

CASE STUDY 6

PUBLIC INFRASTRUCTURE

Open Contracting Reforms in Colombia

Overview

In 2014, concerns of corruption in Colombian public procurement grew among the Society of Engineers (SCI). They were alarmed because tender specifications were so narrow that the SCI believed they were being tailored to benefit particular bidders.

Prompted by the potential for reputational risk, the organization began analyzing official data from the public procurement agency and discovered that the majority of tenders for public transportation projects had only one bidder. At best, this could be a symptom of an overly complicated tendering process that only a few companies were equipped to manage, with the result that tenders were not conducted based on fair competition; at worst, it would indicate bid rigging or other types of collusion, a sign of underlying corruption that is both expensive and wasteful to the taxpayer.

As a result of the organization's findings, the national government finally made it mandatory to use standardized open tender documents for public transport works beginning in early 2019. In parallel, a new, fully transactional e-GP platform, SECOP II, first launched in 2015, began to gain users at all levels of government procurement. SECOP II allows for accessible and clear standardized documents for bidders and buyers alike. It publishes data in the open, standardized, and reusable Open Contracting Data Standard (OCDS) format and will eventually be the principal procurement platform for all government entities.

Open contracting helps create a fair business environment and levels the playing field for suppliers:

half of all contractors that won government bids under the new, more open procurement platform after 2015 had never before participated in public contracting.

The Colombian government got this done in collaboration with Open Contracting Partnership, an international organization promoting openness and standardization of contracting in public procurement. The contracting process is now more transparent and tender specifications are prevented from being tailored to favor particular bidders.

Introduction

In 2014, the Colombian Society of Engineers (SCI) began scrutinizing government procurement. They were concerned that scandals involving corruption in the award of government contracts had tarnished the reputation of the engineering sector. "Contractor had become synonymous with corruption," explained the SCI's president, Argelino Durán Ariza, to Open Contracting Partnership, the international organization that has supported the Colombian government through the process of opening up and standardizing tendering procedures.

For years, Colombian civil engineers and other potential suppliers had voiced the problems they faced in bidding for government contracts. Their firms rarely met the requirements of the tender specifications, which were typically so specific that the SCI suspected they were being tailored to benefit particular bidders. "The biggest blow was dealt to local small and medium-

sized companies [who didn't win contracts] unless they agreed to pay bribes," Durán Ariza said.

In theory, there can be several reasons for low participation in tenders, beyond specifications being manipulated: capacity can be an issue, particularly for large and complex projects, such as infrastructure, where specialized technical skills are required but are often difficult to find locally. But the SCI did not think this was the whole explanation.

So the SCI began to gather data about the tendering process with the aim of assessing complaints about hiring practices for contractors within some municipalities, regional governments, and entities in Bogotá. They would analyze the data for patterns indicating unreasonable conditions in the tendering specifications and for evidence that this correlated with

low bidder numbers. Such findings could be indicative of potential corruption in the government procurement process.

The SCI analyzed data available on government websites to determine how many companies bid for contracting processes. They initially focused on three competitive methods: open tenders, abbreviated open tenders, and merit contests (in which quality is prioritized, e.g. for consultancies). In 2016, they included analysis of reverse auctions (in which price is prioritized, e.g. for standardized goods or services).

They used data from Colombia's SECOP I procurement platform to do their calculations, manually checking the PDF documents of thousands of tenders, from small goods and services to large public works contracts. Launched in 2007 by the public procurement agency



Colombia Compra Eficiente, SECOP I stored PDFs of tender and contract documents along with a very limited set of data fields. The number of bidders per tender had not historically been captured as a specific data field.

In 2017, the SCI made their findings public: there was only one bidder on 56 percent of all regional government contracts awarded that year. This came out to more than 2,500 contracts worth over USD280 million. At the municipal level, 21,500 contracts were awarded, 94 percent of which had three or fewer bidders.

SCI's findings are supported by similar findings from studies conducted by the Colombian Chamber of Infrastructure, which represents larger companies, lending further credibility to the results.

In order to correct the problem, the national and regional governments needed to improve the quality of published information, adequately alert the market to its needs, and increase the participation of new suppliers.

The implementation process

The central government institution that contracts public road works (INVIAS) saw a surge in the number of bidders when using standard tender documents for its own procurement processes; so when the SCI and Chamber of Commerce released their findings, there was a strong argument to expand the experience to the subnational level. Finally, the government made the use of standard tender documents mandatory in April 2019 with a six-month grace period for implementation.

But there was pushback from local governments over concerns of loss of autonomy. Colombian regional governments have a high degree of constitutionally granted independence with regards to expenditure allocation, and they were concerned that the new law would change that. There were also concerns about the guidelines being too inflexible and technically narrow for a country as heterogenous and large as Colombia. This debate became a major roadblock during deliberations in Congress: would the initiative move decision making power to the central government, shifting corruption upward in the system rather than eliminating it?

