO data.[37]

Improving service delivery through competition

Procurement frameworks aim to facilitate the purchase of the most appropriate services for taxpayers, aiming to achieve the highest quality for the lowest price through fair competition. This section outlines how BO data can help improve the delivery of services by governments fostering competition and leveling the playing field by:

1. **reducing and managing operational and financial risks** through enhanced due diligence;
2. **diversifying suppliers** and widening business participation;
3. fostering competition by **detecting shared ownership**.

Reducing and managing risk

Knowing the BO of companies involved in procurement and their broader ownership structure collected as part of BO disclosures, helps manage operational risks (for instance, by checking for financial liabilities of other entities within an ownership structure, which could be used to hide debt or losses).[38]

This is illustrated by the case of Carillion, a company that delivered services for hospitals, schools, prisons, and transport and had around 450 contracts with the UK government.[39] In January 2018, Carillion went into liquidation. The true impact on the delivery of government services of Carillion's insolvency was unclear due to the number of entities in its complex ownership structure who had been awarded contracts. This made it difficult to assess the full implications of the insolvency.[c] Therefore, arguably, a complete risk assessment could not have been possible. In June 2017, Carillion owed GBP 2 billion[40] to its subcontractors and suppliers, leaving many small and medium-sized enterprises (SMEs) unpaid with outstanding debts. One mentioned that "the government continued to give them billion-pound contract after billion-pound contract and that said to me, as a small supplier, that the government had done their due diligence. We were following the government lead."[41]

BO data and better visibility of ownership structures helps government buyers conduct better risk analysis for procurement decisions, and therefore deliver better services to citizens. In the case of Carillion, knowing how many companies in its ownership structure were contracting with the government would have helped to accurately assess the true risk posed by insolvency, and potentially help mitigate it.

Diversifying suppliers

Better managing risk can help to increase the pool of potential suppliers, thereby fostering competition. Because government buyers try to mitigate and manage risk, much like private companies do, many governments have tended to favour larger suppliers over smaller ones, with the assumption that this bears less risk.[42] This can be seen, for example, in IT procurement. Due to the risks involved in early IT projects, this assumption led to the saying, "nobody was ever fired for choosing IBM", as the tech-giant's size provided an extra level of assurances of delivery, albeit not necessarily within budget. This has likely contributed to the common crowding out of smaller suppliers. SMEs are often significantly cheaper and offer substantial savings and value-for-money for taxpayers. A 2013 UK government report showed a 90% reduction in cost by awarding a hosting and server contract to a smaller provider. The average savings from switching from incumbent and large suppliers to smaller suppliers were in the region of 30% to 90%.[43] Being able to better understand and manage risk allows governments to be more confident in doing business with newer suppliers. By increasing the range of potential suppliers, governments stimulate competition.

Opening up procurement to foreign suppliers can also help increase competition for government procurement contracts and therefore have a positive effect on the cost of goods and services domestically.[44] Looking at legal ownership alone cannot give an accurate picture of procurement from foreign suppliers, as these tend to register domestically. The EU uses a commercial BO dataset to be able to analyse the impact of cross-border penetration in public procurement.[45] By accurately understanding and analysing trade based on data, governments can make better evidence-based policies to promote trade and foster competition in procurement.

Detecting shared ownership

Finally, using BO data in procurement can help detect shared ownership between multiple companies in a bid. This is not problematic per se, and can be common, especially in emerging markets, but there are some cases where this has been associated with anticompetitive effects.[46] It is necessary to understand both ownership and control in order to assess potential (anti)competitive effects.[47] Any procurement system should be able to detect and monitor shared ownership and control for possible closer inspection. In order to truly assess both common ownership and control, it is necessary to analyse the BO of companies.

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c In January 2018, Companies House listed around 100 companies and partnerships with "Carillion" in their name. See: Federico Mor, Lorraine Conway, Djuna Thurley, and Lorna Booth, "The collapse of Carillion", House of Commons Library, 14 March 2018, 30, https://researchbriefings.files.parliament.uk/documents/CBP-8206/CBP-8206.pdf.

