Open Contracting Partnership Submission

Australian Public Service Review 2018

Table of Contents

[**Introduction**](#_thv494evke3v) **1**

[**Australian Government approaches to contracting**](#_h30nbisy57h6) **2**

[**What is Open Contracting?**](#_xd3xg4ln6jnw) **3**

[The business case for Open Contracting](#_sy21yrtiepuk) 5

[Open Contracting in practice](#_i6k8a7qxisn1) 5

[Key elements of Open Contracting](#_sniipmub8m96) 6

[The Open Contracting Data Standard](#_ekmfa32a6xxo) 7

[**Open Contracting contributions to APS Review aims**](#_diijgbcg9rt6) **8**

[**Further Information**](#_ffzavnmcizqd) **9**

## **Introduction**

Government contracting is a core responsibility of the Australian Public Service and a modality through which many functions, services and responsibilities are performed.

Government contracting is a key mechanism for delivering services, infrastructure and supporting the core functioning of the Australian Public Service. It is a major area of government spending and an important interface with business and the community sector.

There is a high level of public interest in government contracts as they reflect investments of public finances into health, education, transport, defence, infrastructure and they can demonstrate the integrity and effectiveness of government spending.

As such, how the Australian Public Service undertakes contracting, and how well approaches to contracting and procurement meet the needs of the government and the public are relevant to the Australian Public Service Review.

Open contracting is a global approach to government contracting, originally developed in the World Bank, to deliver better *value for money* to government and *better value to the many users* of public contracting information from citizens to entrepreneurs, and other levels of government.

The [Open Contracting Partnership](https://www.open-contracting.org/) is a global organisation supporting partners to open processes and data regarding the planning, procurement & implementation of public contracts so that all stakeholders can understanding how and when decisions are made and work together to improve outcomes.

The [Open Contracting Principles](https://www.open-contracting.org/implement/global-principles/) are intended to guide governments and other stakeholders to provide access to contract information related to public contracting in a manner that enables meaningful understanding, effective monitoring, efficient performance, and accountability for outcomes.

The APS Review provides a critical opportunity to identify approaches, such as open contracting, that support ongoing modernisation, digitisation and greater effectiveness in government.

This submission presents some of the contributions that open contracting could make to supporting the Australian Public Service to help connect departmental information and data in a meaningful and useful way, collaborate with the community and business to deliver positive outcomes, and better monitor and measure performance to ensure transparent, accountable and effective use of taxpayers money.

We would welcome any opportunities to provide further information to the Review Panel.

## **Australian Government approaches to contracting**

Australia has been a world leader in transparency of government contracts and early digitisation. The history of gazetting government contracts contributed to Australia’s global reputation and attractiveness for investment as a transparent market. Australia moved early into e-procurement systems that enable online promotion and bidding for tenders.

Australia – at Federal and state levels – has also moved back and forth over time between centralised and devolved approaches to procurement. Today’s devolved approach has the benefit of being focused on the diverse and specific needs of departments and agencies of different sizes and purposes.

Devolution also has downsides: a proliferation of processes is confusing for government contractors, business and the community; information is in different and disconnected systems making it hard to access, link and share data. Devolution has meant that data on government contracts comes in many forms. This lack of standardisation has led to challenges in combining relevant datasets to provide a bigger picture, and leading to inaccuracies and incompleteness.[[1]](#footnote-1) The government cannot easily use its own data to see the whole picture of government contracts from conception through to delivery.

A trend towards outsourcing of a range of government responsibilities including in challenging areas, such as human services, requires a transparent framework to enable assessment of outcomes and decisions about the appropriate roles of government and contractors or service providers.[[2]](#footnote-2)

Increasingly, procurement is seen as a mechanism that can be used to support broader policy goals through sustainable and social procurement policies. Delivering the promise and intention of these policies will require access to data and engagement with business and community to monitor and ensure the effectiveness of these policies.

