Openness in Public Sector Procurement

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Ontario Connections
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Outline

• Who We Are

• The IPC and Open Government

• The Guelph Lab

• Open Contracting
About the IPC

• Information and Privacy Commissioner (IPC) provides an independent review of government decisions and practices concerning access and privacy

• Commissioner is appointed by and reports to the Legislative Assembly; remains independent of the government of the day to ensure impartiality
The Three Acts

IPC oversees compliance with:

• *Freedom of Information and Protection of Privacy Act* (FIPPA)

• *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA)

• *Personal Health Information Protection Act, 2004* (PHIPA)
The purposes of *FIPPA* and *MFIPPA* are:

• to provide a **right of access to information** under the control of institutions in accordance with the principles that
  - information should be **available to the public**
  - access exemptions should be **limited and specific**
  - access decisions should be reviewed **independently** of government

• to **protect the privacy of individuals** with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information
Open Government refers to the policies, activities and governance structures that improve openness, accountability, and public engagement.

Open Government supports and enables the right of access to information granted in FIPPA and MFIPPA.

The IPC strongly supports open government initiatives and encourages all institutions to adopt an Open by Default approach.
Open Government and the IPC

Since 1994, the IPC has been calling for greater transparency through routine and proactive disclosures:

• Routine Disclosure/Active Dissemination (1994):
  - Institutions should proactively make information available to the public rather than relying on access to information requests

• Access by Design (2011):
  - Collect and create records with the express intention of making them accessible to the public
Open Government and the IPC cont’d

• The IPC is developing a series of guides to help institutions advance the Open Government agenda, including:
  – Overview of Open Government and important resources
  – Outline of key implementation considerations and a review of the personal privacy issues raised by Open Government

• We are working with individual institutions to provide advice on how to move forward on their Open Government initiatives

• **Guidance on Open Contracting** was issued in 2015
  – Procurement records should be fully accessible and proactively made available online
About the Guelph Lab

• Partnership of the City and University of Guelph
  – Two institutions with changing attitudes to their role in the community (and how they interact with it)
  – University concerned with “engagement”
  – City concerned with “participation” / “openness”

• Support change INSIDE both institutions
  – how to support (resource) change directed at the rules / routines etc. that make “engagement” / “openness” difficult?

• People and processes (no white coats!)
Guelph and Procurement

- Problem: Some of the best people and ideas are excluded by existing procurement processes
- Number of tensions that make “openness” challenging in procurement:
  - Privacy Vs. Active disclosure
  - Knowledge is centralized and internal Vs. held externally and diffuse; Process is engaged / participatory Vs conflict of interest / fair and competitive
- Response: series of small design meetings (supported by graduate researcher), working with City to prototype one of the ideas (Civic Solutions Accelerator)
Civic Solutions Accelerator

“Aims to deliver better services to the citizens of Guelph by developing new solutions to complex challenges through open innovation collaboration with companies and start-ups.”

• Targeted at specific kinds of procurement
• Key Elements:
  – Problem-based procurement / challenge competitions
  – Business Accelerator (through partner orgs)
  – Active prototyping / experimentation
  – Active disclosure; bids, evaluations and (hopefully) contracts
What is Open Contracting?

- Open Contracting refers to norms and practices for increased disclosure and participation in public contracting

- It covers the entire contracting process - RFPs, bids, evaluations and contracts

- It encompasses all public contracting, including contracts funded by combinations of public, private and donor sources
Benefits

Open contracting has a number of benefits:

• Improved public confidence and trust

• Increased accountability on spending

• Increased fairness and competition in contracting

• Reduction in the number of access to information requests and appeals
Examples of Open Contracting

The Ontario Government’s Open Data Directive:

- Contracts must include provisions to enable proactive disclosure, such as the right to publish procurement contract data as Open Data.
- Information for every contract awarded (e.g. vendor name, financial payment information) must be published in a timely manner.
- Vendors to agree that financial data of contracts are not considered commercially sensitive and may be released.
Examples of Open Contracting

Legal Aid Ontario:

• Full text contracts are available on the Legal Aid Ontario website

• The main contracts website includes summaries with details such as cost, dates signed and names of parties

• Some redaction of contracts is done to protect privacy, including, for example, signatures
Proactive disclosure

As Legal Aid Ontario (LAO) is a publicly funded organization, we are committed to being transparent in all manners of funding. If you require further information regarding LAO's expenses and how your tax dollars are being put to use, please feel free to contact us.