Box 2: The Stork's Nest

In 2006, a Czech company whose shares were owned by a limited company subsidiary of Agrofert, the multinational conglomerate owned by businessman Andrej Babiš, started renovations on a dilapidated farm outside Prague. This company subsequently changed from being a limited company to a joint stock company with bearer shares.[d] After it changed its name in February 2008, all shareholders became anonymous.[48]

In August 2008, the farm received a EUR 1.67 million EU subsidy intended for small businesses,[49] and in 2010, the farm opened as the Stork's Nest hotel and conference centre. That same year, Czech media started making connections between the farm and Agrofert, making the point that at the time of receiving its EU subsidy it was considered a small business. This led to public outcry and mass demonstrations. In response, Babiš denied any connection to the business. In 2013, Agrofert took over the Stork's Nest, which it said was "loss-making and overburdened with debt".

In 2018, a leaked EU report stated that, it appeared, the Agrofert conglomerate staged a fake transfer of ownership of the Stork's Nest to anonymous shareholders in December 2007 in order to feign eligibility for a grant intended for SMEs, which it would not have been eligible for as part of a bigger business. Babiš and Agrofert continue to deny all involvement with the Stork's Nest at the time it received the subsidies, and Czech prosecutors dropped the lawsuit in 2019. This case illustrates how obfuscating a company's ownership could potentially be used to disguise its size, and how BO data can be used to detect potentially hidden links between entities and their parent companies.[e]

Verifying eligibility in strategic and preferential public procurement

Preferential procurement is any procurement that gives preference to certain suppliers, thereby deviating from the traditional principles of public procurement of equality, non-discrimination, and competition.[50] Many governments in both developing and developed economies have introduced preferential procurement policies and programmes to achieve certain horiztonal policy objectives. This is also called strategic procurement.

As governments are the largest single buyer of goods and services in most economies, it is considered "a powerful force for change"[51] to realise other development and sustainability goals. Preferential procurement policies are numerous and diverse in their application (see Box 3). These include environmental goals (green procurement) and stimulating innovation, trade, and economic integration.[52] A key aim of strategic procurement is related to GESI. This includes preferential procurement to redistribute opportunities, choices, and resources. Often, this is done to improve the conditions of disadvantaged individuals and groups.[53] Inclusivity in procurement supports job creation. Governments can also procure with a national focus, for instance, to develop a sector or in defence procurement where domestic and trusted suppliers are often preferred for national security reasons.

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d Bearer shares are physical share documents where the person who holds the document is the legal shareholder to whom dividends are paid. As they are unregistered and their ownership can easily change, they lack effective regulation and control, and as a result can be used for illicit purposes. Due to their opacity, bearer shares have been banned in many countries.

e For additional information on the Agrofert case and the impact BOT has had in Slovakia, please see: Tymon Kiepe, Louise Russell-Prywata, and Victor Ponsford, , "Early impacts of public registers of beneficial ownership: Slovakia", Open Ownership, September 2020, https://www.openownership.org/uploads/slovakia-impact-story.pdf.

Box 3: Strategic and preferential procurement examples in practice

- **Green procurement**: The EU's "Buying Green" procurement policy seeks to procure goods, services, and works with a reduced environmental impact throughout their life-cycle.[54]
- **Innovation**: Mexico set up a "Public Challenges" fund which invited proposals for innovative digital solutions to address specific societal challenges.[55]
- **Stimulate economic growth by supporting SMEs**: The EU's procurement policy breaks tenders down into smaller lots, more manageable for smaller companies.[56] The World Bank's 2017 Benchmarking Public Procurement report, which surveys 180 economies, shows that 47% of countries indicate they provide SME-specific public procurement incentives.[57]
- **GESI**: In Chile, the government procures from "female enterprises", which are companies where women own the majority of company shares and the CEO must be a woman.[58] In South Africa, the government aims to improve opportunities for Black people and women through its Broad-Based Black Economic Empowerment Commission (B-BBEE Commission) policy.

Certification

For public procurement to realise its transformative potential of addressing additional policy aims, accurate and reliable verification of supplier eligibility should form the backbone of a procurement regime.[59] Certification is the means by which governments are able to establish the eligibility of an individual or company in applying for preferential procurement contracts. Reliable information is critical for doing so.

