

Publish What You Buy

The Case for Routine Publication of Government Contracts

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Abstract

Global government procurement probably tops \$9 trillion a year. The contracts signed between procuring governments and their suppliers outline who is to be paid what to deliver which services and when. But those contracts are rarely published.

Publication could improve the quality of government decision-making and both the quality and extent of competition for contracts. It may also reduce contract costs

and corruption related to the contracting process. Jurisdictions including the United Kingdom and Colombia have introduced contract publication, and the burdens related to review and ensuring commercial confidentiality are manageable.

An international institutional structure to support government contract publication might play a useful role in promoting more widespread adoption.

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Introduction

Each year, the average government in the OECD procures goods and services with a value equal to 15 percent of GDP—somewhere over \$6 trillion in total for rich countries alone. If the proportion is similar for the rest of the world, total global government procurement is worth somewhere in the region of \$9.5 trillion a year.¹ But nearly all of the resulting contracts are difficult or impossible for the average citizen to access.

This paper argues for a citizen’s contract initiative that would exhort governments to “publish what you buy.” There are strong reasons to believe that greater contracting transparency would lead to lower-cost higher-quality contracting outcomes. Benefits would accrue to governments, contractors and citizens alike. This paper will discuss some of those benefits. But regardless of efficiency concerns, the main reason that citizens should be able to see government contracts is because they are *their contracts*. Citizens are entitled to know how government money is spent. Any argument against contract publication has to confront this strong presumption in favor. Technological advance which means the vast majority of contracts are written in soft copy, and which makes the cost of hosting contract documents on a web platform minimal, has made what was once a highly burdensome and prohibitively expensive exercise of contract publication into something both cheap and straightforward. The remaining arguments commonly presented against—regarding administrative burdens and confidentiality concerns—are weak.

A growing number of countries including the US reactively publish contracts in response to Freedom of Information Law requests, but this is only a first step. The Federal Government in Colombia, the UK government, the Australian state governments of New South Wales and Victoria and the US county government of Miami-Dade are leaders in this area—all proactively publish the text of contracts online.² Other jurisdictions are considering a similar change. In May 2010, the US government published an advanced notice calling for public comment on how to protect proprietary information if/when such information was posted on line. With the spread of e-procurement systems and the simplicity of online publishing, posting contract documents is increasingly straightforward. It is a good time for a global movement towards greater contracting transparency.

¹ See OECD, 2007. GDP data from World Bank WDI (2012)

² In addition, the Commonwealth of Virginia allows public access to procurement transactions including the contract (Code §2.2-4342) excluding information the contractor has marked confidential on submission (and with reason).

The next sections discuss the potential benefits of contract transparency to the quality of government decision-making, the efficiency of the contract tendering and bidding process and the delivery of contracted goods and services. Following that, the paper discusses the two most frequent arguments against publication –that it would be a considerable administrative burden and that it would deter firms from bidding on government contracts because of the risk of exposing confidential information. Before concluding, the paper looks at potential institutional mechanisms to foster global progress towards contract transparency.

Publication can increase the quality of government investment decision-making

When governments contract out goods or service provision, the distance between the people delivering the services and the ultimate customer –citizens—grows. That can make contracting prone to manipulation, poor design and weak performance.³ This isn't always – or even usually—about corruption. Lack of knowledge or lack of incentive are quite enough to do the job.⁴ Transparency in general and contract publication in particular are ways to shorten the chain of accountability –to help citizens see what they are paying for, so they are in a better position to judge if they are getting it.

Publication would provide an incentive for officials to avoid signing contracts that are not in the public interest –because of the greater risk of such contracts would be subject to scrutiny. For example, had government signatories known that the details of the Dabhol Power Plant contract between Enron and the Indian State of Maharashtra would be published –revealing a power purchase agreement above international comparator costs and more than two times retail tariffs—they might have paused before signing, saving all sides a considerable amount of money, time and embarrassment as the plant was mothballed and the contract went to court.⁵

Some partial evidence in favor of the idea that transparency will lead to a higher quality government investment portfolio is suggested by returns to World Bank projects. Bank projects in countries with the strongest protection of civil rights generate economic rates of return 8-22 percentage points higher than projects in countries with the weakest civil rights, and there is some evidence that the route for this impact is through citizen voice and

³ And the problem gets worse if contracts are not awarded on the basis of full and open competition, which is common worldwide. In 2005, nearly 40 percent of US federal contracts were issued non-competitively (or \$145 billion-worth).

⁴ A recent study of procurement in Italy suggested that amongst generic goods purchased by the Italian government, the average price paid for goods amongst public bodies at the 90th percentile is 55% above the price paid by bodies at the 10th percentile. The authors estimate that 'passive waste' –inefficiency-- accounts for 83 percent of total waste compared to 'active waste' related to corruption, which accounts for only 17%. (Note also that waste is lower in autonomous agencies). See Bandiera, Prat, & Valletti, 2009

⁵ See

<http://www.nytimes.com/2010/03/23/business/global/23enron.html?sq=india&st=cse&scp=14&pagewanted=2>

government accountability. Again, countries that score well on international subjective measures of voice and accountability see lower costs (and cost-overruns) for roads projects.⁶

More broadly, as a rule, nobody learns if a government contract was well or poorly written because nobody outside the small group involved in writing it ever gets to look at it. Such a complete lack of information flow is not usually considered the best way to improve performance over the long term. When combined with information on contract and project performance, contract publication will considerably ease the process of lesson-learning to improve the design of future contracts.

One value of widespread publication of such contracts for investment decision making is demonstrated by the Road Cost Knowledge System or ROCKS, which is maintained by the World Bank.⁷ ROCKS provides data on unit costs for components of road preservation and development works –elements like grading, resurfacing, upgrading and widening. These are based on the analysis of contracts and other documents from World Bank-financed projects around the world that contain cost components.⁸ The aim of ROCKS is to improve the reliability of new cost estimates and reduce the risks generated by cost overruns, which are a common occurrence in road construction (In India, for example, nearly half of all roads projects see cost overruns greater than 25 percent).⁹

Publication can improve the quality and reduce the costs of the tender and bid process

It is a common story in project management of a consultant contracted to produce bid documents for an investment project in country X, who returns a set of documents that mentioned an agency in country Y as the procuring body. The mistake is a common one because consulting firms often recycle material from previous bid documents they have prepared (and been paid for) across similar projects in different countries. The bid documents for a two-lane tarmac road rehabilitation project in Nigeria look similar to those documents in Ghana –and as a result, so does the contract.

Consultants do this because they keep copies of the bid documents and contracts they prepare. But the documents are still officially limited distribution or confidential. That means that while there may have been a thousand very similar contracts written between governments and firms each year, any individual bureaucrat in a particular government department in a particular country may have access to none of them –and so is forced to recreate the documents from scratch or outsource that job. Publishing contracts would help reduce the scale of the cut-and-paste consulting business, while building capacity in

⁶ Kenny, 2010

⁷ See http://www.worldbank.org/transport/roads/rd_tools/rocks_main.htm

⁸ It is worth noting that the underlying contracts were available to World Bank staff and consultants working on ROCKS because the Bank had financed the project –but the contracts are not available to the general public.

⁹ Kenny, 2010

governments worldwide to develop better bid-documents in house. Beyond saving money, such a change would be likely to speed learning and improve contract design.

When it comes to the bid process itself, new entrants can have a far better idea of the goods and services they will bid to provide if they have access to existing contracts. Indeed, new entrants and previously unsuccessful tenderers in the US already use freedom of information requests to gain access to government contracts. They do this in order to present more competitive bids on additional or re-tendered contracts –and to better evaluate if they should bid in the first place. Given the considerable costs of bidding – construction firms spend between 0.5-1 percent of contract values on bid preparation, and the proportion can be considerably higher on consultant contracts— only bidding where a company has a reasonable chance of winning will be of great financial benefit to firms.¹⁰

Increased quality and extent of competition fostered by contract publication would benefit governments. In a recent sample of World Bank road contracts in Africa, while the average number of bidders across the sample was 5.2, this dropped to 3.9 responsive bidders who submitted bids which matched the tender requirements.¹¹ A significant number of contracts saw only one or two responsive bidders. A second analysis of World Bank infrastructure contracts in Africa¹² found a strong correlation between cost overruns on contract delivery and fewer than two other bids falling within ten percent of the lowest bid at the time of procurement. Only half of the contracts analyzed saw a level of competition which included the three lowest bidders being within ten percent of each other.¹³

Furthermore, contract publication may help to reduce fraud and corruption. Survey evidence suggests that company executives believe procurement-related bribery is the most common form of corruption undertaken.¹⁴ Those bribe costs are paid for out of inflated contract prices or skimping on delivery. The role for contract publication in deterring lower quality delivery is discussed below, but contract transparency can also be a valuable tool in detecting over-payment, as suggested by the evidence above that costs appear to be lower in more transparent economies in general. Indeed, beyond helping with cost estimation, a large

¹⁰ Strassmann & Wells, 1988

¹¹ Alexeeva, Padam, & Queiroz, 2008

¹² Africon, 2008. Note this analysis did involve a very small sample of contracts.

