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POSITION PAPER

TOPIC:

Transparency in Government; Transparency in Government Procurement.

A position paper from NIGP on
the importance of transparency in
public procurement.



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NIGP

151 Spring Street
Herndon, Va 20152
703.836.8900

CUSTOMER CARE:

800.367.6447, Ext. 426

ONLINE:

nigp.org

nigp.org

[facebook.com/OfficialNIGP](https://www.facebook.com/OfficialNIGP)

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NIGP: THE FOREMOST AUTHORITY IN PUBLIC PROCUREMENT

Since 1944, the Institute has been developing, supporting and promoting the public procurement profession through premier educational and research programs, professional support, technical services and advocacy initiatives that benefit members and constituents.

With over 15,000 professionals from more than 2,500 local, state, provincial and federal government contracting agencies across the United States, Canada and countries outside of North America, NIGP is international in its reach.

NIGP's goal is recognition and esteem for the government procurement profession and its dedicated practitioners. The Institute led the way in developing the Values & Guiding Principles of Public Procurement and its professional development program offers traditional face-2-face courses, independent online courses, interactive online courses and no travel Webinars that address current industry issues and trends affecting the way governments do business.

NIGP is unique for the wealth and depth of services offered to its members. Through time-saving resources, agencies reap the benefits of improved operating efficiency and expanded organizational capacity. Individuals gain immediate value through access to our library of thousands of bid-related documents and the largest network of public procurement professionals in North America.

TRANSPARENCY IN GOVERNMENT; TRANSPARENCY IN GOVERNMENT PROCUREMENT.

A position paper from the National Institute of Governmental Purchasing on the importance of transparency in public procurement.

Preamble

Procurement^{*} in the public sector plays a unique role in the execution of democratic government. It is at once focused on support of its internal customers to ensure they are able to effectively achieve their unique missions while serving as stewards of the public whose tax dollars bring to life the political will of its representative governing body. The manner in which the business of procurement is conducted is a direct reflection of the government entity that the procurement department supports.

In a democratic society, public[†] awareness and understanding of government practice ensures stability and confidence in governing systems. Awareness and understanding of government practices relies greatly on the public's ability to access the information relevant to its interests. Ease of information access and understanding is more succinctly referred to as "transparency." In his 2009 inaugural address, President Obama emphasized the importance of transparency in government practice and its value in holding government accountable for its actions ". . . *And those of us who manage the public's dollars will be held to account, to spend wisely, reform bad habits, and do our business in the light of day, because only then can we restore the vital trust between a people and their government.*"

Today's democracies enjoy the benefits of evolved information technology systems that aggregate and communicate government information to those who would benefit by it. Unfortunately, not all government entities are financially able to equally provide their publics with the technology-based information systems that maximize transparency. Though perhaps unintended, the consequence is a community less able to ensure that its government is acting in a manner that effectively balances the needs of all its constituents.

In this brief treatise on the importance and role of transparency in the public procurement process, the National Institute of Governmental Purchasing highlights the historical importance of transparency in a democracy and the contemporary tools available that enable greater transparency, and offers a series of recommendations governments can adopt to achieve transparency in practice, without undue burden.

^{*} Throughout this paper, we will use the term *procurement* to capture the many functionalities associated with the process of acquiring goods and services, including description of requirements, solicitation and selection of sources, preparation and award of contract, all phases of contract administration, inventory control, and salvage and disposal operations.

[†] *Public* refers to both the private individuals and corporate entities in a jurisdiction

Transparency in Government Procurement Operations

INTRODUCTION

In a democratic society, citizens rightfully demand judicious and prudent use of their tax dollars. Businesses are accountable to owners and citizens should not expect any less from their government. Thomas Jefferson is credited with saying, “We might hope to see the finances as clear and intelligible as a merchant’s books, so that every member of Congress, and every man of every mind in the Union should be able to comprehend them, to investigate abuses, and consequently, to control them.”

Annual government expenditures for goods and services are a major factor in the U.S. economy. In FY 2007, federal government civilian agencies purchased over \$129 billion in goods and services and the department of defense purchased over \$330 billion in goods and services[‡]. Spending at the state and local government level for FY 2007 totaled \$3.14 trillion.[§] With the size and scope of government spending activity it is critical that all stakeholders have confidence in the process.