Box 4.1: Certification challenges in US defence procurement

The US has relied on self-certification in defence procurement but, in doing so, the country has seen both financial and nonfinancial fraud. The Department Of Defense's (DOD) vendor vetting programme must carry out investigations into contractor ownership, including BO, without access to a central BO register. In an audit, the GAO concluded that the lack of access to accurate information exposed the DOD to national security risks from contractors with opaque ownership structures, and saw individuals circumvent debarment and eligibility criteria for specific contracts.

Of the 32 cases reviewed, four cases involved individuals creating domestic shell companies for foreign manufacturers to bid on contracts specifically designated for domestic companies. One of the companies ultimately supplied the DOD with defective and non-conforming parts that led to the grounding of at least 47 aircrafts. Three of the companies shared sensitive military technical drawings and blueprints to foreign countries. In 20 of the 32 cases, GAO identified ineligible contractors using self-certification to fraudulently win bids set aside for companies with majority ownership by women, US citizens who are economically or socially disadvantaged, or service-disabled veteran-owned businesses. In these cases they either fraudulently used the names of eligible individuals or the figureheads did not actually hold the level of BO or control of the company required.[60]

In another case, the Pentagon discovered that the company it had procured security cameras from had circumvented domestic production requirements[61] by disguising its illegal importation of Chinese surveillance equipment through the use of shell corporations with anonymous ownership records.[62]

The main challenge in certification is the same challenge faced by central registers of BO: to establish and verify whether statements submitted by companies are accurate and reliable. Certification is typically done through self-certification, certification via private businesses, or registration via centralised registers based on demographic data.

Where a centralised register as a reference database is lacking, certification regimes can face issues with accuracy and reliability (see Box 4).

Box 4.2: Preferential procurement in South Africa

In South Africa, the B-BBEE Commission aims to increase involvement from Black and women-owned businesses, amongst other criteria. Scorecards are provided by private entities, which give a score according to the five B-BBEE criteria, two of which relate directly to percentage ownership and voting rights by Black people and women. Higher scores result in greater likelihood of winning tenders.

The most significant risk that private verification agencies face in verifying the ownership score is the overstatement of beneficial Black ownership and gaining an accurate image of complex ownership structures.[63] The B-BBEE Commission reported that less than 20% of transactions in 2018-2019 included complete certification documentation when first submitted. Follow-ups concerning incomplete information were often conducted without any success, having to draw on various documents with varying formats that lacked specific data requirements.[64] Despite hefty sanctions, the current system is highly susceptible to fraud.[65]

Ensuring eligibility with beneficial ownership data

Centralised and verified BO registers are a potentially valuable reference dataset that can be used to help verify bidder eligibility at the award stage of procurement regimes that define eligibility based on ownership or control. BO registers can help with simplifying and automating the verification of eligibility and auditing preferential procurement qualification procedures.[66] In South Africa, for instance, reliable BO information would be useful in verifying B-BBEE certification, which predominantly relies on affidavits. It would help create a more complete picture of ownership to more accurately achieve policy objectives.[67]

Box 4.3: Procuring from indigenous-owned businesses in Australia

Australia aims for 3% of contracts to be delivered by businesses with more than 50% indigenous ownership.[68] Supply Nation is a not-for-profit organisation that holds a central database of majority indigenous-owned businesses. Whilst Supply Nation is a main source for this information, it is not the only one, nor are indigenous-owned businesses mandated to receive certification from them. If an enterprise states that it is an indigenous enterprise and is not listed with Supply Nation, procurement officers must take steps to ensure that the enterprise is 50% or more indigenous-owned.[69] The Australian Securities and Investments Commission (ASIC) has been criticised for not collecting and publishing businesses' beneficial owners alongside directorship information. If they would do so, this would make it easier to verify the percentage ownership of indigenous-owned businesses and help the government to analyse how they are upholding their social procurement commitments.[70]

Collecting information in central registers has the advantage that information is checked and updated more regularly in the business lifecycle, as discussed later in this briefing. This could make verifying eligible bidders more efficient and provide better data for analysis, as governments could do so centrally in a standardised data format, making it cheaper to use and analyse. If the data is available in structured, machine-readable format, these processes can be automated to reduce costs.

Current BOT regimes do not typically collect demographic information for individuals, besides age (via date of birth) and location. It is possible to collect additional data, but countries would need to assess whether it would be appropriate to collect certain sensitive demographic data – for instance, race and ethnicity – as part of a broader BOT regime. Additional demographic information could be collected during the procurement process, and combined with BO data at a later stage.