Ultimately, the standard was clarified to stipulate that autonomy over tender specifications remains with the local governments. The requirements are set at the national level; they are written by the offices that manage policy of the corresponding sector and refer to the type and amount of information required from bidders. The law stresses that the promotion of companies and people local to the regions will be prioritized, with the aim of promoting the economies of the regional departments and municipalities. It also allows for a great deal of innovation, which has resulted in buy-in from local leadership and boosted social growth, for example by adding requirements for gender parity among bidders in one municipality.

Others argued that the scope was too limited and should include all sectors, not only road works. This proposal was accepted, and new templates are currently being developed for other sectors, as mandated by Congress.

While the documents were crafted by the National Public Procurement Agency, Colombia Compra Eficiente (CCE) with the technical advice of INVIAS, the Ministry of Transport was crucial in forming an early coalition around the initiative. The ministry's vice minister, Juan Felipe Sanabria Saetta, who is in charge of all major infrastructure works in the country, became a key driver for the successful adoption of the law in Congress.

The new standard documents became mandatory for all state governments as of April 1st, 2019. In the days leading up to this, several states saw a run on procurement systems, perhaps an early sign that the law goes part of the way to alleviating corruption in procurement.

In tandem with the new law, the use of Colombia's updated e-GP platform is spreading. SECOP I was launched in 2015 and is managed by the CCE. SECOP II is a fully transactional e-GP platform and is gradually becoming the principal platform for more and more government entities. The platform publishes data in the open, standardized, and reusable Open Contracting Data Standard (OCDS) format. It stores PDFs in real time and now includes many more data fields, including the numbers of bidders. Publishing to the OCDS ensures that all data is subject to the same quality control. When, eventually, every entity is obligated to use SECOP II, suppliers will be required to register to submit a bid in the system. The number of bidders will be calculated automatically from this data, as well as

other important statistics.

The documents set specific requirements that bidders must meet in order to participate in the tender process and win contracts. The new requirements relate to information, including transparency agreements; basic bidding letters; prior experience; organizational capacity; financial status; clauses for hiring local staff; and more. Standard documents are important in cases where there is a high risk of corruption, but they also boost accessibility for small entities with limited capacity who can file ready-made documents, saving time and resources for every tender.

Data on these processes are accessible to anyone in the OCDS format and the specifications can be set by the procuring entity to match the size and kind of contract. This creates uniformity in the information, while retaining regions' administrative autonomy to carry out their own contracting processes and to be innovative in doing so.

The use of standard bidding documents and e-GP systems is not unique to Colombia, but the adoption of these measures has a timely relevance as the country embarks on a major project to build tertiary roads across the country. The Colombian case is interesting not only because it is recent, but because of the positive knock-on effects that are already showing: inspired by the demand for fair competition, the central government set a goal to increase the average number of bidders per tender for the central government by five percent in 2019. Single-bid contracts are estimated to be seven percent more expensive than contracts with two or more bidders, so increasing the number of bidders could lead to substantial associated annual price savings for the government.

Reflections

Though the reform is recent, Colombia is already beginning to see the positive impact of using both standardized documents and e-GP, and of utilizing data analytics to assess these reforms. Data will continue to be analyzed and published in the future, a process which itself will be made easier when SECOP II becomes the principal platform for all government entities.

The Contracting Observatory of the Colombian Chamber of Infrastructure conducted an analysis of

the results on the infrastructure civil works sector, from implementation in April 2019 through August 2019. They found that the number of bids went up at the national and the regional level: At the national level, 61% of tenders received more than 20 bids while 20% of tenders received between 11 and 20 bids and only 19% received fewer than ten. At the regional level, results were more muted but still impactful: 20% of tenders received more than 20 bids, and 48% received between two and ten bids, while 32% received only one. The same analysis showed that the standard documents were used in their original or a modified version in more than 90% of tenders across national and regional cases.⁶⁴

The national public procurement open data policy allows regional governments to update their processes; improve efficiency in the use of their resources; use public procurement as a vehicle for inclusion and growth; communicate their needs more clearly to the market; and ultimately achieve better results for their citizens:⁶⁵

- Thus far, reports show that contracts relating to infrastructure have seen an increase in the use of public tenders to procure public works, rising from six percent in 2018 to nine percent in 2019. The median number of tenderers increased from five to nine. More data analysis is yet to be done.
- INVIAS, the public roads agency, has seen a decrease in single bid tenders from 30 percent to 22 percent on its approximately 900 tenders yearly since the introduction of SECOP II.
- Many of the early results are measured at regional or municipal level. For example, the city of Cali created an Administrative Public Procurement Department which published an Annual Procurement Plan. By alerting the market to public needs, the new plan has improved transparency and efficiency in public purchases, increasing the percentage of competitive processes from 31.1 percent in 2017 to 55.9 percent in 2019.
- The changes are also an opportunity to boost social change. Cali's standardized contracts are designed to promote inclusivity: a 2019 requirement stipulates that 10 percent of suppliers who would be awarded departmental contracts that year should be women-owned businesses.