¹³ It is likely that the plausible number of competitive firms will rarely rise above four or five, however, given the expense of participating. Firms spend between 0.5-1 percent of contract values on bid preparation. Estimates from the 1980s suggested international firms see profits in the region of four to five percent of turnover, and are unwilling to bid if they expect more than four other competitive bids (Strassman and Wells, 1988). For consulting contracts, the median value of a QCBS contracting assignment was \$432,000. Proposal preparation for shortlisted firms can cost \$30,000-\$60,000. Given an average shortlist of five, this suggests total preparation costs of between 35 and 70 percent of final contract values (Casartelli & Wolfstetter, 2007). This problem is obviously reduced for larger contracts. Nonetheless, even for large goods and works contracts, preparation costs can be a considerable burden.

¹⁴ OECD, 2008

enough database of contracts regarding similar projects could help uncover contract price inflation linked to cartel activity or corruption.

In work on Latin American hospital procurement, for example, researchers with access to government records found that hospitals paid dramatically differing amounts for basic supplies. The range of prices paid by different hospitals in Bolivia for gauze was as high as 36:1 –a result of either gross mismanagement or gross malfeasance.¹⁵ Were contracting information routinely published, such discrepancies would be far easier to uncover. Again, cartel activity has been found to raise prices for road projects by 8% in Florida and as much as 40% across a sample of 29 developing countries.¹⁶ With accurate enough cost estimation based on a large sample of cases, significant cost escalation would be a powerful red flag of potential cartel activity.

Publication can assist in ensuring better delivery of contracted services

Perhaps the second most economically damaging failure of government contracting (after contracting for the wrong thing completely) is when the contract is poorly executed –the goods and services delivered are substandard. This is hardly a rare event. A US Congressional Report from 2006 summarizing evidence from government auditors and elsewhere suggested that US Federal contracts with a total value of \$745 billion had "experienced significant overcharges, wasteful spending, or mismanagement over the last five years."¹⁷ This is not a problem limited to the US. The World Bank's Integrity Department has uncovered numerous instances where World Bank financed goods works and services were clearly not delivered according to contracted specifications: roads narrower than the contracted width, structures left unbuilt and so on. A 2010 audit of 18 Zambian roads projects jointly financed by the government and donors found that substandard cement had been supplied in all projects and in half the projects the concrete was weaker than required.¹⁸

When citizens –as well as other parts of government-- know what is to be delivered where, when and by whom, they can monitor project implementation. If a confidential contract is failing, it may well remain a secret between one or two bureaucrats and the company concerned. Government audit agencies might uncover a problem if they are alerted or perform a random investigation. But for everyone else, it is difficult to hold contractors (or the officials who hired them) to account if people don't even know what's meant to be delivered.

¹⁵ Di Tella & Savedoff, 2001

¹⁶ World Bank, 2011

¹⁷ U.S. House of Representatives, 2006

¹⁸ World Bank, 2011

One example of citizens using contract details to ensure goods were delivered involves school text book delivery in the Philippines, where information on what was to be delivered where and when was used by civil society groups including scout groups to monitor on-time delivery of the right quality and quantity books.¹⁹ With more complex contracts, while many public interest groups will lack the capacity to judge the quality of contracted goods delivered, contract publication at least ensures that as many groups and interested parties as possible (including competitors in the same industry) have the potential to evaluate quality against specifications.

The Indonesia Urban Poverty Program, financed by the World Bank, provides a case study. It has a website that hosts project details, implementation status, consultant contracts (billing rates are excluded), invoices and disbursements as well as a complaint handling mechanism. It is visited more than 2,000 times a day and recorded over 6,000 complaints in 2007. As a result of those complaints, \$32,000 in returned funds had been collected by 2009. Again, in the Philippines a local civil society organization (the Concerned Citizens of Abra for Good Governance) whose membership included a civil engineer, was able to uncover the use of substandard cement in a provincial road construction project, for example.²⁰

Why publish the whole contract?

Is there a benefit to whole-contract publication over extended or short summaries of contract terms and conditions? In the best of all possible worlds, “publish both” is surely the preferable answer. Whole contract publication has advantages, however. It removes discretion from officials in deciding what is material information with regard to the contract—which is a question they might be ill-placed to judge, or may judge with a bias regarding their reputation, or a desire to avoid controversy or to obscure information related to corrupt transactions. Reduced discretion also simplifies transparency, in that there is not the need for a decision-making and summarization process regarding what information to release, when and how.

Certainly, existing examples of contract summarization—involving short project descriptions, total cost and awardee, for example—do not allow for easy replication of the contract by future bidders or other jurisdictions, nor do they provide sufficient detail for aggregation of pricing data across similar contracts, nor do they allow for a detailed examination by third parties as to whether contracts were fully and efficiently delivered.

¹⁹ Majeed, 2011

²⁰ Cadapan-Antonio, 2007. It is worth noting that evidence from randomized controlled trials suggests that greater transparency can sometimes improve service delivery, but the record is far from perfect. Transparency is only one tool, and one that can only work in combination with other reform efforts. See a useful review of RCTs for accountability and empowerment programs from the Governance and Social Development Resource Center available at: <http://www.gsdr.org/docs/open/HD756.pdf>.

Would publication be an overwhelming administrative burden?

While contract publication may be a good idea in theory, opponents have concerns regarding the complexity of publication and confidentiality concerns. The next two sections discuss these issues. But it is worth noting to begin with that most governments already regularly post information about contracts including who has won, a basic description of the goods and services to be delivered, timing and contract amount. There is often considerable discretion as to what is published and too limited detail released to allow civil society to hold officials and contractors to account. Nonetheless, the proposal to publish the whole contract is a change to the extent of information proactively published rather than reversing a precedent of complete contracting secrecy. Again, freedom of information requests routinely lead to the release of whole contracts, so the proposal to publish proactively is only a change in process rather than in what is considered publishable information.

In the US, for example, copies of contracts with confidential information redacted are available under a Freedom of Information Request, and we have seen that competitors for government contracts regularly request previous versions of that contract to help prepare bids.²¹ Assisting with that process, a private company in the US called Deltek operates the GovWin website on which thousands of federal state and local government contracts collected through FOIA requests can be accessed for a fee.²²

One might ask, if contracts *can* be accessed under a Freedom of Information request, why not just continue with that mechanism? Because this is a decidedly second-best solution. Given the considerable advantages we have seen to mass-release of contracts, individual release after an idiosyncratic and administratively burdensome process is no substitute. In addition, many countries see freedom of information laws operated in the breach as much as the observance. Even in the US, FOIA requests take time –14 months in the case of one recent request to see some USAID contracts. And what is disclosed varies considerably apparently based on the whim of contractors and officials. In the USAID Freedom of Information case, the price paid for copies of Windows XP was apparently considered a trade secret for one contractor.²³

Why not go further to proactive release? Mitch Daniels, as director of the US Office of Management and Budget in 2001, suggested the administrative burden and confidentiality issues were one and the same. He argued against the resumption of publication on the grounds that “many federal contracts... contain trade secrets and other confidential business

²¹ See <http://www.federalregister.gov/articles/2011/02/10/2011-2900/federal-acquisition-regulation-enhancing-contract-transparency>

²² See <http://iq.govwin.com/corp/library/contracts.cfm>

²³ See <http://aidwatchers.com/2010/08/the-accidental-ngo-and-usaid-transparency-test/>

information that is protected under federal law... agency staff would have to carry out an individualized review of the contract to identify any such information and redact it before publishing the contract.” As the US Government enters into 9.5 million contracts, this would be a significant burden, he argued.²⁴

Interestingly, a recent evaluation of a potential rule change towards contract publication by the US Defense Department, NASA and the GSA suggests that much of that work is already done. The agencies suggested the need to publish contracts was not of great importance because a range of existing public databases already included most of the content of the contracts which could be aggregated together by interested citizens.²⁵ This argument fits poorly with one that suggests posting such information would be complex and time consuming.

