

Openness in Public Sector Procurement

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Ontario Connections

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Outline

- Who We Are
- The IPC and Open Government
- The Guelph Lab
- Open Contracting



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About the IPC

- Information and Privacy Commissioner (IPC) provides an **independent** review of government decisions and practices concerning access and privacy
- Commissioner is appointed by and reports to the Legislative Assembly; remains independent of the government of the day to ensure **impartiality**



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The Three Acts

IPC oversees compliance with:

- *Freedom of Information and Protection of Privacy Act (**FIPPA**)*
- *Municipal Freedom of Information and Protection of Privacy Act (**MFIPPA**)*
- *Personal Health Information Protection Act, 2004 (**PHIPA**)*



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Purposes of *FIPPA* and *MFIPPA*

The purposes of *FIPPA* and *MFIPPA* are:

- to provide a **right of access to information** under the control of institutions in accordance with the principles that
 - information should be **available to the public**
 - access exemptions should be **limited and specific**
 - access decisions should be reviewed **independently** of government
- to **protect the privacy of individuals** with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information



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Open Government

Open Government refers to the policies, activities and governance structures that improve openness, accountability, and public engagement

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

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



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Open Government and the IPC

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

- Routine Disclosure/Active Dissemination (1994):
 - Institutions should proactively make information available to the public rather than relying on access to information requests
- Access by Design (2011):
 - Collect and create records with the express intention of making them accessible to the public



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Open Government and the IPC cont'd

- The IPC is developing a series of guides to help institutions advance the Open Government agenda, including:
 - Overview of Open Government and important resources
 - Outline of key implementation considerations and a review of the personal privacy issues raised by Open Government
- We are working with individual institutions to provide advice on how to move forward on their Open Government initiatives
- [Guidance on Open Contracting](#) was issued in 2015
 - Procurement records should be fully accessible and proactively made available online



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About the Guelph Lab

- Partnership of the City and University of Guelph
 - Two institutions with changing attitudes to their role in the community (and how they interact with it)
 - University concerned with “engagement”
 - City concerned with “participation” / “openness”
- Support change INSIDE both institutions
 - how to support (resource) change directed at the rules / routines etc. that make “engagement” / “openness” difficult?
- People and processes (no white coats!)



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Guelph and Procurement

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



Civic Solutions Accelerator

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

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



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What is Open Contracting?

- Open Contracting refers to norms and practices for increased disclosure and participation in public contracting
- It covers the entire contracting process - RFPs, bids, evaluations and contracts
- It encompasses all public contracting, including contracts funded by combinations of public, private and donor sources



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Benefits

Open contracting has a number of benefits:

- Improved public confidence and trust
- Increased accountability on spending
- Increased fairness and competition in contracting
- Reduction in the number of access to information requests and appeals



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Examples of Open Contracting

The Ontario Government's Open Data Directive:

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



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Examples of Open Contracting

Legal Aid Ontario:

- Full text contracts are available on the Legal Aid Ontario website
- The main contracts website includes summaries with details such as cost, dates signed and names of parties
- Some redaction of contracts is done to protect privacy, including, for example, signatures



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Publications & resources

Proactive disclosure

[Contracts](#)

[Expense reports](#)

[Public proceedings of LAO's Board](#)


[Questions & answers](#)

Proactive disclosure

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

- [Memorandum of understanding](#)
- [Salary disclosure](#)
- [Expense reports](#)
- [Contracts](#)
- [Service agreements](#)
- [Public proceedings of the Board](#)
- [Information requests](#)
- [public interest related correspondence](#)

Employee contracts

Position	Name	Date	File
President and CEO	Robert W. Ward	June 26, 2006	

Vendor contracts

2015/16 contracts						
Reference number	Department	Name of vendor awarded contract	Date of contract	Contract details	Value	File
RFP2015-008	Policy & Strategic Research	Public Interest Strategy & Communications	Jan. 29, 2016	Public Legal Education and Information: Research and Analysis project	\$79,633.75	
RFP2015-012	Client Service Centre	Still Waters Consulting Inc.	Nov. 24, 2015	Information Management Consulting	\$57,915.33	
RFP2015-011	Corporate Services	Deloitte LLP	Sept. 4, 2015	Facilities and Space Strategy	\$47,779	
RFP2015-007	Provincial Case Management & Special Projects	HDR Corporation	Aug. 25, 2015	Analytics and Business Innovation Support	\$50,000	
RFP2015-006	Central Programming & Innovation	Pesce & Associates Inc.	July 16, 2015	Program Review of LAO's Harassment Prevention Policy and Program	\$16,950	
RFP2015-005	Strategic Technology and Innovation	Nielson Consulting Inc.	June 29, 2015	IVR Redesign	\$48,499.60	
RFP2015-003	Lawyer Service Center	HDR Corporation	June 11, 2015	Analysis of Contribution Agreement and Write-Offs	\$94,000.00	
RFP2015-004	Central Programming	Lebeau Transcription Services	May 11, 2015	Secure Legal Transcription Services	\$50,000.00	

Examples of Open Contracting

City of Seattle:

- Full text contracts, including pricing information, are available on the seattle.gov website
- All contracts are searchable by a variety of means and are not merely posted in a chronological order
- Calls for proposals/bids remain online after the call period has closed