- Other results are showing up on the bottom line. When the Caldas region began using the SECOP II platform in 2019, the region went from 53 digitally registered processes worth USD2.8 million in 2018 to 209 digitally registered processes worth USD52.8 million in 2019. That is a lot more transparency over a lot more projects.

Government-wide laws, policies, guidance and other factors influence the use of data analytics on an institutional and project level. In the case of Colombia, a combination of determination from the central government and buy-in from regional governments was key to getting the law for standardized documents passed, and to seeing it implemented innovatively and with fast results.

Aside from commitment, a handful of requirements facilitate the successful integration of data analytics into project management:

- Culture and people play a pivotal role. Implementation requires the technical skills to use e-GP platforms and the data that they generate correctly which, in turn, relies on a culture that understands the benefits of data gathering. The Colombian case is a good example of bottom-up driven change that was set in motion by the analytical skills of committed individuals and adopted into law by the commitment of leadership.
- Processes and technology are equally important. The collection of data through e-GP and the continuous assessment of its reliability and validity are part of the process. Monitoring and evaluation of the performance of SECOP II, based on objectives and metrics, is critical for understanding its effectiveness and adapting them into policy as needed.

Not all environments or projects are equipped with these fundamentals. A project may be too small, or the resources and willingness to experiment with these types of 'openness'-policies and tools may be lacking. Colombia partnered with Open Contracting Partnership (OCP), an international organization promoting open contracting in public procurement, in creating the right format for its law for standardized documentation.

The national public procurement open data policy in Colombia is modeled on OCP's Open Contracting Data Standard (OCDS). OCDS is a free and non-proprietary

platform that teaches users how to publish data and documents at all stages of the contracting process. In practice, it transfers previously paper-based processes into standardized, machine-readable, and interoperable open data.

OCDS is currently the only international open instrument for the publication of information related to the planning, procurement, and implementation of public contracts. As such, it is uniquely helpful for enhancing transparency in procurement.

Strengthening the leadership of regional authorities by making tendering open and accessible is making the whole procurement process more competitive and creating a broader and more diverse supplier base.

Public procurement can be a catalyst for social change by improving the goods and services that citizens receive and by expanding opportunities to participate in the market. Colombia is one example where regional governments are driving forces for change, and where transparent and efficient public procurement is proving to be an effective tool for strengthening institutions and developing regions.

Notes

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12. These include the OECD Anti-Bribery Convention (1999), the OECD Recommendation on Public Integrity (2017), and the OECD Principles for Integrity in Public Procurement (2009)
13. The High-Level Principles build on the United Nations Convention Against Corruption (UNCAC, 2005), which is the only legally binding universal anti-corruption treaty.
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22. CoST seeks to prevent integrity risks through accountability. The goal is not to detect corruption risks in a given context. If a CoST program encounters potential corruption issues, however, these are referred to the relevant authorities.
23. CoST was launched as a pilot from 2008-2011. It has received grant funding from the UK's Department for International Development (DFID), the World Bank (2011-2014) and the Netherland's Ministry of Foreign Affairs (MinBuZa). An increase in funding allowed it to scale up its activities in 2015. At the time of writing, 14 countries are implementing CoST programs, that number is set to increase to 20 in the next year, and up to 35 in 5 years. The World Bank participated in the International Advisory Group that oversaw the pilot project and currently has observer status on the CoST Board.
24. OGP: <https://www.opengovpartnership.org/>; OCP: <https://www.open-contracting.org/>; EITI: <https://eiti.org/>; GIFT: <http://www.fiscaltransparency.net/>.