More to the point, we know that contract publication is possible without undue burden because it is already being done. Colombia’s e-procurement website regularly publishes the full contract for procured goods and services, along with contract amendments and extensions and a range of other documents from the procurement process to final evaluation.²⁶ Already in 2008, the site was getting nearly half a million visitors a month. The UK launched a similar system last year, although one that regularly redacts price and personal information from contracts. Again, Florida’s Miami-Dade County sometimes publishes full contracts on its procurement website.²⁷ And the State of Victoria in Australia discloses the text of all contracts worth over AU\$10 million within 30 days of signature, as with the UK excluding only material that would be exempt from the State’s Freedom of Information Law—for example trade secrets and personal details.²⁸ It also attempts to time-limit confidentiality exceptions. An annex describes these existing contract publication regimes in greater detail. It is worth noting that while these existing systems are not perfect, with evidence of missing contracts and considerable redaction, they do demonstrate the institutional feasibility of contract publication.

As is the case in Victoria, any administrative burden could be reduced by setting a threshold—only 500,000 of the 9.5 million contracts the US government enters into a year are worth more than \$25,000 for example, so a value-based threshold for the publication requirement would reduce any associated review burden. Again, looking at the universe of 7,772 World Bank financed contracts in Fiscal Year 2005, 1,218 contracts worth more than \$1 million—just sixteen percent of the total—accounted for 83 percent of the value of all contracts financed.²⁹

²⁴ Kenny, 2011

²⁵ See <http://www.federalregister.gov/articles/2011/02/10/2011-2900/federal-acquisition-regulation-enhancing-contract-transparency>

²⁶ See “Sistema Electronico para la Contratacion Publica,” 2012

²⁷ See “Miami-Dade County Procurement Management,” 2012

²⁸ See “Tenders VIC Victorian Government Tenders System,” 2012

²⁹ Kenny, 2011

To further limit the level of effort required of bureaucrats in review, contractors should be asked to identify what information they think should be withheld and give legally sustainable reasons why –officials can review these requests rather than going over the whole contract themselves. Indeed, because of FOIA legislation, legal firms in the US already suggest that their clients bidding and winning government contracts mark confidential and trade secrets provided as part of the contracting process with appropriate confidentiality legends.³⁰

With regard to the transactions costs of publication itself, the Internet has made the marginal cost of publication close to zero. The most expensive e-tendering system a recent survey discussed was the \$27m South Korean version used by 27,000 public sector organizations – the country has an annual government procurement budget of about \$120 billion.³¹ It could be easily adapted to publish contracts alongside tender documents. This hardly seems a high price to pay.

A more difficult question regards subcontracts. On the one hand, publishing subcontracts will greatly enhance transparency, especially regarding final beneficiaries of government contracting resources. On the other hand, as subcontracts are between two private firms, the rationale for publication by government is reduced. Currently in the US, for example, some information is available on subcontracts because of reporting requirements on minority and small business subcontracting levels, but it is not clear to the authors that a whole subcontract can be FOIA'd. Governments could make it a condition of contracting that subcontracts are also published –but the level of opposition such a requirement would face from primary contractors is unknown.

Limits to commercial, personal secrets, and national security concerns

The administrative burden of contract publication is directly linked to the likely extent of (potentially) confidential information in contracts. Confidentiality is a germane issue in some limited cases involving intellectual property, other industrial property, trade secrets, personal resumes, (perhaps) pricing structures, and national security. But the governments that are already implementing publication schemes have found ways around the confidentiality issue. And as part of its deliberations over contract publication in Victoria, Australia, the public accounts committee concluded that the insistence on confidentiality of clauses in contracts most frequently originated from the government, not the contractor, suggesting the

³⁰ See <http://www.brownrudnick.com/nr/pdf/alerts/Brown%20Rudnick%20Alert%20-%20FREEDOM%20OF%20INFORMATION%20ACT%203-09%20.pdf>. Regardless of the decision to proactively publish, the US experience with freedom of interest requests suggests that guidance on what counts as the type of contractual information that is commercially confidential with enough gravity to outweigh the public interest in publication should be improved.

³¹ Parliament of Victoria, 2000

commercial secret concern may be exaggerated.³² Furthermore, to quote the Australian Council of Auditors-General:

Those in the private sector who wish to gain commercial advantage from dealings with the Government cannot seek to escape the level of scrutiny that prevails in the public sector. Such scrutiny is required because of the non-commercial nature of much Government activity, the non-voluntary relationship between individuals and their Government, and the different rule of law which applies in the public sector compared to the private sector.³³

Exactly how much information regarding costs, techniques and personal details should be redacted from published contracts is likely to be a matter of existing law and custom on the one hand and the nature of the contracted services on the other. Colombia and Miami-Dade frequently publish unredacted contracts, while Victoria and the UK redact personal and price information –along with quantities and descriptions of goods in some cases. But there are strong reasons to push for the greatest level of transparency possible, in part on the grounds that fears of a commercial backlash are oversold. It does not appear to have limited competition for government employment that pay scales are widely published, for example – and indeed the actual pay and benefits of named employees is frequently a matter of public record.³⁴ Why should contractors necessarily be treated any differently?

Furthermore, there is, as noted by the New South Wales Auditor General and reported by the Victoria Parliamentary Committee, a considerable difference between tender information and the final contract:

There would be a very clear demarcation between commercial information which is ex ante, before a decision is made relevant to that information, and commercial information which is ex post - that is, after decisions have been made. Tender documents provided before the tender decision is made are a particularly commercially sensitive ... because the benefits and rights attaching to that information can be usurped by others should that information be given out. After the decision is made ... the information is of very little value in a commercially confidential sense.³⁵

For large contracts, notes the Victoria Committee, the final provisions are known by hundreds of lawyers, advisers, financial consultants and others –it is hard to imagine a competitor determined to know what was in the contract would have too much trouble finding out.

³² Parliament of Victoria, 2000

³³ See <http://www.acag.org.au/ccpi.htm>

³⁴ As two examples, the pay and benefits received by officials in Ontario's government: <http://www.fin.gov.on.ca/en/publications/salarydisclosure/2011/ministries11.html> and everybody in the UC California system: <http://ucpay.globl.org>

³⁵ Parliament of Victoria 2000

A recent Freedom of Information request connected with USAID contracts suggest that many contractors are in fact willing to share considerable cost information.³⁶ Nonetheless, the USAID public affairs specialist in charge of the case selectively concluded that direct and indirect costs and rates were trade secrets, while releasing names of employees working on the project would be an “unwarranted invasion of personal privacy.” This is a surprising statement—one might have thought that the fact someone was working for the government should usually be a matter of public record. In some cases, the public affairs specialist also blocked out the quantity of items (the length of time staff would be working on projects, the number of flights involved). It is not clear that such a level of exclusion would survive appeal, but the massively varying level of information released suggests at least that there is no clear guidance or regulation in this case. (It should be noted that the State of Victoria has faced similar issues, with some agencies arguing the obligation to publish contracts does not include the annexes and schedules where much of the technical and financial information is contained).

In fact, because of the Freedom of Information Act, legal firms in the US warn that disclosure is likely to be considerable. They suggest the presumption that information in contracts will be deemed confidential only if its disclosure would impair the government’s ability to obtain necessary information in the future or cause substantial harm to the competitive position of the contracting firm or individual.³⁷ Despite that, and that over 12,000 contracts are already available in a searchable database online in the US for only \$99,³⁸ contractors still appear willing to bid for federal state and local contracts in the country. There is clearly scope to publish considerably more contracting information within the scope of existing Freedom of Information legislation and without deterring contractor participation.

Finally, the extent of confidential material in contracts related to national security is, of course, likely to be higher than usual. Having said that, it is worth noting that many of the goods and services that military and intelligence systems purchase are not confidential in nature: clothes, boots, food, civilian-grade transport equipment. And many of the concerns which have emerged over defense procurement in the US Pentagon in the past have been about such purchases: jet fuel, coffee pots, toilet seats and so on.³⁹

³⁶ See <http://aidwatchers.com/2010/08/the-accidental-ngo-and-usaid-transparency-test/>

³⁷ See http://www.pepperlaw.com/publications_update.aspx?ArticleKey=274

³⁸ See <http://iq.govwin.com/corp/library/contracts.cfm>

³⁹ <http://www.thedailybeast.com/newsweek/blogs/declassified/2010/04/28/pentagon-confirms-it-gave-1-4-billion-in-no-bid-fuel-contracts-to-mysterious-companies.html>. It is worth asking if there are any reasons apart from those publicly presented as to why bureaucrats would be against an assumption of publication. Fear of justified and unjustified criticism may both play a role—as well as the time necessary to respond to those frivolous or serious accusations. People also value discretion for both reasons of pride, simplicity and the greater ability it provides to manipulate results—in either the perceived public or private interest.