Australia is negotiating international agreements that include provisions on public procurement – for example accession to the General Procurement Agreement of the World Trade Organisation, and a range of free trade agreements. It will be important for the Government to have access to accurate and standardised data to use for multiple reporting requirements under these agreements.

Australian governments are focused on how to increase competition and participation of small and medium enterprises in their markets. They are preoccupied by the need to better standardise and use data to ensure value for money, be able to easily access and use information on government services by geographic area or analyse market participation and delivery across all government contracts. We suggest that open contracting provides a way to address these aims and, at the same time, modernise, digitise and support the greater effectiveness of the APS.

## **What is Open Contracting?**

Open contracting is a global approach, originally developed in the World Bank, to deliver better *value for money* to government and *better value to the many users* of public contracting information from citizens to entrepreneurs, and other levels of government.

Open contracting drives systemic change by embedding joined-up data, user engagement and feedback along the entire chain of public contracting. It can help governments, business and citizens track and analyse information from planning to tendering to the award and implementation of public contracts. Understanding processes and access to data underpin the Open Contracting Principles.

Open contracting is an emerging global norm for how modern, effective, and open governments make sure that their government contracting delivers results, creates competitive and fair markets and is accountable to citizens. There is a strong global community of government reformers, digital innovators, civil society and business who are working to advance and implement open contracting in over 30 countries, including in Australia.

The NSW Government was the first Australian government agency to adopt open contracting. NSW Procurement led Australia’s first application of the Open Contracting Data Standard – a globally recognised schema for publishing contracting information supported by the Open Contracting Partnership – through the development of an open data API for procurement information at the tender and contracting stages. Motivated by a desire to widen their reach to businesses of all types and sizes and the promotion of procurement opportunities, opening their data has enabled easier access to information. The adoption of the standard allows intermediaries to innovate and find ways to help communicate contracts and tenders opportunities broadly to the market.

At the Federal level, the Government has made commitments to the Open Contracting Principles and to publishing e-Tender data using the Open Contracting Data Standard through the first two Australian Open Government Partnership National Action Plans. We are currently collaborating with the Department of Finance around these plans and the implementation of these commitments.

Australia has started by publishing open data and this is an important first step. However, there is much more that the APS could do to adopt open contracting and unlock some of the broader benefits achieved in other countries using open contracting approaches, including:

1. Deliver value for money, saving governments time and money by more efficiently managing procurement and being better equipped to analyse outcomes and determine value;
2. Build a fairer business environment and create a level playing field for suppliers where all have access to the same information and opportunities;
3. Increased engagement and investment by proactively publishing project pipelines and opportunities to broader audiences across multiple channels;
4. Improve public trust and integrity by increasing access to relevant information;
5. Visibly track and improve service and infrastructure delivery and outcomes.

### **The business case for Open Contracting**

**Governments** can use open contracting to secure better value for money for goods, works and services, and to build trust with the private sector, civil society and citizens. Improved information on contract performance can encourage value-based procurement decisions and mitigates the risk of awards being reversed, or projects being terminated, due to faulty processes.

For **citizens**, open contracting can support more targeted, informed engagement, and tracking of project delivery. It may improve public trust, if data and feedback are acted on, by ensuring public money is spent in the public interest.

For **businesses**, open contracting creates a level playing field by reducing corruption, enabling fair competition and increasing market access. Coupled with broader reforms, it can help simplify the contracting process, lowering barriers of entry to government markets. Open contracting data helps large companies better understand opportunities and enter new markets, and enables small and medium-sized enterprises to better decide whether or not to compete for contracts. By engaging in clean contracting and establishing integrity in the markets, businesses can demonstrate how they contribute to delivering vital public services, which helps build trust.

### **Open Contracting in practice**

The largest infrastructure project in **Mexico** this decade, Mexico City’s new international airport, uses open contracting to improve delivery, business participation in contracting and civic engagement.

**France** and [the **UK**](https://www.gov.uk/government/publications/open-contracting)are implementing the OCDS to make government contracting information more friendly to small businesses and entrepreneurs, and to foster innovation in service delivery.