Recent federal legislation reflects recognition of the fundamental nature and value of transparency in democratic governance. On September 26, 2006, President George W. Bush signed into law the Federal Funding Accountability and Transparency Act of 2006. The intent of the act is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards, including contracts, subcontracts, purchase orders, task orders, and delivery orders to be made available to the public via a single, searchable website.

In 2008, the Transparency in Government Act was adopted. Title V of the act directs the Administrator of General Services to establish and maintain a database of information regarding integrity and performance of federal contracts.

Shortly after taking office, President Obama signed a memorandum outlining the commitment of his administration to openness and transparency, signaling the importance of this continuing initiative. Government agencies have willingly complied with open record or "Sunshine Laws," but with the advantages offered by modern technology, a higher quality and diversity of information is available.

The Association of Government Accountants (AGA) commissioned the Harris Interactive research firm to conduct a survey of public attitudes towards government transparency and accountability. According to the study, 90% of American adults believe that, as taxpayers, they are entitled to transparent financial management information. The survey found that the public

[‡] Federal Procurement Report FY 2007, Federal Procurement Data System

[§] U.S. Census Bureau’s State and Local Government Finances by Level of Government 2006-2007

believed the government could better serve them and improve accountability through better *reporting* (open disclosure, easy-to-read reports), a change in *attitude in communications* (honesty and transparency) and better *information in the right channels* (websites, through the press).^{**}

Thomas Jefferson remarked on the importance of transparency in government 200 years ago. Today, transparency in government operations is discussed at all levels of government. Accountability, understanding of spending priorities, economic conditions, identification of businesses opportunities, and political scandals all drive the demand for information.

TRANSPARENCY LEGISLATION

While transparency is not a new concept in the area of public procurement, many of the transparency measures recently implemented are associated with public contracting.

Federal

At the federal level, the Federal Funding Accountability and Transparency Act of 2006 requires full disclosure to the public by all entities or organizations receiving federal funds. The Office of Management and Budget is responsible for establishing and maintaining a website that complies with this mandate.

In 2009, the United States' Federal CIO Council shepherded the creation and launch of the *Data.gov* Website. The site's mission is "to increase public access to high value, machine readable datasets generated by the executive branch of the federal government." The site offers "raw" datasets (such as those exported from ERP systems) that individuals may utilize, manipulate and interpret. Datasets are offered through keyword searchable catalogs and are provided in multiple file formats to maximize accessibility and software compatibility.

The Data.gov site serves also as a blueprint for similar sites created at the state and local level. Data.gov provides an interactive map that links to the state and local data sites that have been launched. [<http://www.data.gov/statedatasites>]. As of January, 2010, California, Michigan, Utah, Massachusetts, and the District of Columbia have such sites.

State and local

At the state level, a number of states have implemented a form of transparency law.

- Mississippi has legislative mandates to provide taxpayers access to financial activities. The Mississippi Department of Finance and Administration is responsible for providing access and updating financial data regularly. Information includes budget appropriations, revenues, payroll information and contracts (Mississippi Accountability and Transparency Act of 2008).

^{**} *Survey Report on Perceptions of Government Financial Management – Verbatim Survey Results*. Association of Government Accountants. <http://www.agacgfm.org/harrispoll2008.aspx>. February 2008. Slide 6.

- The State of Alaska provides budget and financial information online.
- California offers online access to a summary of contracts awarded by state agencies.
- Texas provides contract information on the state website.
- The State of Kansas shares expenditure information by vendor as a result of its transparency initiative to provide access to the State's financial activity.
- The State of Illinois recently enacted legislative action that requires greater transparency in the procurement process and provides a structure in an attempt to shelter procurement officials from the political influences. Public Act 96-0975 of the State of Illinois requires not only greater transparency in the procurement process, but also requires that conversations held with vendors associated with a particular contract or procurement action be captured in written form and made available for public inspection. State officials required to oversee implementation of these provisions will need to wrestle with the absence of adequate resources and the investment necessary to see that all state agencies are in compliance with the new law that went into effect on July 1, 2010.

Various cities, including Chicago, IL, and Fort Collins, CO, have adopted transparency legislation and make transactions available on their web sites. Chicago introduced the Chicago Transparency in Government initiative in 2003, making final contracts available to the public via its Web site. It also made available other information such as a freedom of information directory, an online permit center, public safety and community e-mail alerts, 3-1-1 online service requests, and other information of interest to stakeholders.

