Introduction: What is Open Contracting?[1]

Procurement spending lies at the core of virtually everything the government does, from road repair to the purchase of school and medical supplies. Every Nova Scotian has a common interest in ensuring that the province spends its money wisely and efficiently, since the people of Nova Scotia are ultimately the ones who pay for these goods and services, and for whose benefit they are being procured.

The most important component of a strong public procurement system is transparency. As a matter of principle, the people of Nova Scotia have a fundamental right to monitor where their money is going. This level of oversight is critical to a democratic system, by providing the public with an accurate window into what their representatives are up to, and generating trust and confidence in public authorities. However, beyond these broad social benefits, there is increasing evidence that transparency can actually lower the costs of procurement.[2] Transparent processes are more efficient and competitive, since they are less impacted by corruption and mismanagement. Open contracting can even be a source of business intelligence, enabling unsuccessful bidders to make their tenders more competitive in future processes. The implementation of a robust open contracting system in Ukraine led to savings of nearly USD 1.5 billion between 2015-2017,[3] while Virginia's eVA procurement system has reduced costs by around USD 450 million.[4]

These benefits are a major driver of why governments around the world are increasingly embracing open contracting. However, while the global trend is unmistakably in favour of greater access to procurement information, Nova Scotia remains stuck in the past, with systems that trend towards

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[1] This work was drafted by Michael Karanicolas, Paul Conrod, Jeremy Ryant, Basia Sowinski, and Keith Johnson of the Right to Know Coalition of Nova Scotia. It is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Unported Licence. You are free to copy, distribute and display this work and to make derivative works, provided you give credit to the Right to Know Coalition of Nova Scotia and distribute any works derived from this publication under a licence identical to this one. To view a copy of this licence, visit: http://creativecommons.org/licenses/by-nc-sa/3.0/.

[2] Michael Karanicolas, "The Costs of Secrecy: Economic Arguments for Transparency in Public Procurement", Open Government Partnership, 15 May 2018. Available at: https://www.opengovpartnership.org/sites/default/files/OGP_Costs-of-Secrecy_20180515.pdf.

[3] Sophie Brown, "'Everyone sees everything': Overhauling Ukraine's corrupt contracting sector", Medium, 28 November 2016. Available at: https://medium.com/open-contracting-stories/everyone-sees-everything-fa6df0d00335.

[4] These numbers are reported in "Information About Virginia's Enterprise Electronic Procurement System Benefits and Savings", Virginia Department of General Services, November 2015. Available at: https://eva.virginia.gov/cd/files/evafact1benefits-savings.pdf.

secrecy, or provide only a bare minimum of information. This Report examines Nova Scotia's procurement system, and contrasts the information which is made available against international better practice standards to develop a set of concrete recommendations for how things could be improved.

International Standards for Transparency in Procurement

The enormous importance of procurement to public administration has led to a robust body of international standards for how to create an effective and transparent system. The basic approach underlying this work is that all procurement information should be open by default, and that governments should, at a minimum, publish the following:

Publications Categories for a Strong Open Contracting System	
Information to be published at the outset of a contracting process:	• Budget allocations • Needs assessments • Risk assessments • Procurement plans • Dispute Resolution mechanisms and procedures
Information to be published alongside the contract:	• Technical specifications • Selection criteria
Information to be published when a decision is made:	• Justifications and reasoning • Information about all bids received (including beneficial ownership information • Any conflicts of interest uncovered
Information to be published about the contract itself:	• Performance, delivery and payment schedules • Specific pricing • Information about any subcontracting arrangements
Information to be published upon the contract's conclusion:	• Final financial information (including regarding cost-overruns, if there have been any) • Performance evaluations.

This material should ideally be published in open and machine-readable formats, and in a manner which is easily searchable and accessible.

Nova Scotia's Procurement System

Public procurement in Nova Scotia is governed by the *Public Procurement Act*, which applies to all public sector entities acquiring and suppliers providing goods, service, construction and

facilities.[5] This law includes a requirement to publicly tender for all goods, services, construction and facilities, and to post limited amounts of information about contracts on their web portal, including announcements for open tenders and the ultimate contract amount awarded. The level of process and transparency required for different types of acquisitions depends mainly on the size of the contract, but in general the Public Procurement Act only requires entities to post the name of the successful bidder and the contract amount awarded, along with basic information about their procurement policies.

For most of the entries on Nova Scotia's procurement web portal that we examined in the course of our research, the published information is in line with these minimum standards, but is limited to the name of the successful bidder, the contract amount awarded, the tendering department, and the opening and closing dates of the tender.[6] This falls far short of what is seen in better practice jurisdictions. It is also worth noting that the web portal is capable of delivering more data points, including spaces for original tender documents, contact information for the individual responsible for the tender, and information about unsuccessful bidders and their bid amounts. These spaces are often left blank.[7]

Nova Scotia can do better and, at the very least, the government should be making full use of the public procurement tools available to it by filling out all of the data points on the web portal. Information about unsuccessful bidders would be a particularly useful place to start, since this is crucial to public oversight of the process. One particularly valuable improvement could be to publish bid tabulations for competitive contracts, spelling out exactly how the bids were evaluated and why a particular one was chosen. This practice is routine in many jurisdictions, as it provides an increased amount of transparency and justification for contract awards, allowing individuals to dig more deeply into the decision-making process, and understand the economics underlying successful bids.