A global agenda

Contract publication might be a particularly valuable tool for countries with weak governance. In an environment where the capacity or incentive to ensure quality contracting within the government is limited, it would allow closer scrutiny by stakeholders from firms in the industry through civil society to parliamentary oversight committees. And, to date, it is a developing country (Colombia) that has emerged as a leader in federal contract publication. But publishing government contracts is a practical, significantly powerful tool for improved contracting outcomes in countries rich and poor, weakly and strongly governed alike. Indeed, many of the examples used in this paper involve wealthy countries usually considered comparatively well governed. Publish what you buy is a slogan as appropriate for the OECD as it is for Africa, then.

Given cross-border spillover benefits in terms of reducing costs of tendering and improved contract cost estimation, alongside an improved environment for international bidders on government contracts, Publish What You Buy has an international public good component. This suggests the potential for an international institution to encourage contract publication, share best practices and monitor implementation.

To support a global movement towards contract publication, a supporting institution might document existing cases including the UK and Colombia, develop good practice guidelines regarding contract publication methods and redaction, advocate for the idea and promote international agreements regarding publication, propose common standards in areas such as redaction and contract metadata, and provide financial support (or coordinate with financiers) to roll out publication systems in countries with limited internal resources as well as to build civil society capacity to use the documents released to hold government to account. The institution could also validate (or support the validation of) implementation of publication regimens at the country-level, perhaps auditing the availability of contracts and the extent of excluded information on a random basis. The validation process might carry the imprimatur of a peer-review committee. The institution might help develop toolkits and provide technical support to civil society organizations willing to use contract publication mechanisms to hold government to account. Finally, the institution could monitor the impact of contract publication on government service delivery and efficiency.⁴⁰

An international effort could also ease political economy constraints related to publication. While such a publication initiative may have advantages to government in terms of self-monitoring and a higher quality and extent of competition for contracts, it will also threaten additional oversight (with attendant transactions costs) alongside greater risk of discovery of either mistakes or malfeasance. On the model of the World Trade Organization or the Extractive Industries Transparency Initiative, a multinational, monitored, rules-based approach to contract publication can provide leverage to overcome opposition from

⁴⁰ It should be noted that, given the apparently limited use to date of released contracts by civil society in Colombia, and the limited evidence available on impact, capacity building and evaluation would be key activities.

domestic groups acting against the general interest –in this case contractors and officials who may benefit from the continued opacity of contracting.

A potential institutional vehicle for Publish What You Buy would be the Open Government Partnership, a multilateral initiative of governments and civil society organizations committed to transparency, citizen participation, accountability and the use of technology and innovation to achieve these goals. The Partnership involves countries making commitments to an action plan to improve transparency which will be independently evaluated. Contract publication might form one element of future commitments.

To formalize commitments in the future, contract publication might be written into trading agreements. In the early 2000s, the World Trade Organization convened a working group on transparency in government procurement as part of a Ministerial commitment at Doha to develop multilateral agreement on the subject. By 2004, however, no agreement had been reached to start negotiations on the issue and it was decided that procurement transparency would not be covered under the Doha round.⁴¹ Given the moribund status of Doha, the impact of this failure appears to be limited. But it does suggest that, going forward, the WTO might be a suitable institutional structure to record and monitor voluntary commitments to contract publication as part of broader government procurement transparency commitments, perhaps in a format equivalent to the commitments made under GATS.

An additional approach might be to create a separate international institution to advocate for contract publication and monitor implementation by governments which had committed to publish what they buy. Given the targeted focus of Publish What You Buy, and the existing models for contract publication, such an institution could be comparatively small, perhaps nested within an existing international transparency organization.

Conclusion

This proposal has focused specifically on contracts (and amendments) as documents to be published. Of course there is a public interest case to be made for publication of considerably more information upstream, involving the procurement process, as well as downstream, involving completion reports.⁴² Publish What You Buy should be seen as one step as part of a broader transparency and good governance effort around procurement and contracting, and by no means the be-all and end all.

Indeed, contract transparency is no silver bullet for inefficiency, incompetence or corruption in government contracting. The impact of transparency will surely be muted in countries

⁴¹ See http://www.wto.org/english/tratop_e/gproc_e/gptran_e.htm

⁴² Although legitimate confidentiality concerns regarding bid documents are potentially larger than those involving contracts themselves. Some argue that publishing even only the names of bidders assists cartel formation, and the legal status of bid document data, as voluntarily submitted by bidders, is different from that provided under compulsion (as with contracts).

lacking a strong civil society or an independent press. The incentives for other firms in the industry to monitor contract delivery will be reduced if they are in collusive arrangements with the winning bidder. And transparency is no substitute for government capacity in areas from planning and budgeting through project design to oversight. To date, while existing contract publication systems are being widely accessed, we have limited evidence of them being used specifically as a tool to hold government to account.⁴³

At the same time, however, it is clear from Australia, Colombia, the UK and elsewhere that publishing contracts is a practicable endeavor, and a number of experiences suggest that it could be a useful tool in improving the quality and reducing the cost of the contracting process. Perhaps more to the point, given that publication apparently carries low costs both to government and suppliers, there is no reason against publication that stands up to a strong presumption *for* publication provided by the fact that citizens have the right to know what governments are contracting in their name. It is time for governments worldwide to publish what they buy.

⁴³ Early reactions to the new procurement transparency framework in Colombia were somewhat pessimistic. A 2007 report in *Economía Colombiana* suggested that “better laws are necessary, but not sufficient.” It noted that many government entities were able to operate outside of the legal framework due to “special regimes.” See Transparencia por Colombia, 2007.

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Annex: Three case studies of electronic contracts publishing

The four most well-known electronic contract publishing systems –Colombia’s SECOP, Victoria’s (Australia) Tenders VIC, Miami-Dade’s Procurement Management System, and the UK’s Business Link Contracts Finder –vary tremendously in coverage (both in terms of information and geographic coverage). It is worth looking at each system individually, since there are peculiarities that set them apart from one another. An exercise is carried out for each system below, wherein a detailed description of steps taken in the contract search process and the results of that search is laid out.

A number of conclusions follow: despite the fact that Colombia is the only developing country of the four, the federal government’s Electronic Public Contracting System (SECOP) is probably the most transparent, and easiest to use. Full contracts with all classes of information (from names and identity numbers, to amounts paid per unit of inputs, including labor) as well as annexes (with price and other details) are available to download, and no information is “blacked out.” The search tool allows any user to search chronologically, by geographic area of interest, public entity, type of contract, status and nature of contract, and value of the contract. This makes searching with a pre-determined set of criteria extremely simple, and an open query even more straightforward.

Victoria’s VIC Tenders System is the least useful of the four, as a limited number of contracts are available online, and where a contract is actually available for viewing (which appears to be limited to completed contracts), the vast majority of information is either left blank or blacked out. Similarly, the UK’s Contracts Finder removes key information from the documents concerning prices and inputs. Meanwhile, Miami-Dade’s Procurement Management System falls somewhere in between Colombia and Victoria/UK –there are some search criteria (which actually allow users to search using keywords for the contract title or actually input contract numbers), but not all of them appear to function correctly. With regards to the information included for each contract, it would appear that, unlike Colombia, Victoria, and the UK, multiple contract IDs are included for the same projects (or phases of projects), and only some of these entries include contracts in a viewable form. Where a full contract is available, a detailed set of contact and pricing information is included, with no information blacked out.

There are of course a number of limitations within each electronic contracts publishing system that merit discussion. In the case of Colombia, despite the fact that the law stipulates that all public entities are required to publish every document related to contracts (from the start to the finish of all projects), it is clear that not all contracts are published. In both Colombia and Victoria, despite the fact that the former system has been in place in one form or another since around 2003 and the latter since 2001, only contracts with a completion date no earlier than two years from the date of the search are publicly available.

The UK’s Contracts Finder only involves tenders established after January 1, 2011, which limits the number of contracts currently accessible. Furthermore, a clear limitation to the

specificity of the information displayed is the constraint imposed by an interpretation of the UK Freedom of Information Act (FOIA) which regards information on prices and quantities commercially sensitive.

Colombia's SECOP

The Colombian government's Electronic Public Contracting System (SECOP) website to access specific contracts is: <https://www.contratos.gov.co/puc> . The following steps must be taken to access specific information about contracts (the website is in Spanish, but steps are explained as translated to English):

1. Under "Information on Contractual Processes", select "Search information through different search criteria"
2. Select the legal entity that "purchased" the contractor (eg. "all entities"), the modality of the contract (eg. "public tender/government procurement," "auction," etc.), status of the contract (eg. "all statuses of the process", "signed", "awarded", "discarded", "liquidated", signed, etc.), product or service, and other fill in the blank options related to dates (contracts are only available from January 2009 to the present), geographic location, and monetary value.