Improving procurement systemically

Whilst the previous sections have focused on direct benefits of BO data to procurement, it is important to recognise the wider and systemic indirect benefits for the general environment from which governments procure. Broadly, BOT improves procurement in the following areas.

1. **Increase competitiveness** between businesses by leveling the playing field – reducing corruption creates an environment where all companies play by the same rules.[71]
2. **Reduce risk and the cost of due diligence**. Knowing who companies are doing business with and increasing supply chain visibility helps companies manage financial exposure and operational risks.[72] To illustrate, 84% of chief supply chain officers said the lack of visibility is the largest challenge in mitigating disruptions.[73] This benefits SMEs, as the costs of due diligence are relatively higher for smaller companies.[74]
3. **Foster a business culture of transparency and trust**, between businesses as well as between business and society, and business and government. This, in turn, is good for investment.[75] BOT means that all actors have more confidence about who they are really entering into business with, increasing accountability of and trust in business and government, and closing loopholes for bad actors.

The systemic benefits of BO data for procurement were highlighted in a 2019 Adam Smith study, which stated that "registers may facilitate greater prosperity by contributing to a more open investment regime and by ensuring value-for-money in public procurement. This includes bolstering customer due diligence in the private sector, establishing a level playing field and fostering open competition".[76]

The full range of systemic benefits of BOT in procurement can only be realised with centralised open registers. The review of the implementation of the UK BO register shows that of the companies that used the register for potential customer checks, due diligence checks, and looking up information on competitors, 64% said the information was useful or very useful.[77] Recent surveys show the use of public registers for due diligence is on the rise.[78]

Operationalising the use of beneficial ownership data in procurement

Operationalising the use of BO data in procurement requires making decisions about a number of things, including where to source BO data from, how and when to collect it, and how to verify it and whether it is published. These will all have an impact on data quality and useability. How and in what format data is collected will also affect its ability to be linked to other datasets, which may allow for specific types of analysis. The following section outlines some key considerations for implementers.

Data collection and coverage

Broadly, governments implementing the use of BO data in procurement can either buy commercially available BO data or collect it themselves in a centralised register. The latter is good practice, as this means that different user groups (including procurement authorities), can access the information through one central location in a standardised format. This removes some of the practical and cost barriers to accessing and analysing BO information.[79] If governments collect the data themselves in a central register to aid procurement, there are two main options:

1. governments can collect data during the procurement process and hold this in a **central procurement-specific register**;
2. governments can pull data from a **central BO register that covers all sectors of the economy** into procurement processes.

In both cases, there are practical and technical considerations to maximise the effectiveness of disclosures. Open Ownership (OO) has developed a set of principles for effective disclosure (see Box 5) for governments aiming to implement central registers, which also apply to procurement-specific registers.

Box 5: The Open Ownership Principles for effective beneficial ownership disclosure

OO has developed the OO Principles as a gold standard for effective BO disclosure. They are intended to support governments implementing BO reforms, and guide international institutions, civil society, and private sector actors in understanding and advocating for effective reforms. The nine principles are necessary for high quality, reliable data to maximise usability and minimise loopholes.

1. BO should be **clearly and robustly defined in law, with low thresholds** used to determine when ownership and control is disclosed.
2. Disclosure should **comprehensively cover** all relevant types of legal entities and natural persons.
3. BO disclosures should contain **sufficient detail** to allow users to understand and use the data.
4. Data should be collated in a **central register**.
5. Data should be **accessible to the public**.
6. Data should be **structured and interoperable**.
7. Measures should be taken to **verify** the data.
8. Data should be kept **up to date** and **historical records maintained**.
9. Adequate **sanctions and enforcement** should exist for noncompliance.

For more information, please see: www.openownership.org/principles.