One example of how this is done elsewhere is Manitoba's Infrastructure Department, which maintains a Bid Results Library containing tabulations and granular information on each vendor's bid, as well as disclosure on which vendor was awarded the contract.[8] Virginia has a similar but more expansive model where bid results, tabulations, and breakdowns are provided for all public entities.[9]

Another useful area for greater transparency is in the granular costing of the contracts themselves, such as information on labour hours and wages, unit costs for supplies, costs of building materials, etc. This type of information can be helpful to the public at large, in order to understand whether the government is getting good value for its money, as well as for potential future bidders, who can assess the competition and decide whether it might be worthwhile to enter future processes.

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[5] *Public Procurement Act*, SNS 2011, c 12 [*Public Procurement Act*], s 4.
[6] *Public Procurement Act*, *supra* note 5, s 12(1)(b).
[7] See e.g. an entry for an awarded tender by the Department of Justice for "officer uniform pants, shirts and 3 in 1 patrol jackets for correctional services and sheriff services" at www.novascotia.ca/tenders/tenders/tender-details.aspx?id=60148752.
[8] Manitoba Infrastructure, "Bid Results Library", available at: gov.mb.ca/mit/contracts/bidresults.html.
[9] Virginia.gov, "eVA: Virginia's eProcurement Portal", available at: eva.virginia.gov.

> **Nova Scotia should substantially expand the amount of procurement information it publishes, starting with routine publication of information about unsuccessful bidders, bid tabulations, and costing breakdowns for contracts.**

Information is open, except when it isn't

There are two types of procurement in Nova Scotia where significantly less information is available: standing offers and sole-source contracting. Standing offers are tender or procurement offers made by a pre-approved supplier with predetermined terms and conditions. Sole-source contracts are awarded without competitive bidding. While both types of procurement can have a place in a robust procurement system, they should be subject to even more rigorous standards for transparency. Unfortunately, in Nova Scotia, the reverse is typically true.

According to the Nova Scotia *Sustainable Procurement Policy*, standing offers require only the name of the successful bidder to be published. It is understandable that no financial information would be published at the time of the awarding of the standing offer contract as it is likely that no goods or services are supplied immediately. However, we could find no disclosure as to the reasons for selecting a particular bidder for the standing contract. Further, we could find no requirements to disclose the use by a public entity of an established standing offer. While the use of standing offers themselves is not necessarily antithetical to a robust procurement system, at least the same obligations of transparency should apply to these processes as to every other contract.

Sole-source contracts are entered into without a competitive process. Again, this can be legitimate, with the typical justification that there is only one known source or that only one supplier is able to fulfill the requirements.[10] But although public entities in Nova Scotia using non-competitive procurement processes must abide by specific policies, we could not find any disclosure specifically for sole-source/non-competitive contracts. As a comparator, Alberta maintains a database exclusively cataloguing sole-source contracts, including information on all sole-source contracts of $10,000 or more purchased by Alberta government departments.[11]

Since 2004, the federal government has required public notice of any contract over $10,000. Additionally, the current Guideline on the Proactive Disclosure of Contracts requires annual reporting[12] and disclosure[13] from all departments and agencies on a contract when its value is $10,000 or less, and a positive or negative amendment when its value is $10,000 and under. The Government of Canada posts its procurement and tendering information through a central online portal, the Open Government Portal, under which all departments must report their contracting data.[14]

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[10] National Association of State Procurement Officials, "Non-Competitive/Sole Source Procurement: Seven Questions" (January 2015). Available at: www.naspo.org/solesourceprocurement/7-Question_Sole_Source_Procurement_briefing_paper-1-13-15.pdf .

[11] Alberta Government, "Sole-source service contracts". Available at: www.alberta.ca/sole-source-contracts.aspx.

[12] Government of Canada, Guidelines on the Proactive Disclosure of Contracts [Federal Guidelines], s 4.1.2. Available at: www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14676.

[13] Federal Guidelines, *ibid*, s 4.1.3.

[14] Federal Guidelines, *ibid*, s 4.3.1.

Accessibility challenges

Accessibility is among the greatest challenges of any transparency system. As increasing amounts of information are placed online by public bodies, users may find it more and more difficult to locate the specific information they are seeking. Nonetheless, developing a website which is intuitive and accessible is critically important. There is little utility in putting information out there if the public will not be able to find it.