In **Nigeria**, information on government healthcare contracts was used to support community monitoring and improvement of primary health services.

In **Ukraine**, civil society, private sector and government reformers revolutionized public procurement, enshrining open contracting into law as part of the country’s Prozorro.org open source e-procurement system. Potential savings amount to over $900 million (as of June 2017) and thousands of new businesses have competed for contracts.

 In **Paraguay**, open data has led to a reduction in the number of cancelled tenders as well as revealing over-spending and in contracts for basic goods at some ministries. Policies on value for money for frequently purchased goods were adopted across the government.

In **Albania**, the Albanian Institute of Science was able to organise publicly available information about government contracting in a user-friendly way to evaluate the effectiveness of policies that seek to foster opportunities for women entrepreneurs and start a discussion about how to grow women’s participation in the procurement market.

In **Colombia**, by adopting Open Contracting principles, the [City of Bogota](https://medium.com/open-contracting-stories/the-deals-behind-the-meals-c4592e9466a2) was able to bust a price fixing scandal in the district’s school program. The US$170 million that was previously shared between 12 companies is now spent among 55 specialized producers. Some 14 of those had never participated in a bid process before.

### **Key elements of Open Contracting**

Efforts to make public contracting more transparent and effective in countries including the UK, Ukraine, Slovakia, Mexico, Colombia, Nigeria, and Paraguay have been most effective where they combined 3 elements:

1. **Made public contracts open by design:** Governments publish contracts and make deals open by design in order to share information with users to add value. For example, in Slovakia a government contract is not legal until it is published. This includes putting an unambiguous public disclosure clause in all government contracts (unless appropriate public interest redactions are used, in which case, the reasons are published) and publishing data on contract milestones and performance.

1. **Provided machine-readable, reusable open data on public procurement and how deals are reached:** Using the Open Contracting Data Standard, governments perform smarter analysis of data, helping them maintain value for money, gain efficiencies, and easily report nationally and internationally.

Businesses can better check previous contracts to understand markets, identify opportunities, and choose where to invest or tender based on clear project pipelines. Citizens can monitor the use of public funds and the quality of service and infrastructure delivery, and know who is responsible for delivery across the whole life cycle of projects and services

The more governments standardise and automate the publication of information on planning, procurement and implementation of contracts, the easier it is for the government to be able to connect and use its own data for better decision-making. As procurement is increasingly used to contribute to broader environmental and social goals, better data is needed if these policies are to have their intended impact. Publishing open data in a globally recognised standardised format also enables the market to consume, analyse and innovate around the data.

1. **Created engagement channels to encourage use of the data and to identify bottlenecks or to add value and insight to government services:** Engaging citizens, businesses and technologists in contracting can improve results, quality of services and competition.

Engagement with business means more companies have the information they need to make decisions about participating in procurement markets, especially based on good information about past approaches, conditions and prices, and future opportunities.

Public participation can help make sure that contracts are responding to public needs, manage expectations, and provide oversight and feedback for better delivery of good and services.

Government, contractors and citizens can work together to address irregularities and problems that are identified through the feedback. Other Government agencies have visibility on the shape of the market and where imbalances may occur, such as large companies dominance of specific contract types.

As well as being applied to government procurement, open contracting can and has also been applied to government contracting around natural resources, energy, infrastructure, public private partnerships, and grants.

### **The Open Contracting Data Standard**

The purpose of the [Open Contracting Data Standard (OCDS)](https://www.open-contracting.org/data-standard/) is to support organizations to increase contracting transparency, and allow deeper analysis of contracting data by a wide range of users.

The OCDS is a global non-proprietary schema guiding public administrations what information should be published when. It was developed in a year-long process by procurement practitioners worldwide in 2014, and continues to evolve based on feedback and insights from governments using the schema. The data standard enables users and partners around the world to publish shareable, reusable, machine readable data, to join that data with their own information, and to build tools to analyze or share that data.