Commercially available BO data

BO data from private third-parties have inherent limitations. Private sector BO providers building proprietary datasets often have limited visibility on (or rights to distribute) full ownership data, and often rely on inferring from partial information. They cannot coordinate the knowledge held by beneficial owners, shareholders, and companies or guarantee the coverage in the way that a government with the right powers and mandate can.[80] For example, the EU's ARACHNE system uses Bureau van Dijk's ORBIS data[81] – a commercial dataset which includes BO data – to detect potential conflicts of interests. However, there are debates about the quality of ORBIS data, and some data users have pointed to gaps in its coverage of certain countries (Germany, for instance). Whilst ORBIS covers a huge number of companies, the varying coverage per country highlights that BO data from private suppliers is no substitute for governments legislating for companies to disclose their BO.[82]

Central registers

A number of governments collect BO data themselves specifically for procurement (see, for example, Box 6). In this case, BO information can be collected at different stages of the contracting process (see Figure 1). Governments must ensure their disclosure regime comprehensively covers the legal entities to fulfil their policy aims. How and when data is collected comes with different advantages and disadvantages relating to the accuracy and quality of the data, as well what the data can be used for.

To illustrate this, if jurisdictions do not have a central BO register but want to use BO data to prevent fraud and corruption, they must collect the BO information of all entities submitting bids, in addition to conducting BO checks on the contract awardee, otherwise they will not be able to identify bid rigging. The UK's proposed register of beneficial owners of overseas companies and other legal entities intends to collect BO data on foreign entities seeking to bid for UK government contracts over a certain threshold. However, the proposal is to only collect this data for contract awardees, making it impossible to detect bid rigging by cartels.[83] Collecting BO information for the sole purpose of procurement may also restrict governments from using BO data in other policy areas.

Governments can also collect information in a central register on all legal entities in a jurisdiction as part of a BOT regime and subsequently use this data in procurement. In this case, BO information can be collected and checked at different company lifecycle and procurement stages. Economy-wide BOT can allow for better visibility of full ownership structures when sufficient detail is collected. This can reveal other legal entities in an ownership structure that would not be revealed in procurement-specific BO data collection.

A key consideration for implementers is whether the disclosure regime comprehensively covers all companies relevant to procurement, including, for instance, foreign entities. Using data from other jurisdictions, where available, may not be feasible in the near future, as aspects like legal definitions and standards on verification differ. The UK, for instance, has proposed a separate register for foreign entities wishing to do business with the government, in addition to its central register for the BO of UK legal entities.[84] Implementers may face additional challenges when verifying the BO of foreign entities, such as verifying the identities of foreign nationals.

Collecting BO data on all legal entities also allows governments to use BO data in a number of other policy areas (for instance, AML), where some countries may already be under international obligations. In the Czech Republic, for instance, contract awardees were required to submit BO information as prerequisites for contracting. Following the implementation of a centralised BO register, as required by the EU Fourth and Fifth Anti-Money Laundering Directives, the Czech Republic removed its requirement to submit BO data in procurement. Instead of the supplier needing to provide this information as part of the procurement process for every bid, contracting authorities search the relevant information on the Register of Beneficial Owners, maintained by registry courts.[85]

Currently, not many governments appear to be using BO data in procurement. Where this is done, it is not done systematically, and appears to be done in an ad hoc fashion and not broadly publicised. The World Bank's 2020 Good Practices Guide for Preventing and Managing Conflicts of Interest in the Public Sector, for instance, only mentions Chile, Indonesia, Moldova, and Ukraine as collecting this data as standard procedure.[86] In contrast, of the few other countries that do have central and public BO registers, most do not appear to be using them systematically in procurement. How Ukraine collects BO data on all legal entities as part of its BOT regime, and subsequently uses this in its procurement processes, is detailed in Box 6.

Box 6: Ukraine's ProZorro platform

Ukraine's online procurement platform, ProZorro, is considered one of the best global platforms for monitoring public spending.[87] It was implemented as part of procurement transparency reforms in 2014. Ukraine also collects BO information of legal entities registered in the country on a central, publicly accessible register, called the Unified State Register of Legal Entities. According to Ukraine's Public Procurement Law (Article 17), the procuring entity should refuse participation in the procurement procedure of the bidder if the Unified State Register does not contain information about the beneficial owner of the legal entity. Information about bidders and awardees, including information about their beneficial owners, is accessible online free of charge on ProZorro, also in a machine-readable format, which allows public scrutiny and oversight.[88] According to research by OCP, ProZorro has led to saving at least 10% of the procurement budget by fostering competition and decreasing corruption.[89]

Public access

Publishing BO data – for procurement or otherwise – stimulates broader data use and scrutiny that is likely to drive up data quality. The publication of data can also have a deterrent effect. Therefore, in order to get the maximum benefit and full utility from BO data in procurement, including its systemic and indirect effects, governments should collect, verify, and publish BO data centrally. This also allows governments to use BO data in other policy areas.