Our researchers found that Nova Scotia's procurement web portal is fairly easy to access and navigate.[15] Tenders can be searched based on whether they are open, closed, or awarded. Through the use of a drop-down menu, searches for projects can be refined to specific government departments and public-sector entities. Users can also refine their search to specify procurement related to goods, services, or construction, and by tender category, which can be sorted to a high degree of granularity. Some examples of these categories include office supplies, industrial equipment, vehicles, and property maintenance services.

Although the categorization is relatively user-friendly, the search function is far less so. It is difficult to use effectively since it relies on using the exact keywords in the "Description" section of each entry. If a user cannot guess this exact wording, the correct results will not appear. This creates inconsistency since these keywords may not be intuitive to all users. For example, a call for tenders by the provincial Waterfront Development Corporation for a waterfront beer garden is listed as "Halifax Waterfront Business Opportunity".[16]

Our researchers also found several cases where important information about bids and awarded contracts was inaccessible due to the portal links being broken. Other reports, such as those that detail the Halifax Regional School Board's (HRSB) contracts, do not provide an accessible hyperlink to the HRSB's external website. Instead, users must copy and paste a link into a new browser and then complete an online form on an external page in order to access basic tender information. The compounded effect of dealing with broken links, a web of external websites, and the added barrier of filling out personal information to access tender documents presents a serious problem for user accessibility.

Additionally, most of the information on Nova Scotia's web portal is made available via pdfs and web pages which must be individually accessed, making the information far more difficult to

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[15] See Nova Scotia Procurement, "Nova Scotia Tender Notices". Available at: www.novascotia.ca/tenders/tenders/ns-tenders.aspx.
[16] Nova Scotia Procurement, "Tender Details: Halifax Waterfront Business Opportunity" (25 November, 2015). Available at: www.novascotia.ca/tenders/tenders/tender-details.aspx?id=WDVEND15-3.

aggregate and process. Ideally, this information should be distributed in open and machine readable formats, such as csv files.

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Nova Scotia should improve the search functionality of its web portal.

Nova Scotia should review its web portal to correct broken links and, as far as possible, should centralize relevant information on the portal itself rather than forcing users to access external websites to obtain basic tender information.

Under no circumstances should users have to enter personal information to obtain basic tendering information.

Nova Scotia should publish all of its contracting information in open and machine readable formats.

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Procurement Reporting

A strong open contracting system should include not only information about individual contracts, but also consolidated or aggregated information about the contracting system. An important way to achieve this is through the publication of annual reports. For example, Vancouver publishes an Annual Procurement Report with full documentation of its procurement activities.[17] It provides information on supply chain management including departmental data on activities and savings, contract approvals, contracts awarded, surplus asset disposals, warehouse inventory, sustainable and ethical procurement information, contract transactions by value range, and contract transactions by vendor location. It also lists all contracts $75,000 or greater and sole source contracts with reference numbers, descriptions, names of successful vendors, contract awarded values, and departments.

Nova Scotia currently has no comparable reporting requirement. Although the online document library on the Nova Scotia procurement page includes dispute settlement logs, guides, processes and quick reference documents, sustainable procurement documents, and trade agreements,[18] there is no evaluative component to this information. Nova Scotia's open data portal contains consolidated information about government contracts, which can be downloaded in machine readable formats, but there is no breakdown for this raw data.[19] An annual procurement report could be a mechanism for government accountability which allows for informed engagement between the government, suppliers, and the general public.

An annual report could represent information that is impossible to infer by looking at individual contracts, such as cumulative data and general spending trends. It also allows for easy comparison

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[17] City of Vancouver, 2016 Annual Procurement Report. Available at: http://vancouver.ca/files/cov/2016-Annual-Procurement-Report.pdf.

[18] Nova Scotia Procurement, "Document Library". Available at: https://novascotia.ca/tenders/document-library.aspx.

[19] Nova Scotia Open Data Portal: https://data.novascotia.ca/Procurement-and-Contracts/Awarded-Public-Tenders/m6ps-8j6u.

between different years. The following is a list of valuable information that could be included in a report:

- Geographic distribution of tenders submitted
- Geographic distribution of successful tenders
- Total number of contracts submitted
- Total number of successful contracts
- Total number of standing offers
- Total number of sole-source contracts
- Total value of successful contracts
- Value range of contracts
- Individual values for successful contracts
- Evaluations of government departments or agencies
- Evaluations of categories listed on online portal
- Achievements
- Complaints
- Improvements

Nova Scotia should produce an annual procurement report.

Consolidated Recommendations for Nova Scotia

1. Substantially expand the amount of procurement information published, starting with routine publication of information about unsuccessful bidders, bid tabulations, and costing breakdowns for contracts.

2. Publish information about standing offers, including the reasons why a particular bidder was chosen.

3. Establish a database of sole-source contracts.

4. Improve the search functionality of the web portal.

5. Review the web portal to correct broken links and, as far as possible, centralize relevant information on the portal itself rather than forcing users to access external websites to obtain basic tender information.

6. Eliminate any requirement for users to enter personal information to obtain tendering information.

7. Publish all contracting information in open and machine readable formats.

8. Introduce annual procurement reports.