- Memorandum of understanding
- Salary disclosure
- Expense reports
- Contracts
- Service agreements
- Public proceedings of the Board
- Information requests
- public interest related correspondence
## Employee contracts

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
<th>Date</th>
<th>File</th>
</tr>
</thead>
<tbody>
<tr>
<td>President and CEO</td>
<td>Robert W. Ward</td>
<td>June 26, 2006</td>
<td></td>
</tr>
</tbody>
</table>

## Vendor contracts

### 2015/16 contracts

<table>
<thead>
<tr>
<th>Reference number</th>
<th>Department</th>
<th>Name of vendor awarded contract</th>
<th>Date of contract</th>
<th>Contract details</th>
<th>Value</th>
<th>File</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP2015-008</td>
<td>Policy &amp; Strategic Research</td>
<td>Public Interest Strategy &amp; Communications</td>
<td>Jan. 29, 2016</td>
<td>Public Legal Education and Information Management Consulting project</td>
<td>$79,633.75</td>
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<tr>
<td>RFP2015-012</td>
<td>Client Service Centre</td>
<td>Still Waters Consulting Inc.</td>
<td>Nov. 24, 2015</td>
<td>Information Management Consulting</td>
<td>$57,915.33</td>
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<tr>
<td>RFP2015-007</td>
<td>Provincial Case Management &amp; Special Projects</td>
<td>HDR Corporation</td>
<td>Aug. 25, 2015</td>
<td>Analytics and Business Innovation Support</td>
<td>$50,000</td>
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<td>RFP2015-005</td>
<td>Strategic Technology and Innovation</td>
<td>Nielson Consulting Inc.</td>
<td>June 29, 2015</td>
<td>IVR Redesign</td>
<td>$48,499.60</td>
<td></td>
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<tr>
<td>RFP2015-003</td>
<td>Lawyer Service Center</td>
<td>HDR Corporation</td>
<td>June 11, 2015</td>
<td>Analysis of Contribution Agreement and Write-Offs</td>
<td>$94,000.00</td>
<td></td>
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<tr>
<td>RFP2015-004</td>
<td>Central Programming</td>
<td>Lebeau Transcription Services</td>
<td>May 11, 2015</td>
<td>Secure Legal Transcription Services</td>
<td>$50,000.00</td>
<td></td>
</tr>
</tbody>
</table>
Examples of Open Contracting

City of Seattle:

• Full text contracts, including pricing information, are available on the seattle.gov website

• All contracts are searchable by a variety of means and are not merely posted in a chronological order

• Calls for proposals/bids remain online after the call period has closed
CITY PURCHASING

City Purchasing and Contracting Services manages bids and contracts for all City products, supplies, equipment and services that have accumulated value above $49,000 a year.

Online Business Directory/Roster
Add your name to the City’s Online Business Directory, which provides information about your firm. Sign up/sign in here or search for companies.

Purchasing Contract Search
Use the Purchasing Contract Search tool to find a blanket contract. For more detailed contract information or to request a complete official hard copy, please contact City Purchasing and Contracting Services at 206-684-0444.

Interlocal Agreements
Per the Revised Code of Washington Chapter 39.34, the Interlocal Cooperation Act, a local government may exercise any of its powers or perform any of its functions including purchasing, and participate in the financing thereof, jointly or in cooperation with other local governments. See a list of the City of Seattle’s Interlocal Agreements.