For this exercise, the following criteria were chosen:

1. Legal entity: All legal entities
2. Modality of the contract: Public tender
3. Status: Liquidated
4. Products/Services: All products/services
5. Department (geographic): All departments
6. Municipalities: All municipalities
7. Value of contract: Any value

The results of this search were provided with basic information about individual contracts (number, type of process (in this case public tender), status (in this case liquidated), legal entity, objective, geographic location, value, and date). Clicking on an individual link for any one of the contracts provided in the search opens a new page with more specific information, including a contact email, more detailed information about the location, and a number of documents related to the specific contract, including the official budget in an excel file. This file in particular includes the monetary compensation provided to personnel involved (professional and administrative), taxes and other legal fees, direct refundable costs and costs per unit, among others.

Where reference to names of individuals involved is concerned, no names or other identifiable information is blacked out/covered up. Examples of the first page of a contract

(for which the complete version is available) and an Excel spreadsheet with costs available for one contract in the database are below. The contract number for reference is 059-2010.

First Page of Contract for Stadium Remodeling from Colombia's SECOP



ALCALDIA DE PEREIRA

SECRETARIA DE INFRAESTRUCTURA

CONTRATO DE OBRA N° COMO RESULTADO DE LICITACION PUBLICA N° 059-2010. 1391

Entre los suscritos a saber: **ISRAEL ALBERTO LONDOÑO LONDOÑO**, Mayor de edad, identificado con la cédula de ciudadanía número **10.118.193**, expedida en Pereira (Risaralda), en su calidad de Alcalde y Representante Legal del Municipio de Pereira, elegido popularmente según consta en acta de escrutinio de la Registraduría del Estado Civil de fecha noviembre 06 de 2007 y acta de posesión No. 01 del 1 de enero de 2008, en la Notaría Cuarta del Circulo de Pereira (Departamento de Risaralda), autorizado para contratar mediante el Acuerdo N° 064 del 4 de Diciembre de 2008, expedido por el Concejo Municipal, y en ejercicio de la competencia otorgada por la ley 80/93 (Artículo 11, Numeral 3°, Literal b) y que para los efectos del presente contrato se denominará **EL MUNICIPIO y CONSORCIO REMODELACION ESTADIO PEREIRA** con Nit. 900378614-0 Representado legalmente por el señor **OSCAR EDUARDO BULLA BAQUERO** identificado con la cédula de ciudadanía No. 19.267.670 expedida en Bogotá, quien obra en su propio nombre y para los efectos de este contrato se denominará **EL CONTRATISTA**, han acordado celebrar el presente contrato de obra, que se registrá por las siguientes cláusulas previas las siguientes consideraciones a) Que por medio de la resolución N° 3975 del 14 de Julio de 2010, se ordenó la apertura del proceso de Selección por Licitación Pública N° 059 - 2010 b) que por medio de la resolución N° 4710 del 19 de Agosto de 2010 se adjudicó el proceso por Licitación Pública N° 059 - 2010 c) que el día 22 de Julio de 2010 se llevó a cabo el cierre para participar en licitación publica presentándose Tres (3) proponentes entre consorcios y uniones temporales, según consta en el acta respectiva d) Que luego de efectuada la evaluación jurídica y técnica de las propuestas el 30 de Julio de 2010, el comité asesor y evaluador, del MUNICIPIO DE PEREIRA produjo el informe respectivo, contentivo del orden de elegibilidad, que fue publicado en el SECOP – Portal Único de Contratación e) Que durante la permanencia del informe durante los días 02 al 06 de Agosto de 2010 no se presentaron objeciones a este, El día doce (12) de Agosto de 2010 se recibió observación extemporánea. f) Que el Municipio de Pereira citó a audiencia pública de adjudicación el 13 de Agosto de 2010, Efectuadas las verificaciones necesarias se presentaron los resultados definitivos de la evaluación g) Que teniendo en cuenta la recomendación del comité asesor y evaluador, el Secretario de Infraestructura, en su condición de delegado del señor Alcalde según resolución 4577 de 10 de Agosto de 2010, procedió a adjudicar el contrato, mediante Resolución número 4710, del 19 de Agosto de 2010, al proponente **CONSORCIO REMODELACION ESTADIO PEREIRA**; h) La Secretaria de Hacienda del Municipio de Pereira expidió el certificado de disponibilidad No 1688 de 30 de Junio 2010. **ESTE PROYECTO ESTA RESPALDADO CON UNA VIGENCIA FUTURA APROBADA POR EL CONCEJO MUNICIPAL A TRAVES DEL ACUERDO DE N° 24 DE JUNIO 25 DE 2010, para ejecutar el presente contrato con recursos de las vigencias 2010 y 2011. CLÁUSULA PRIMERA: OBJETO CONSTRUCCION TERCERA FASE REMODELACION ESTADIO HERNAN RAMIREZ VILLEGAS - CONSTRUCCION CUBIERTA - CLAUSULA SEGUNDA: ALCANCE DEL OBJETO:** se obliga para con EL MUNICIPIO a ejecutar a todo costo las obras descritas en este contrato, en las cantidades y por los precios establecidos a continuación:

No.	ACTIV	CAPITULOS	UN	CANTIDAD	PARCIAL	SUBTOTAL	CAPITULO
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Piso 9 Tel: (9)3248156 Fax: (9)3248196
2/10

SECRETARIA DE INFRAESTRUCTURA
Pereira, Risaralda

[Handwritten signatures]

Cost Details from Stadium Contract Available in Excel file from Colombia's SECOP

ANALISIS DE AIU					
	PLAZO	6	MESES	CDP \$ 5,872,984,364	
				COSTOS DIRECTO DE OBRA \$ 4,701,396,385	
1. PERSONAL PROFESIONAL					
	PROFESIONAL	SALARIO	UTILIZACION MES	No. MESES	
				V/r PARCIAL	
1.1	Director de Obra	\$ 2,600,000.00	0.83	6.00	\$ 13,000,000.00
1.2	Residente de Obra	\$ 2,100,000.00	0.83	6.00	\$ 10,458,000.00
1.3	Asesor Seguridad industrial salud ocupacional	\$ 1,560,000.00	0.67	6.00	\$ 6,240,000.00
1.5	Asesor de gestión de calidad	\$ 1,560,000.00	0.20	6.00	\$ 1,872,000.00
1.8	Maestro de Obra	\$ 1,050,000.00	0.83	6.00	\$ 5,229,000.00
	Subtotal Personal				\$ 36,799,000.00
	Factor Prestacional			57.75%	\$ 21,253,250.18
	Total Personal				\$ 58,052,250.18
2. PERSONAL DE APOYO					
2.1	Secretaria	\$ 520,000.00	1.00	6.00	\$ 3,120,000.00
2.2	Almacenista	\$ 520,000.00	1.00	6.00	\$ 3,120,000.00
2.3	Contador	\$ 1,050,000.00	0.20	6.00	\$ 1,260,000.00
2.4	Vigilancia Privada (Turno 24H)	\$ 2,820,000.00	0.67	6.00	\$ 11,336,400.00
2.5	Mensajero	\$ 520,000.00	1.00	6.00	\$ 3,120,000.00
	Subtotal Personal				\$ 21,956,400.00
	Factor Prestacional			70.42%	\$ 15,462,273.56
	Total Personal				\$ 37,418,673.56
3. COSTOS DE LEGALIZACION					
3.1	POLIZAS	\$ 38,000,000.00	100.00%		\$ 38,000,000.00
3.2	PUBLICACION	\$ 11,322,000.00	100.00%		\$ 11,322,000.00
	Subtotal costos de legalizacion				\$ 49,322,000.00
4. IMPUESTOS					
4.1	IMPUESTO DE TIMBRE	\$ 5,872,984,364.30	0.50%		\$ 29,364,921.82
4.2	Estampilla Procultura	\$ 5,872,984,364.30	1.00%		\$ 58,729,843.64
4.3	Sobretasa al Deporte	\$ 5,872,984,364.30	2.00%		\$ 117,459,687.29
4.4	Industria y Comercio	\$ 5,872,984,364.30	1.04%		\$ 61,079,037.39
4.5	4 por mil (Anticipo)	\$ 1,468,246,091.07	0.40%		\$ 5,872,984.36
4.6	Contribución especial	\$ 5,872,984,364.30	5.00%		\$ 293,649,218.21
4.7	Retención en la fuente	\$ 5,872,984,364.30	1.00%		\$ 58,729,843.64
4.8	Impuesto Departamental	\$ 5,872,984,364.30	2.00%		\$ 117,459,687.29
	Subtotal Impuestos				\$ 742,345,223.65
5. COSTOS DIRECTOS REEMBOLSABLES					
5.1	Equipos de computo	\$ 52,000.00	1.00	6.00	\$ 312,000.00
5.2	Comunicaciones y Telefonos	\$ 52,000.00	1.00	6.00	\$ 312,000.00
5.3	Gastos operacionales de oficina	\$ 52,000.00	1.00	6.00	\$ 312,000.00
5.4	Papeleria, Fotocopias, Fax y Fotografias.	\$ 52,000.00	1.00	6.00	\$ 312,000.00
5.5	Seguridad Industrial	\$ 105,000.00	1.00	6.00	\$ 630,000.00
5.6	Archivos y Funcionamiento General	\$ 52,000.00	1.00	6.00	\$ 312,000.00
	Subtotal Costos Directos				\$ 2,190,000.00
	Factor de Administracion			15%	\$ 328,500.00
	Total Costos Directos				\$ 2,518,500.00
	VALOR TOTAL SUMA 1 + 2 + 3 + 4 + 5				\$ 889,656,647.39
1	VALOR TOTAL ADMINISTRACION			18.92%	\$ 889,656,647.39
2	VALOR UTILIDAD			5.00%	\$ 293,649,218.21
3	VALOR IMPREVISTOS			1.00%	\$ 58,729,843.64
	REDONDEO GENERAL			24.92%	\$ 1,463,738,145.78