OCDS enables disclosure of data and documents at all stages of the contracting process by defining a common data model. It is not a system, or software but rather a schema or map that guides the collection and publishing of data. The fields *(such as ‘date of award’ and ‘item name’)* are in standardized formats. The inclusion of unique identifiers allows to connect datasets from different publishers, irrespective of whether they are a local authority or central government department, in the same country or another part of the world. The comparability of data is not just useful for looking at patterns of spending within contract data and spend data. It can also be connected to other datasets such as grants, land use licences, budgets and company ownership. The Open Contracting Partnership has produced [guidance](https://www.open-contracting.org/resources/using-it/) on how different fields in the OCDS can help the tracking of different goals (e.g increasing competition or supplier diversity).

The Open Contracting Data Standard is fully open source and there are no licence fees. The unique global identifier helps link data across existing public financial management platforms.

The Open Contracting Data Standard is independent and complementary to any existing platforms or software solutions. Guidance on [integration with e-procurement systems](https://www.open-contracting.org/2018/07/18/new-guidance-including-ocds-electronic-procurement-projects/) has also been developed and a support unit can help governments implement the standard free of charge.

## **Open Contracting contributions to APS Review aims**

As outlined above, open contracting can contribute to the aims of the APS Review by driving innovation and productivity, better outcomes and better performance management, as well as connecting government information and modernising services.

In order to unlock the benefits of an open contracting approach we propose that the Australian Government and the Australian Public Service:

1. Adopt a consistent approach to making government contracts open by design with explanations for any redactions of information;
2. Invest in new approaches to engaging business and citizens to understand and help improve government contracting, for example:
	1. Develop clear and engaging process maps to help those inside and outside government better understand and implement procurement and contracting processes;
	2. Engage businesses around long term government plans and project pipelines;
	3. Engage relevant organisations in supporting the monitoring of policy priorities - for example minority owned businesses, small and medium enterprise participation, and sustainable procurement suppliers;
	4. Engage citizens in understanding government spending and grant making, for example in their local area;
	5. Develop the capacity of APS to engage citizens and business effectively.
3. Increase the publication of government contracting and procurement information in structured, open data on platforms that enable easy use and analysis by government, citizens and business.
	1. Streamline the consistency of input of government contracting information in open data from all Federal Departments and Agencies through use of the Open Contracting Data Standard (note: this will not require any change to existing underlying IT systems, rather structuring the data being inputted and outputted from all systems);
	2. Develop relevant and engaging online platforms that enable different audiences to understand and analyse information based on an understanding of the needs of different audiences, for example, businesses wanting to consider competing for government contracts, or citizens wanting to see how government funds are spent in their local areal;
	3. Support engagement and use of the data – for example through proactive communications and data dives;
	4. Continue to improve the quality, completeness and relevance of data published through feedback from and engagement with data users from government, civil society and business.
4. Consider collaborating with State Governments to better publish and communicate information around large scale infrastructure projects of high public and business interest.

Open contracting also provides a unique way to assist with the upskilling and capacity building of the APS, providing potential for cross agency access to information about project pipelines to see where duplication of services may have or be occurring, and in the sharing of knowledge about the ways projects and services have been approached in order to learn and adapt, building on successes and experiences of others.

## **Further Information**

You can read further information on Open Contracting at [www.open-contracting.org](http://www.open-contracting.org/).

We welcome any opportunity to provide further information to or engage with the Review Panel.

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1. The ANAO’s audit of Limited Tender Procurement found that only 41 of 155 contracts examined correctly reported all details on AusTender (a rate of 73% inaccuracy). Common inaccuracies were contract dates, contract values, procurement method, and categories of procurement. See: ANAO Audit Report No.48 2014–15 Limited Tender Procurement, p. 19 and p. 56. [↑](#footnote-ref-1)
2. See: Centre for Policy Development (2015), *Grand Alibis: How Declining Public Sector Capability Affects Services for the Disadvantaged*. [↑](#footnote-ref-2)