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City Purchasing & Contracting

Finance & Administrative Services Department - Fred Podesta, Director

Home / City Purchasing

City Purchasing

City Purchasing FAQs

Green Purchasing

Consultant Contracting

Construction Contracting

Social Equity

Blanket Contract Search

Online Business Directory Account Access

Sign in/Register

Search the OBD

Learn more

CITY PURCHASING

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

Online Business Directory/Roster

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

Purchasing Contract Search

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

Interlocal Agreements

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

Current Purchasing Announcements

11/4

Expiring Blanket Contracts

12/30

2016 First Friday Drop-In Day

Current Purchasing Solicitations

4/18

CLOSED-Integrated Pest Management ITB #CTY-3577

Upcoming Events

2016 City of Seattle

Reverse Vendor Trade Show

Thursday, July 21, 2016

11 a.m.-3 p.m.

Seattle Center Fisher Pavilion

305 Harrison St., Seattle WA 98109

Download flier

RSVP today

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- Priority Hire
- Protest Protocols
- Public Disclosure Requests
- WMBE
- Who Can Help

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Sign up for Public Works email updates

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Blanket Contract Search

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

You have an option to limit your search by Contract Status

Contract Status: Closed Open All

Find a Contract by Contract Number

Contract Number:

Or Find a Contract by Vendor Name

Vendor Name: Starts with Contains

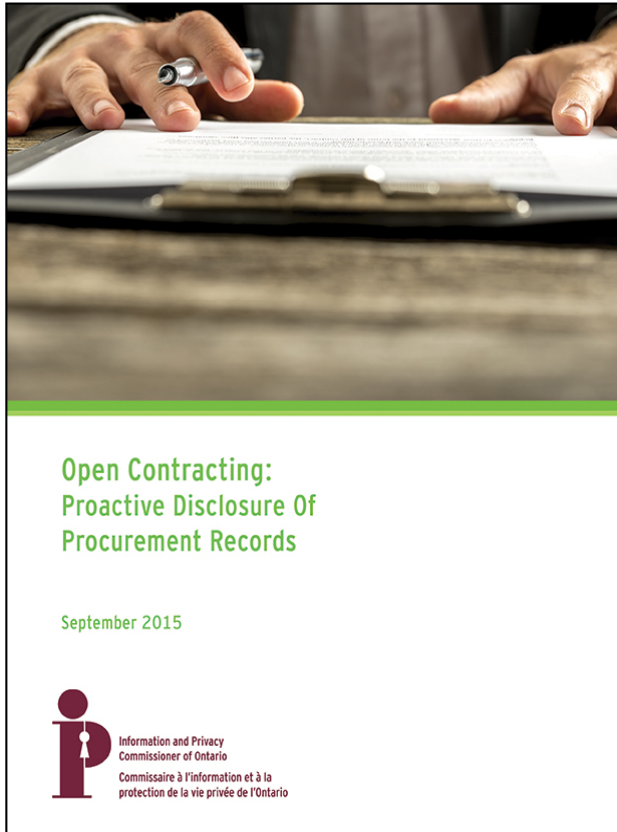
Or Find a Contract by Commodity Keyword

[Commodity Keyword](#): Starts with Contains

Or Find all Approved Blanket Contracts

All Approved Blanket Contracts:

IPC Open Contracting Guidance



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

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

Routine Publication

IPC recommends routine publication of procurement records

- Including, but not limited to, preliminary analyses, successful and unsuccessful bids, evaluations of bids and full contracts
- Only **truly proprietary** and limited **personal information** should be withheld



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Third Party Exemption

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

- 1. Identify the types of information** – examples include trade secrets, scientific, technical, commercial
- 2. Determine if the information was supplied in confidence** – was the information supplied in its entirety? Was the information generated as a result of negotiations? Did the supplier of the information have reason to believe it would be held in confidence?
- 3. Identify and evaluate harms that could reasonably be caused by disclosure** – for example, will release of the information prejudice competitive position, interfere significantly with contractual negotiations, result in undue loss to the third party?



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Orders on Procurement

M0-3183

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



Orders on Procurement

PO-3311

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



Orders on Procurement

PO-3148

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



Open Contracting Implementation

- Understand that there are no legal impediments in Ontario's information and privacy laws to designing an open procurement process
- Make proactive disclosure **the default**
 - Commitment of senior leadership is key
- **Engage** your stakeholders regarding the design of your procurement process



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Open Contracting Implementation

- Design your procurement with **limited exceptions** in mind
 - Understand how to deal with third party information and personal information
- **Be transparent** about transparency
 - Be upfront and clear when gathering information from third parties about your intentions to disclose
 - Key is **managing expectations**: parties engaging with government should expect public scrutiny (include notice in RFP materials)



Resources

Open Contracting: A guide for practitioners by practitioners:

http://www.unpcdc.org/media/416641/open_contracting_a_guide_for_practitioners_by_practitioners-v2.pdf

The Open Contracting Partnership:

<http://www.open-contracting.org/>

The Open Government Guide:

<http://www.opengovguide.com/topics/public-contracting/>



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Questions?



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How to Contact Us

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