Whilst there is a case for making data public to maximise effectiveness of BO data in public procurement, there are legitimate privacy concerns over publicising certain characteristics of individuals and the unequal impacts these may have. As a principle, governments and companies should not collect and disclose data beyond the minimum that is necessary to achieve their policy aims, or data that poses a significant risk of harm.[90] Governments should be mindful about what data they collect and the fields they publish, and consider exceptions on a case-by-case basis where credible threats to an individual emerge from the publication of data.[f]

Structured and interoperable beneficial ownership and procurement data

Internationally, there has been a growing trend towards e-government and e-procurement.[91] Operationalising the use of BO data in procurement is more easily done through integrated digital technologies rather than through paper based systems. In order to maximise the potential benefit of using BO data in procurement, it should be collected and stored as structured, interoperable and machine-readable data, which can be analysed easily and cheaply. When BO data is combined with other open and structured datasets, such as open contracting and spending data, analysis can provide powerful insights into procurement practices, consumption models, and supplier transactions.

A number of data standards have been developed that can be used off the shelf for implementing governments, which facilitate easy exchange of data between systems. The Open Contracting Data Standard (OCDS) was developed by the Open Contracting Partnership for this purpose, and is implemented around the world. It is built on the idea that it should be possible to follow a contracting process from planning to implementation through a unique ID.[g] For BO data, OO has developed the Beneficial Ownership Data

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f In the UK, for instance, individuals can apply for their information to be concealed from the public register, if personal characteristics of a person when associated with a company put a person "or any person living with them, at serious risk of violence or intimidation." See: "Applying to protect your personal information on the Companies House register", GOV.UK, 16 September 2020, https://www.gov.uk/guidance/applying-to-protect-your-personal-information-on-the-companies-house-register.

g For more information on the Open Contracting Data Standard (OCDS), see: www.open-contracting.org/data-standard.

Standard (BODS), which provides a structured template for describing BO as machine-readable data, laying out key data points for implementers to collect.[h] OCDS and BODS data can be easily combined.