This exercise makes it clear that no information is being withheld from the public domain related to the main agents involved (including their personal identification information), the salaries paid to all personnel involved, any taxes and legal fees, or the cost per unit of

materials/inputs used. For example, we can see in the snapshot of the official budget that the director of the project received compensation based on months worked (6) at a monthly salary of \$2,600,000 Colombian pesos (approx. \$1,423 USD). Furthermore, we can see that taxes related to the project totaled approximately \$742 million pesos (approx. \$409,000 USD, or nearly 10% of the total \$4.2 million USD project).

It appears that some contracts of concern have been taken down from –or were never uploaded into—the system. Beginning in 2010, the so called “Carousel of Contracting” or “Cartel of Contracting” as it came to be known, was a scandal in the capital city of Bogotá surrounding a large number of contracts for infrastructure projects awarded to Grupo Nule, a large conglomerate headed by Guido Nule Marino and extended family members. During the third phase of a massive public transportation project (*Transmilenio*). It was during this project that allegations came to light about bribes between government officials and members of the conglomerate, which eventually resulted in a long list of indictments.

A search was carried out to identify all projects related to the *Transmilenio* Project (which was at the center of the scandal mentioned above) with a value of over 1,000,000,000 Pesos (approx. \$550,000 USD). A total of 18 contracts came up on the search pertaining to the time between January 2009 and January 2012 (the first two years of which the scandal was emerging in full force), of which six were classified as being in draft stage (not yet awarded) and 12 in the pre-implementation awarded stage. Selecting additional information on any of the awarded contracts results in an error page from an external site. Where information on awarded or signed contracts with a lesser value is requested, links to the contracts frequently redirect the user to an external site pertaining to the Bogotá contracts page (run by the mayor’s office of Bogotá).

The contract that would seem to involve the third phase of the *Transmilenio* project (around which the scandal was centered) is summarized by the following information:

26	TMSA-LP-002-2009	Licitación Pública	Adjudicado	BOGOTÁ D.C. - TRANSMILENIO	Contratar el contratista que lleva a cabo las obras de mantenimiento de la infraestructura del sistema de transporte masivo de la ciudad de Bogotá, a cargo de la Empresa de Transporte del Tercer Milenio -TRANSMILENIO S.A.	Bogotá D.C. : Bogotá D.C.	\$26,680,000,000	24-11-2009
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Upon clicking on the link on the far left, an error page pertaining to the district’s contracts page is displayed with the message: “No processes related to your search criteria were found.” Whether this was a selective omission of information, or whether it was removed from the public domain as a result of the scandal (and the ongoing indictments) is unknown.

There are a few limitations worth noting in the “reach” of SECOP at the national level. A self-evaluation done by the Intersectoral Commission of Public Contracting (CINCO) in 2008⁴⁴ mentions problems related to full coverage of the system. While it is obligatory for all government entities (at the national, department, and municipal levels) to publish documents and information related to contracts, lack of connectivity in some regions does not permit

⁴⁴ Transparencia por Colombia 2007

the easy transfer of information and documents (nonetheless, the evaluation claims that where it is not possible for certain entities to use SECOP, this information can be obtained through more rudimentary means). A second issue is related to the selectivity of certain contractual processes that are not published. That is to say, some public entities do not publish key documents related to the contract (especially pre-contract documentation and drafts).

Finally, while it is obligatory for all contracts to be published in full, the law stipulates that contracts can be accessed via SECOP for a maximum of two years after the contract has been closed/liquidated/terminated. This of course means that only recently awarded contracts can be accessed, even though SECOP has been in place in one form or another since 2003.

Miami's (Dade County) procurement management

The Miami (Dade County) government's Procurement Management System website to access specific information regarding contracts is <http://services.miamidade.gov/DPM/SearchContracts.aspx>. Unlike Colombia's SECOP, a full list of awarded county contracts is listed (by order of contract ID, contract title, effective date, expiration date, and contract amount), and a search tool is provided to filter contracts by ID or title, date range, and contract amount.

For this exercise, the following criteria were chosen, but it appears that some of the criteria for the filtering tool were not functioning correctly. Below is the list of criteria:

1. Contract ID: (blank)
2. Contract Title: Contains the word "Transportation"
3. Effective Date Range: (blank)
4. Expiration Date Range: (blank)
5. Contract Amount: (blank)

Selecting any of the various contracts by clicking on the contract ID provided opens a new page with a number of PDF and Word documents related to: Invitations to Bid, Award Sheets, Addendums, Purchase Orders (in the case of ongoing projects), and full contracts (in the case of completed projects). A large number of contracts denoted as "PRE-QUAL" do not include full contracts, but rather, a list of documents as mentioned above. A snapshot of the full contract for a "Ground transportation system" project, worth a total of approximately \$1.4 million, is below. The contract number for reference is **RFP651**.

First Page of Contract for Ground Transportation System Project from Miami-Dade's Procurement Management System

MIAMI-DADE COUNTY, FLORIDA

RFP651: Ground Transportation System

Contract No. RFP651

(Ground Transportation System)

THIS AGREEMENT made and entered into as of this 15th day of October 2009 by and between TransCore LP., a corporation organized and existing under the laws of the State of Pennsylvania, having its principal office at 8158 Adams Drive, Liberty Centre Blvd. 200 Hummelstown, PA 17036 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Ground Transportation System (GTS) and services, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 651 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated March 5, 2009, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Ground Transportation System and services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

Cost Details from Contract for Ground Transportation System Project from Miami-Dade's Procurement Management System

PRICE DETAILS

The Price details of the entire GIS project is detailed in the Price Breakdown section below. Payments to the Contractor will be released based on successful completion of the mutually agreed upon milestones described in the "Payment Schedule" section. Each milestone has associated deliverables. The Contractor and the County have agreed on these milestones. The deliverables associated with each milestone may be adjusted during the term of the Contract with the mutual understanding of the Contractor and the County and with the approval from the POM Project Manager. POM Project Manager's approval will be required for the release of payments against all milestones. The Price Breakdown section may be adjusted during the term of the Contract with mutual understanding of the Contractor and the County and with the approval from the POM Project Manager.