Current Purchasing Announcements

- **Expiring Blanket Contracts**
  
  11/4

- **2016 First Friday Drop-In Day**
  
  12/30

Current Purchasing Solicitations

- **CLOSED-Integrated Pest Management ITB #CTY-3577**
  
  4/18
Blanket Contract Search

This tool allows you to search for a blanket contract. For more detailed contract information or to request a complete official hard-copy, please contact City Purchasing and Contracting Services at (206) 684-0444.

You have an option to limit your search by Contract Status

- Closed
- Open
- All

Find a Contract by Contract Number

Contract Number:  

Find Contracts

Or Find a Contract by Vendor Name

Vendor Name:  

Starts with  
Contains

Find Contracts

Or Find a Contract by Commodity Keyword

Commodity Keyword:  

Starts with  
Contains

Find Contracts

Or Find all Approved Blanket Contracts

Find Contracts

Reset
IPC Open Contracting Guidance

- Proactive disclosure of procurement records will improve transparency of government spending and reduce resources required to respond to access to information requests
- Paper provides guidance on how to make procurement records publically available, while protecting sensitive third party information and personal information

https://www.ipc.on.ca/images/Resources/open-contracting_1.pdf
Routine Publication

IPC recommends routine publication of procurement records

• Including, but not limited to, preliminary analyses, successful and unsuccessful bids, evaluations of bids and full contracts

• Only truly proprietary and limited personal information should be withheld
Third Party Exemption

In the limited cases where confidential third party information is collected, the guide will help you determine which information may not be appropriate for proactive disclosure

1. Identify the types of information – examples include trade secrets, scientific, technical, commercial

2. Determine if the information was supplied in confidence – was the information supplied in its entirety? Was the information generated as a result of negotiations? Did the supplier of the information have reason to believe it would be held in confidence?

3. Identify and evaluate harms that could reasonably be caused by disclosure – for example, will release of the information prejudice competitive position, interfere significantly with contractual negotiations, result in undue loss to the third party?
Orders on Procurement

M0-3183

• Request for access to the names and bid prices from all proponents that responded to a particular RFP
• Access granted to the names of the proponents, but denied access to the corresponding total bid prices
• Under MFIPPA, the affected parties must establish evidence that there is a reasonable expectation of harm with release of information
• IPC found no evidence of harm in releasing this information (such as commercial or technical methodology) and ordered it to be disclosed
Orders on Procurement

PO-3311

- Request for access to the full contracts for a number of procurements related to a single project
- Access was denied to the records, claiming a third party information exemption
- IPC has long stated that contracts cannot be supplied, as they are negotiated
- Contracts included some technical information, and as such, the contracts were ordered to be released, with technical information redacted
Orders on Procurement

PO-3148

- Request for access to **bid evaluation** and **scoring records** related to a procurement
- Access to the records was denied, claiming that knowledge of evaluation approaches could result in future bids being tailored to the evaluation, rather than the project
- The IPC found no evidence to support this claim, noting that knowledge of an evaluative matrix is not sufficient information to tailor future bids
- The records were ordered to be released
Open Contracting Implementation

• Understand that there are no legal impediments in Ontario’s information and privacy laws to designing an open procurement process

• Make proactive disclosure the default
  - Commitment of senior leadership is key

• Engage your stakeholders regarding the design of your procurement process
Open Contracting Implementation

• Design your procurement with **limited exceptions** in mind
  - Understand how to deal with third party information and personal information

• **Be transparent** about transparency
  - Be upfront and clear when gathering information from third parties about your intentions to disclose
  - Key is **managing expectations**: parties engaging with government should expect public scrutiny (include notice in RFP materials)
Resources

Open Contracting: A guide for practitioners by practitioners:  
http://www.unpcdc.org/media/416641/open_contracting_a_guide_for_practitioners_by_practitioners-v2.pdf

The Open Contracting Partnership:  
http://www.open-contracting.org/

The Open Government Guide:  
http://www.opengovguide.com/topics/public-contracting/
Questions?
How to Contact Us

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M4W 1A8

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