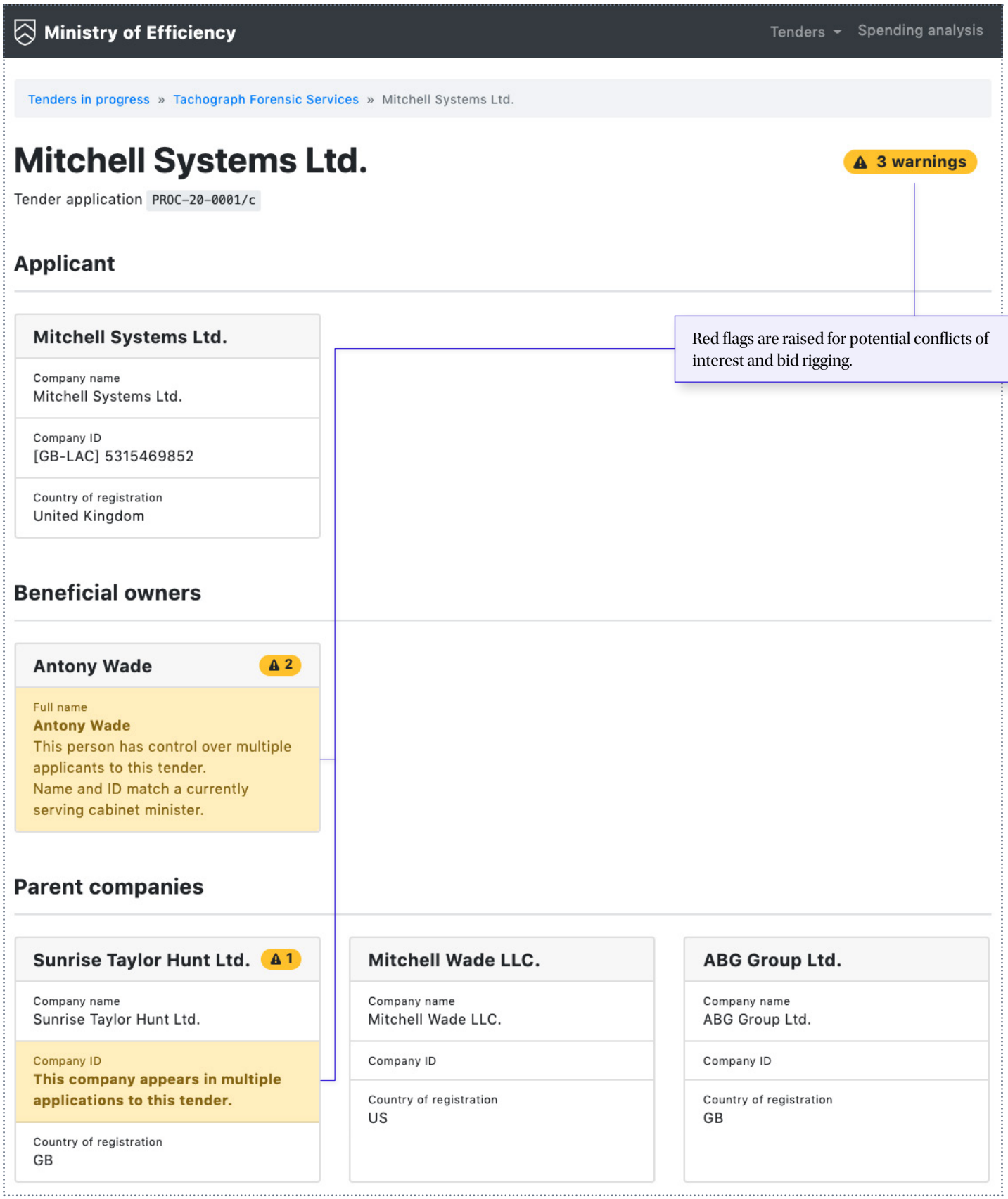
When combining datasets, it is key to be able to identify individuals and companies across them. Matching people across datasets by using identifiers such as names is unreliable and labour intensive, and not viable for larger datasets.[92] A better approach is to use unique identifiers. Combining datasets allows for analysis that is otherwise not possible. For instance, without linking procurement data to spending data, it is not possible to comprehensively analyse a procurement system.

By using national identification numbers in BO disclosures as unique identifiers, Global Witness was able to link jade mining concessions to government officials in Myanmar.[93] Governments implementing BOT, like Nigeria and Jordan, are developing unique identifiers for their own registers.

When these different datasets are expressed in common formats, they can be incorporated into standard workflows, and the analysis can be automated. This is demonstrated through the Bluetail prototype, which connects contracting and BO data for multiple bidders as well as identifying red flags (such as the same beneficial owner appearing in multiple bids). The Sinar Project in Malaysia, a civi-tech organisation that uses open data sources to hold its government accountable, developed Telus. Telus is a web service application that imports and joins up open data sources for PEPs (using the Popit API), BO (using BODS data from the Global Register), and procurement contracts (using OCDS) to expose conflicts of interests in procurement.[94]

h The Beneficial Ownership Data Standard (BODS) has been developed to serve as a solid conceptual and practical framework for collecting and publishing BO data, and enabling the resulting data to be interoperable, more easily reused, and higher quality. BODS has been developed in collaboration with dozens of international experts in company data and in technical standard-setting, across civil society, business, and academia. A separate tool has been developed that allows the data to be visualised. See: standard.openownership.org.

Figure 4. Bluetail: Prototyping the use of structured beneficial ownership data in procurement



Open Ownership has built on a prototype developed by mySociety and Spend Network called Bluetail, which shows how BODS and OCDS can be used to automatically raise red flags for corruption and collusion risks when procurement officers screen tenders. For more information see: www.openownership.org/blogs/tps-prototyping. Source: bluetail.herokuapp.com/tenders.

Verification

To maximise the impact of BO data, it is important that data users and authorities can trust that the data contained in a register broadly reflects the true and up-to-date reality of who owns or controls a particular company. This can be done through verification[i] (defined as the combination of checks and processes that a particular disclosure regime opts for in order to ensure the BO data is of high quality, meaning it is accurate and complete at a given point in time). This can include checking data conforms to known and expected patterns, cross-checking data against other government-held datasets, and frequently checking if data is correct.