1). Price Breakdown

- Price breakdown is detailed in Exhibit B-1

2). Payment Schedule

a). Development and Deployment (Total Cost: \$998,900)

Milestone	Deliverable	Payment Due	Amount
1	Completed Technical specifications development	Upon acceptance of deliverable by POM	5 % of Total Cost: \$49,945
2	Design	Upon acceptance of deliverable by POM	5 % of Total Cost: \$49,945
3	Delivery of Equipment	Upon acceptance of deliverable by POM	10 % of Total Cost: \$99,890
4	Hardware Installation	Upon acceptance of deliverable by POM	10 % of Total Cost: \$99,890
5	Software Installation (including Test environment)	Upon acceptance of deliverable by POM	15 % of Total Cost: \$149,835
7	User Acceptance Test	Upon acceptance of deliverable by POM	20 % of Total Cost: \$199,780
8	Training	Upon acceptance of deliverable by POM	15 % of Total Cost: \$149,835
9	Post Deployment and System Audit (Final Acceptance)	Upon acceptance of deliverable by POM	20 % of Total Cost: \$199,780
100% of Total Cost of \$998,900			\$998,900

b). Maintenance and Support for Year 2 and Year 3 (\$134,301)

Milestone	Description	Payment Due	Amount
	Year 1 Maintenance and Support (Software)	Upon completion of one year Warranty period after Final System Acceptance	\$35,525
	Year 1 Maintenance and Support (Hardware)	Upon delivery of POM approved services	\$31,006
	Year 2 Maintenance and Support	Upon completion of Year 1	\$35,525
	Year 2 Maintenance and Support (Hardware)	Upon delivery of POM approved services	\$32,246
Total			\$134,301

Additional details related to specific pricing of inputs, payments to labor involved, and contact information for both parties involved is published in full. No content in the contract is blacked out, and it would appear that all the relevant information is included. For contract IDs where no full contract exists, there is a wealth of information related to expected inputs

and prices that could be considered as a substitute. While it is uncertain why contracts (for seemingly uncompleted) projects would not be available, there is enough information to make clear conclusions about the bidding process and costs associated with each contractor.

Victoria's (Australia) government tenders system

The Victoria (Australia) State government has an online government tenders system which allows contracts to be searched by agency at the state level. The website to access this information is <https://www.tenders.vic.gov.au/tenders/contract/list.do?action=contract-view>. Unlike Colombia's SECOP and Miami Dade's procurement management page, Victoria's contracts page (Tenders VIC) requires searches to be made within specific agencies of the state government. Each department provides a link with the total number of recently awarded contracts.

For this exercise, the search requested all contracts pertaining to the Department of Transport, which totaled nine, eight of which are current, and one expired. Unlike Colombia's SECOP and Miami Dade's procurement management page, very limited information is available for most contracts. Only for contracts with a total value over \$10 million AUD are public entities required to publish an actual contract, whereas smaller contracts only need to provide basic information. Selecting any one contract with a value less than \$10 million AUD yields a page with very basic information about key agents involved (names and contact information included) and estimated value of the contract. A snapshot of the results is below. The contract number for reference is **313181**.

Basic Contract Details for Supply of Bus Shelters from Victoria's Tenders VIC System

The screenshot shows the Tenders VIC website interface. At the top left is the State Government of Victoria logo. The main header reads "Tenders VIC Victorian Government Tenders System". A navigation menu on the left includes Home, Tenders, Contracts, Help, and News. The top right corner shows "Not Logged In" with links for Login and Register, and a search bar. The main content area displays "Contract - 313181" and "Contract Details".

Contract - 313181

Contract Details

Public Body:	Department of Transport
Contract Number:	313181
Title:	Supply of x 20 Bus Shelters to Tatura
Type of Contract:	Purchases of Goods/Services
Total Value of the Contract:	\$117,810.00 (Estimate)
Start Date:	9 Dec, 2011
Expiry Date:	30 Mar, 2012
Status:	Current
UNSPSC :	Public Utilities and Public Sector Related Services - (100%)

Description

Supply of x 20 Bus Shelters to Tatura

Agency Contact Details

Contact Person: Barry Wells
Contact for factual information purposes. Explanation of contracts or interpretation of specific clauses is not provided.

Email Address: Barry.Wells@transport.vic.gov.au

Supplier Information

Supplier Name:	FURPHYS FOUNDRY SALES
ABN:	29082694880
ACN:	
DUNS #:	
Address:	PO BOX 1929
Suburb:	SHEPPARTON
State:	VIC
Postcode:	3630
Email Address:	

On the right side of the page, there is a "Current Time" section showing "Sat, 21 Jan 2012 5:15:47 PM AEDT Melbourne, Victoria (UTC/GMT +1100)".

The assumption from exploring multiple contract pages is that contact information is provided specifically to allow any interested party to communicate with the agents involved to obtain additional factual information about the contract. What is surprising is the very low number of contracts that are actually published online. This of course greatly reduces the number of contracts that are available for public scrutiny. In total, there are anywhere between 1 and 20 contracts published for the Victoria Departments of Justice, Planning and Community Development, and Transport, among many others. Only in the case of the Departments of Health and Human Services (both broken down into a number of sub-agencies), the Victorian Auditor General's Office, Sustainability and Environment, and Education and Early Childhood Development is the number of contracts greater than 20 in total.

For contracts with a value greater than \$10 million AUD, a PDF file is available for viewing that is assumed to be the final contract (or most recent version). Doing a search for contracts within the "Whole of Victorian Government" as the agency returns five contracts,

all but one of which have a value greater than \$10 million AUD. However, as can be seen in the snapshot below, a significant amount of information has been blacked out. The contract number for reference is **SS-06-2010**.

Cover Page of Contract for State Purchase/Provision of Stationery and Office Products from Victoria's Tenders VIC system

The State of Victoria through the Department of
Treasury and Finance

Corporate Express Australia Ltd

State Purchase Contract

Provision of Stationery and Office Products

Schedule 1

Contract Variables

Item 1: Term

Commencement Date: **April 11 2011**
(At the contract signing stage)
Expiry Date: **April 10 2014**
Options to extend: Two further terms of 1 year

Item 2: Category Manager and Relationship Manager

Lead Department's Category Manager(s)

Name: Julia Huynh
Title: Category Manager
Telephone: (03) 8682-2856
Email: julia.huynh@dtf.vic.gov.au

[Redacted]
[Redacted] [Redacted]
[Redacted] [Redacted]
[Redacted] (03) [Redacted]
[Redacted] [Redacted]
[Redacted] [Redacted]
[Redacted]
[Redacted] [Redacted]
[Redacted] [Redacted]
[Redacted] (03) [Redacted]
[Redacted] [Redacted]
[Redacted] [Redacted]

It is clear from the contract snapshots above that very limited information about any specific contract is available from Victoria's Tenders VIC system. Unlike Colombia's SECOP and Miami-Dade's Procurement Management System, critical information is blacked out, and price details are left blank.

The UK's contracts finder—Business Link System

The British government electronic contracts publishing website, known as the Business Link Contracts Finder, is <http://www.contractsfinder.businesslink.gov.uk>. Upon entering the main page of the Contracts Finder, the following steps should be taken to retrieve documentation on specific contracts:

1. Click on the link for “Advanced search – search by CPV, by buyer or by awarded supplier” directly underneath the text that reads “See what is being bought by government”
2. Select a range of criteria including: type of contract (e.g. “live opportunities,” “details of what government has bought or is buying,” or “everything”), keyword search for contract themes, location of the contract (within a specified number of miles of a designated location within the UK), value of the contract (can specify a range), and four quick filter options (e.g. “items more suitable for small suppliers,” “items suitable for the voluntary sector,” “show only tender documents,” and “show only contract documents”)

For this exercise, the following criteria were chosen:

1. Type of contracts: Details of what government has bought and is buying
2. Find contracts about...(keyword search): Transportation (required field)
3. Location of contract: (blank)
4. Value of contract: From £1,000,000 to £1,000,000,000
5. Quick filter options: show only tender documents and show only contract documents

The search resulted in a total of 50 contracts with a value between GBP 1 million and GBP 1 billion.⁴⁵ After the search has completed, modifications to the search can be made on the same page, so no information about what was used as search criteria is lost. Clicking on any contract results in a summary of the contract, a brief description, and a set of documents (some as Word/PDF documents, others combined in a zip file) including contract award notices, terms and conditions, and schedules.

⁴⁵ The website warns that for technical reasons, Contracts Finder is currently unable to display a maximum contract value greater than GBP 1 billion. Nonetheless, an anticipated value (which falls outside of this range) is displayed when the specified contract is chosen and additional details are furnished.

The quality and depth of the information that is included in these documents is, similar to the Victoria case, dependent upon the sensitivity of the information. For example, the FAQs for suppliers states that some text in the documentation may be excluded to protect sensitive information, limitations which are in line with exemptions set out by the Freedom of Information Act (FOIA).⁴⁶

The contract chosen for this exercise concerns the Prisoner Escort and Custody Service (Area 2), requested by the Ministry of Justice. The contract was established to provide the service of the movement of prisoners and provision of custody services at locations in London and East of England (including police stations, prisons, courts, and tribunals). The contract reference number is **2010/S 22-031469 Lot 2**. Below are snapshots of the Contract Award Notice and the Cost Model:

Cover Page of Contract and Select Pages from Contract Award Notice for Prisoner Escort and Custody Service (Area 2) from the UK Business Link Contracts Finder

The image displays two side-by-side screenshots of a contract document from the Ministry of Justice. Both pages feature the Ministry of Justice logo and the text 'Not Protectively Marked' and 'Contract For The Provision Of Prisoner Escort & Custody Services Area 2 London and East Of England'.