TECHNOLOGY: CRITICAL TO TRANSPARENCY IN GOVERNMENT

Information maintained by the government is a public asset and must be disclosed rapidly in forms the public can readily find and use. Implementing transparency measures and providing information about government operations to the public in a timely manner relies heavily on technology-based solutions. Of course, technology-centric information systems require substantial initial investment and ongoing financial and human resource allocation. As governments are perpetually challenged to adequately fund all public services, public officials must necessarily balance transparency mandates with limited available resources. Absent adequate technology support, transparency initiatives depend on labor-intensive, ineffective, and time-consuming processes to make documents available. For transparency initiatives to achieve their great potential for success, investment in technology is essential.

As technology solutions are founded upon and must integrate with the operating practices of the entity, procurement officials must continue to find ways to creatively streamline processes, become more efficient, promote accountability, preserve process integrity and provide information regarding contracting activities and decisions that build and strengthen public trust. Efficient, well-defined systems processes and rules contribute to reducing the cost of the technology investment.

Evolution of Technology

Prior to the late 1980s, aggregating data into centralized, “mine-able” repositories was much more difficult than it is today. With the advent of sophisticated network architectures and a commonly accessible Internet, the capacity for broadly sharing volumes of useful data is realistic. Public and corporate bodies rely on enterprise-wide technology solutions to support their data acquisition, processing and distribution needs. These Enterprise Resource Planning (ERP) systems have intentionally and substantially eroded information “silos” and organizational “shadow systems” that would otherwise prevent easy access to sought-after information. This is not to say that these barriers have altogether vanished; simply that ERPs have substantially weakened information domains that now require more deliberate effort to maintain.

ELEMENTS OF TECHNOLOGY SOLUTIONS

At its simplest, transparency in procurement is about public access to information. However, anticipating and meeting the broad variety of public information needs is not so simple. Individual citizens may want information about how their tax dollars are spent, while a business may want current and historical information related to an upcoming bid or proposal.