Data should be verified on submission and updated – or confirmed that it still holds true – on a regular basis. Procurement officers want to be confident that the data is correct at the time of decision making, so data should at a minimum be (re)verified at that point in time. There will be more opportunities to verify data during a company life cycle in a central database than when data is collected and held for procurement alone.[95] Making the data public drives up data use and allows for additional verification from civil society, the private sector, and the general public.

Sanctions and enforcement

When governments use BO data in procurement, they can drive up compliance to a BOT regime by imposing sanctions relating specifically to procurement. A number of countries have implemented sanctions for the failure to provide or providing incorrect BO data (see, for example, Box 7). These sanctions range from preventing companies and their beneficial owners from signing contracts, or debarring them from being involved in procurement for a specific period of time. Sanctions are not a substitute for proper due diligence in advance. Debarring certain companies may lead to procurement shortfalls, but the presence of sanctions will help drive up compliance. Full BOT allows governments to more effectively enforce sanctions, such as debarment from procurement, as it becomes more difficult for individuals to hide behind complex ownership structures.

Box 7: Slovakia's Register of Public Sector Partners

Slovakia implemented the Register of Public Sector Partners in 2017, a BO register specifically for procurement. All private entities that provide goods and services to the public sector over a certain value are within its scope, along with any that acquire assets or receive qualified financial contributions from the public sector (over EUR 100,000 for a single contract and EUR 250,000 for recurring annual contracts). Registration is only for awardees, and is the responsibility of the public-sector partner (PSP) and a necessary precondition for conducting business with the public sector. PSPs are not allowed to register themselves, but must find a designated authorised person – an attorney, notary, auditor, banker, or tax advisor – to register them, as well as to verify the data submitted. These verification documents are also publicly available.

Being in breach of the obligations to register may result in sanctions that can be imposed on the PSP, members of its statutory body, the authorised person, or the beneficial owners. In addition to fines, some of the most serious sanctions are the threat for the public-sector entity to withdraw from the agreement with the PSP concerned with an immediate effect, or imposing restrictions on trading with the public sector in the future. The Register of PSPs has already had an impact, resulting in a number of lawsuits and helping clean up public procurement as well as reducing the risks to SMEs' sub-contractors.[96]

i For more information, please see Open Ownership's policy briefing on the verification of BO data: Kiepe, "Verification of Beneficial Ownership Data".

Conclusion

Recently, there have been many discussions about the use of BO data in procurement. This is due in part to the numerous politically linked scandals in COVID-19 procurement, and the dozens of countries that have committed to BOT in procurement as a result. The use of BO data in procurement is not new, and is already being practiced in some places.

BO data is essential in order to know with whom one is doing business. Using BO data in procurement to help make decisions and conduct analysis can help achieve a range of procurement policy objectives. It can help prevent corruption and fraud, limit wastage, improve service delivery, and help establish bidder eligibility in strategic procurement, which are essential to the appropriate expenditure of public funds. Full transparency over who owns and controls companies in a jurisdiction can also improve procurement indirectly and systemically. BOT reduces operational and financial risk within an economy and improves the business environment overall.

This briefing argues that in order to get the maximum potential impact of BO data in procurement, the data should be collected, verified, and published centrally by governments; procurement should not just be combined with BO data, but with BOT. Many governments that already collect data centrally do not seem to be systematically using this data in their procurement processes. Given that over 100 countries have committed to implementing central and public BO registers,[97] and some of them, like EU member states, are legally bound to do so, it would be an obvious step for governments to make use of BO data in order to improve their procurement processes. As BOT is implemented in a growing number of jurisdictions, this will increase the availability of data on foreign entities globally that may be used in procurement processes.

BOT is useful in many different policy areas in government, and centralised registers allow governments to use BOT in each of these areas. Given the global shift towards BOT, it would make sense to integrate it into procurement reform.

BOT is not a panacea for challenges in procurement, but a relatively basic, necessary and underused step that can help improve procurement.

If governments collect, verify, and publish their data in machine-readable structured formats, the data is interoperable and can be joined with other datasets for analysis, or incorporated into automated processes that should help procurement officers do their jobs. As a number of initiatives have already demonstrated, the challenges to implementation are surmountable.

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