The left screenshot shows the cover page with the following text:

**CONTRACT FOR THE PROVISION OF
PRISONER ESCORT AND CUSTODY SERVICES**

Contract Terms and Conditions

At the bottom of the page, it reads: 'PECS Ts & Cs Area 2: TC - 1 of 218 01/02/2012'.

The right screenshot shows a table of contents with the following structure:

Clause	Page
1. DEFINITIONS AND INTERPRETATION.....	9
2. DURATION OF CONTRACT.....	73
3. PERFORMANCE BONDS / PARENT COMPANY GUARANTEES.....	73
4. DOCUMENTS AND CO-OPERATION.....	74
5. GENERAL WARRANTIES AND INDEMNITIES.....	74
6. AUTHORITY WARRANTIES.....	77
7. PREMISES.....	79
8. ACCESS.....	80
9. NOT USED.....	82
10. INFORMATION AND COMMUNICATIONS TECHNOLOGY.....	82
11. SOFTWARE ESCROW.....	85
12. BUSINESS CONTINUITY AND DISASTER RECOVERY.....	86
13. NOT USED.....	86
14. NOTIFICATION OF DELAY.....	87
15. COMPENSATION EVENTS.....	87
16. PREPARATION FOR THE OPERATION OF THE SERVICES.....	90
17. DELAY.....	91
18. NOT USED.....	91
19. NOT USED.....	91
20. PLANNED SERVICES COMMENCEMENT DATE.....	91
21. TRANSFER OF EXISTING VEHICLES.....	91
22. CONDUCT OF OPERATION.....	93

At the bottom of the page, it reads: 'PECS Ts & Cs Area 2: TC - 2 of 218 01/02/2012'.

⁴⁶ See <http://www.homeoffice.gov.uk/publications/about-us/transparency/transparency-factsheet-suppliers/> and <http://www.number10.gov.uk/news/letter-to-government-departments-on-opening-up-data/>



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CONTRACT AWARD NOTICE

Prisoner Escort and Custody Services

Services

SECTION I: CONTRACTING AUTHORITY

NOTICE PUBLICATION DETAILS

Notice Reference Number
Date of Publication 12/04/2011 BST

I.1 NAME, ADDRESS AND CONTACT POINT(S)

Official Name Ministry of Justice		
Postal Address Major Contracts Ministry of Justice 2nd Floor Clive House		
Town London	Postal Code SW1H 9EX	Country United Kingdom
For the attention of _____		
Contact Point(s) Nicola Calvey		Telephone +44 3000475909
Email nicola.calvey@noms.gsi.gov.uk		Fax _____

Internet Address(es) (If applicable): General address of the Contracting Authority http://www.justice.gov.uk Address of the Buyer profile _____
--

I.2 TYPE OF CONTRACTING AUTHORITY

Contracting Authority _____

SECTION V: AWARD OF CONTRACT (1)

Contract No 2010/S 22-031469 Lot 1	
Contract Title Prisoner Escort & Custody Service Area 1: South West and South East	Lot Number 1
V.1 Date of Contract Award 15/03/2011 BST	
V.2 Number of offers received 4	

V.3 Name and address of Economic Operator to whom the contract has been awarded

Official Name GEO Amey PECS Limited		
Postal Address The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ		
Town Oxford	Postal Code OX4 4DQ	Country United Kingdom
Telephone _____	Fax _____	
Email _____		
Internet Address (URL) _____		

V.4 Information on Value of Contract (give figures only)

Initial estimated total value of the contract (if applicable) _____
Total final value of Contract 177,885,000.00 GBP Excluding VAT
if annual or monthly value (Please give number) _____

V.5 The Contract is likely to be sub-contracted Contract is likely to be sub-contracted No

SECTION V: AWARD OF CONTRACT (2)

Contract No 2010/S 22-031469 Lot 2	
Contract Title Prisoner Escort & Custody Service Area 2: London and East of England	Lot Number 2
V.1 Date of Contract Award 15/03/2011 BST	
V.2 Number of offers received 4	

V.3 Name and address of Economic Operator to whom the contract has been awarded

Official Name Serco Limited		
Postal Address Discovery House, 18 Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9XA		
Town Hampshire	Postal Code RG27 9XA	Country United Kingdom
Telephone _____	Fax _____	
Email _____		
Internet Address (URL) _____		

V.4 Information on Value of Contract (give figures only)

Initial estimated total value of the contract (if applicable) _____
Total final value of Contract 280,152,000.00 GBP Excluding VAT if annual or monthly value (Please give number) _____

V.5 The Contract is likely to be sub-contracted Contract is likely to be sub-contracted No

SECTION V: AWARD OF CONTRACT (3)

Contract No 2010/S 22-031469 Lot 3	
Contract Title Prisoner Escort & Custody Service Area 3: East Midlands, Yorkshire & Humberside and North East	Lot Number 3
V.1 Date of Contract Award 15/03/2011 BST	
V.2 Number of offers received 4	

V.3 Name and address of Economic Operator to whom the contract has been awarded

Official Name GEO Amey PECS Limited		
Postal Address The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ		
Town Oxford	Postal Code OX4 4DQ	Country United Kingdom
Telephone _____	Fax _____	
Email _____		
Internet Address (URL) _____		

V.4 Information on Value of Contract (give figures only)

Initial estimated total value of the contract (if applicable) _____
Total final value of Contract 177,115,000.00 GBP Excluding VAT
if annual or monthly value (Please give number) _____

V.5 The Contract is likely to be sub-contracted Contract is likely to be sub-contracted No

SECTION V: AWARD OF CONTRACT (4)

Contract No 2010/S 22-031469 Lot 4	
Contract Title Prisoner Escort & Custody Service Area 4: North West, West Midlands and Wales	Lot Number 4
V.1 Date of Contract Award 15/03/2011 BST	
V.2 Number of offers received 3	

V.3 Name and address of Economic Operator to whom the contract has been awarded

Official Name GEO Amey PECS Limited		
Postal Address The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ		
Town Oxford	Postal Code OX4 4DQ	Country United Kingdom
Telephone _____	Fax _____	
Email _____		
Internet Address (URL) _____		

V.4 Information on Value of Contract (give figures only)

Initial estimated total value of the contract (if applicable) _____
Total final value of Contract 216,985,000.00 GBP Excluding VAT
if annual or monthly value (Please give number) _____

V.5 The Contract is likely to be sub-contracted Contract is likely to be sub-contracted No

Cost Details from Schedule 5 Payment Mechanism Annex for Prisoner Escort and Custody Service (Area 2) from the UK Business Link Contracts Finder



Not Protectively Marked

Contract For The Provision Of Prisoner Escort & Custody Services
Area 2 London And East of England

Schedule 5 Appendix A: Cost Model

1. Cost Summary

Lot 2 Year 1 Total Costs

Lots	Lot 2
Fixed Cost	
Vehicles (lease and maintenance) (£)	£ xxx
Premises (£)	£ xxx
ICT (£)	£ xxx
Management Overhead (£)	£ xxx
Central Operations and Administration (£)	£ xxx
Insurance (£)	£ xxx
Utilities (£)	£ xxx
Equipment	£ xxx
SAP/SSC	£ xxx
Employment Tribunals	£ xxx
Total Fixed Costs	£ xxx
Semi-Fixed Costs	
Total Staff (£)	£ xxx
Court Custody Staff (£)	£ xxx
Custodial Dock Services Staff (£)	£ xxx
Escort Staff (£)	£ xxx
Crown Court Off-Bail Dock Staff (£)	£ xxx
Breakdown Totals to Total Staff Costs	
Staff Related (£)	£ xxx
Court Custody Staff Related (£)	£ xxx
Custodial Dock Services Staff Related (£)	£ xxx
Escort Staff Related (£)	£ xxx
Crown Court Off-Bail Dock Staff Related (£)	£ xxx
Breakdown Totals to Staff Related Costs	
Total Semi-Fixed Costs	£ xxx
Management Fee	
Percentage Management Fee (%)	xx%
Operational Risk Payment (£)	£ xxx
Management Fee Payment (£)	£ xxx
Variable Costs	

As the snapshots above show, crucial information on price details is redacted (similar to the case of Victoria). While a total value of the contract (by supplier) is provided, inputs and other costs are not displayed. Rather, x's are used in place of amounts/prices –a clear indication that the FOIA is limiting the amount of information that could be considered “detrimental to the commercial interests of the supplier.” The contract itself lists no prices/amounts related to the project, and the Schedule 5 annex does not include any detailed information that would be useful to understand the distribution of costs for the project.