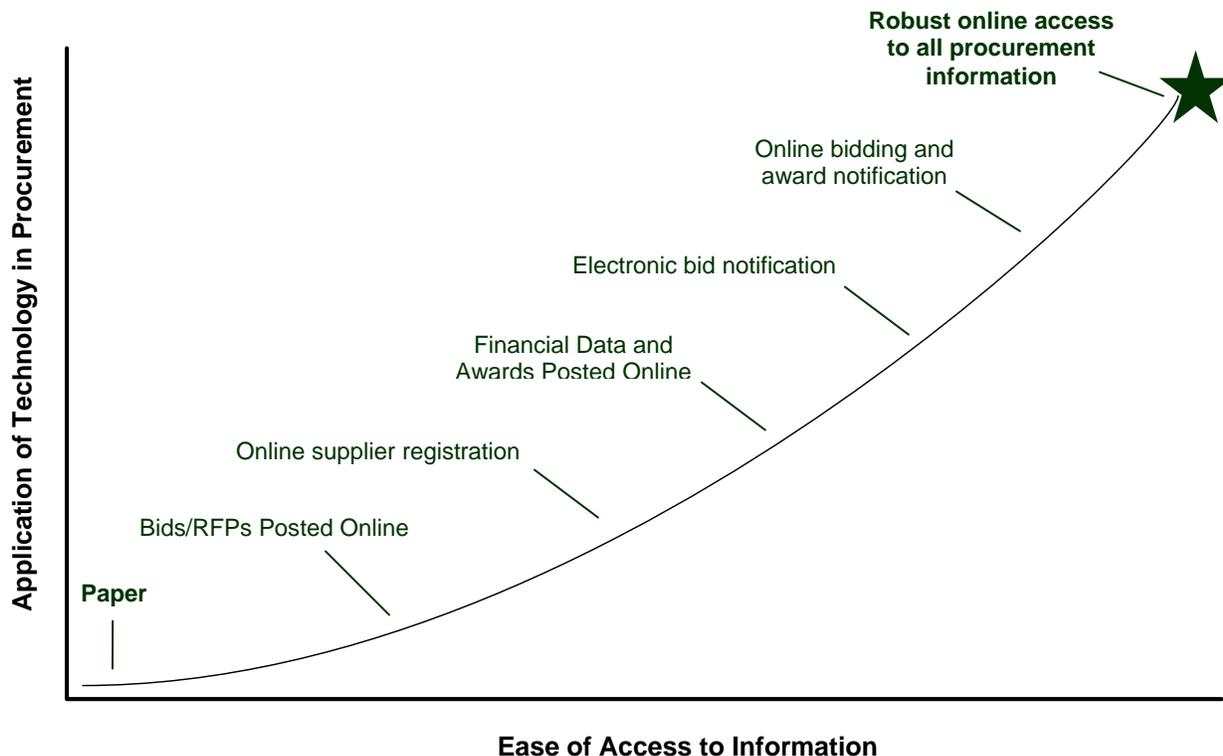
What and How

State and local regulations determine ‘what’ information is to be provided to the public. However, ‘how’ information is provided to the public is frequently left up to the discretion of the state or local jurisdiction.

Ease of public access to government-generated data, i.e. *transparency*, greatly depends on the jurisdiction’s use of technology-oriented operations. The spectrum of public access to procurement information in the United States is depicted in the graphic below:

Information Access and Technology

Transparency in Procurement



Many procurement entities are high on the *transparency* curve with easy access to procurement information online, electronic bid notification and on-line bidding and award notification. Others are somewhere further down the *transparency* curve and may be posting bids on-line, registering suppliers on-line, and/or posting financial data and award information on-line. Unfortunately, many organizations are technologically challenged and function entirely in a paper environment. Paper is the least transparent form of information and may make it difficult for the public to find the desired information or do business with government.

Business Environment

Transparency-in-government initiatives may strongly influence procurement practices and, perhaps unintentionally, transform governments into better customers for their suppliers. Customers who appear easy to do business with are more desirable to suppliers and are more likely to secure better business terms than entities relying on archaic methodologies and systems. Governments committed to being 'easy to do business with' may invite supplier and vendor feedback to determine their success in providing a transparent procurement process.

Factors that reflect how easy it is to do business with a procurement entity:

- Clearly expressed, readily available regulations, policies and procedures
- Standardization of documents

- Completeness of information
- Equal access and opportunity

Regulations, policies and procedures. NIGP works in cooperation with the American Bar Association's (ABA) Section of Public Contract Law to improve state and local procurement. The ABA's Model Procurement Code includes "best practices" that promote transparency in procurement. Adopted by 17 states and many hundreds of local jurisdictions, the Model Procurement Code addresses a broad range of issues arising in the procurement of supplies, services and construction. *[Source ABA Section of Public Contract Law web page for Model Procurement Code]* While public purchasing entities may not need the Model Procurement Code to be "easy to do business with," they do need well defined regulations and policies that promote fair and open competition. Confusing regulations, policies or procedures can make it hard doing business with any public procurement entity.

Standardization of Documents. Vendors must wade through a wide array of documents when attempting to do business with public procurement entities. Vendors are confronted with literally hundreds of different formats for bids, quotes, proposals and registrations. This lack of standardization increases the time and effort that vendors must spend in order to do business with a government activity. Some public procurement activities have developed standardized templates and documents that provide the public with easier access to information as well as making it simpler for vendors to do business with them.

Completeness of Information. This sounds simple, but maintaining the integrity of information and data so that the public can access complete information can be very challenging. The harder it is for an activity to generate complete information to the public, the less transparent that activity is. The use of electronic data and word processing makes the maintenance of information integrity much easier.

Equal Access and Opportunity. There should be no "insiders" when it comes to accessing public procurement information or the opportunity to do business with government. An example of "insiders" would be a department holding a pre-meeting with selected vendors prior to a bid or request for proposals being issued. Other "insider" examples include refusing to meet with some vendors or failing to answer bid/proposal questions to all by addendum. Competitive acquisitions should be "fair and open," an expression that has long been a standard axiom for procurement professionals. It is relatively easy to write bid specifications or requirements that limit competition. However, it can be difficult to develop specifications and requirements that do not limit competition. Under no circumstances should a competing vendor be allowed to write the bid specifications for your procurement. Transparency in procurement means conducting "fair and open" acquisitions throughout the acquisition process.

Example Websites of government entities supporting transparency in process:

- <http://citydocs.fcgov.com/>
- <http://www.fcgov.com/openbook/>
- <http://www.fcgov.com/purchasing/>

- <http://www.cpa.state.tx.us/comptrol/expendlist/cashdrill.php> (State of Texas)
- <http://www.window.state.tx.us/comptrol/expendlist/cashdrill.php>
- <http://milwaukeecounty.headquarters.com/>
- <http://mapyourtaxes.mo.gov/MAP/Portal/Default.aspx>
- Watchdog group website <http://www.fiscalaccountability.org/featured-website-open-book-city-fort-a884>

IDENTIFYING SOLUTIONS

Any solution that will remain viable over the long term must strike a balance between available resources and transparency. Affordability often forces government to balance resources against desired or mandated levels of transparency.

The American Bar Association's model procurement code focuses on promoting transparency, fairness, and competitiveness in state and local government procurement to encourage broad participation and yield best value procurements. Unfortunately, legacy technology systems and inconsistent data collection standards frequently undermine realization of the ABA model's ideal. At minimum, in the absence of technology investments, incremental improvements can be achieved through standardization of documents and simplification of process.

The best systems solution provides for the appropriate scale of technology investment and the inclusion of procurement staff in the solution development process. The return on investment for implementing new technology solutions are transparency, streamlined workflows and improved decision-making. Yet, in addition to acquiring the necessary technology, government staff must be willing to learn and adopt new or more efficient ways of conducting procurement transactions. A focused change management plan must be in place.

Successful implementation of technology-based solutions requires preparation and vision. Organizations must be willing to undertake an assessment of its existing processes to identify opportunities for streamlining and standardization. Engaging procurement staff in the organizational assessment enhances the likelihood of achieving a broader set of possible solutions and more enthusiastic adoption of the final product.

In addition to achieving greater transparency, integrating new processes and technology often achieves a broader range of benefits for the entity.

- Standardized documents
- Efficiency gains and adopted best practices
- Simplified information requirements that result in higher quality responses
- Reduced FOIA or other forms of public records requests (frees resources for redirection to other priorities)
- Broader pool of vendors; increased competition; improved prices for the agency
- Improved vendor-related documentation

- Improved audit process
- Easier procurement planning and strategic sourcing
- Access to federal grant programs that have transparency-related evaluation criteria

RECOMMENDATIONS

Ultimately, the goal of transparency is to provide sufficient information to allow private citizens to view and/or monitor government spending. Access to information is the best way to protect taxpayers' dollars against abuse and fraud.

To this end, the NIGP recommends that entities:

1. Identify existing and proposed legislation guiding transparency-related requirements
2. Allocate the financial and human resources necessary to undertake an entity assessment of its "transparency friendliness"
3. Allocate the financial and human resources necessary to establish a systems solution that supports transparency
4. Establish Web-based reporting of entity data that includes, at minimum, current bid opportunities, bid results, current contracts, and solicitation schedules
5. Model entity portals after the data.gov or nyc.gov data mines
6. Establish recommended raw data format (such as .txt for statistical data)
7. Establish a Public-Procurement Liaison link on the government procurement site as a method for providing data not immediately available through the Website
8. Establish and post Terms of Use to discourage fraud and misuse of information
9. Establish and post an entity *statement of commitment* to the NIGP Code of Ethics

CONCLUSION

The ideal of transparency in government practice is fundamental to successful democratic process. Transparency has been a recurring topic of focus for leaders of democracies throughout history. The manner in which government conducts itself in its business transactions immediately affects public opinion and the public's trust in its political leaders. In addition to garnering the public's good will and strengthened trust, the more practical, measurable business benefits of transparency are increased competition and better value goods and services.

Standardization of process, simplified information requirements, and availability of information, all make doing business with government much more attractive to the supplier community.

Today, democracies enjoy the benefits of database and networking technologies that support achievement of the transparency ideal. For many government entities, however, identifying the financial resources for enhanced information systems is a challenge. Nevertheless, with awareness that the enabling knowledge and tools exist, it is a challenge political leaders have the capacity to overcome. Through their budget debates, they can demonstrate their commitment to a principle operating tenet of democracy. In so doing, they grasp the opportunity to improve the financial performance of their government, strengthen their personal platform for continued leadership, and establish a legacy of trust for all government constituents.