25. See for example, Brandon Brockmyer & Jonathan Fox (2015): *Assessing the Evidence: The Effectiveness and Impact of Public Governance- Oriented Multi-Stakeholder Initiatives, Transparency and Accountability Initiative*, <https://accountabilityresearch.org/publication/assessing-the-evidence-the-effectiveness-and-impact-of-public-governance-oriented-multi-stakeholder-initiatives/>
26. An External Review of CoST in 2019 found evidence of positive impact in CoST program countries, including in two fragile or conflict affected contexts (Afghanistan and Honduras), and in a diverse set of country contexts in Africa, Asia and Central America.
27. CoST has two membership categories: full and affiliate. Full members can apply for funding from the International Secretariat. Countries must be eligible to receive official development assistance (ODA) to receive CoST grant funding. Affiliate members receive structured technical support without funding. All CoST tools and technical resources are freely available for anyone to use (<http://infrastructuretransparency.org/resources>).
28. Countries are invited to re-apply when constraints to effective multi-stakeholder working or disclosure have been removed or addressed.
29. The rules of procedure of an MSG are not unlike that of a board of directors of an organization. The CoST Secretariat provides guidance on the composition of MSGs and on procedural rules for meetings and decision-making.
30. In 2019 CoST and the Open Contracting Partnership agreed on a joint approach to the standardization of open infrastructure data with the creation of the Open Contracting for Infrastructure Data Standard (OC4IDS). Alignment with another internationally accepted data standard (Open Contracting) supports the scalability of government efforts to produce uniform machine-readable data on public contracts and across the lifecycle of infrastructure projects.
31. CoST supports the development of infrastructure digital platforms such as in Costa Rica (Mapalversiones), Ethiopia (PPA), Honduras (SISOCS), and Thailand (AOT), or supports governments in enhancing existing e-GP systems (e.g. Guatemala's Guatecompras).
32. Further details about the CoST assurance process can be found here: <http://infrastructuretransparency.org/2018/11/12/turning-infrastructure-data-into-compelling-information-the-added-value-of-cost-assurance/>.
33. CoST (2014). Ethiopia finalises Disclosure Standard. <http://infrastructuretransparency.org/news/ethiopia-finalises-disclosure-standard/>.
34. The Anti-Corruption Organization of Thailand (ACT) was founded in 2011 by a former President of Thailand's Chamber of Commerce in response to widespread corruption in government projects and the public costs entailed. ACT was registered as a Foundation in 2014.
35. The first MSG was chaired by the Permanent Secretary of the Ministry of Transportation and hosted by the State-Enterprise Policy Office (Ministry of Finance). Since 2017 a new MSG formed by the Cabinet has included: Chair: the permanent Secretary of the Ministry of Finance, Vice Chairs: the Director General of the Comptroller General's Department (CGD) and the Chairman of the Anti-Corruption Organization of Thailand (ACT). Other members include the National Economic and Social Development Board (NESDB), SEPO, Transparency Thailand, Good Governance for Social Development and the Environment Institute, Engineering Institute of Thailand, Association of Siamese Architects and the Association of Thai ICT Industry.
36. The project was an extension of the Suvarnabhumi International Airport in Bangkok, valued at USD4.3bn managed by Airports of Thailand, a publicly listed company. This project was doubtless selected because the construction of the original Suvarnabhumi International Airport had taken 35 years (1971 - 2006) and had been hampered by corruption, mismanagement and procurement delays. Thailand's first project covered by the CoST program thus had a value that was greater than the aggregate value of many other country programs.
37. These are: the Official Information Act 1997 (OIA 1997); the NACC Act 1999, the Land Expropriation Act 1987, Cabinet Resolution of 20 April 2011 on Obligation of Government Agencies to disclose information on their website according to the Section 9 (3) and 9 (8) of the OIA 1997; Regulations of the Office of the PM on Procurement 1992 (ROPMP 1992); Regulations of the Office of the PM on Public Consultation 2005; Regulations of the Office of the PM on Electronic Procurement 2006; and Official Letter of the Ministry of Finance of 22 August 2012 on Guidelines on Disclosure of Government Reference Costs of Construction Works.
38. CoST's analysis of infrastructure accountability in high-income countries concluded that this would be the most productive way of applying multi-stakeholder working in wealthier economies.
39. Between early-2018 and mid-2019 there had been almost 4000 views of the Facebook videos posted by CoST Thailand (more than 7 views per day) and 45 shares (more than one every other week).
40. A financial advisor to the CGD credited the CoST program and Integrity Pacts with helping "save the government THB 83.138 billion that might have been wasted in payoffs": ThaiVisa (2019). Anti-corruption body to save Bt142 billion through anti-graft tools. <https://forum.thaivisa.com/topic/1122657-anti-corruption-body-to-save-bt142-billion-through-anti-graft-tools/>. A vice president of the Thai Chamber of Commerce and of the Thailand Anti-Corruption Organisation reported that Integrity Pacts and CoST would help the country prevent losses of Bt142.76 from corruption, crediting the impact of 230 voluntary observers monitoring projects." ThaiVisa, 2019.
41. CoST (2017). President of Ukraine Thanks CoST Ukraine Team for Transparency and Objectiveness of Road Construction and Repair Reports. <https://costukraine.org/en/prezydent-ukrayiny-podyakuvav-komandi-cost-ukraine-za-prozorst-ta-ob-yektyvnist-informatsiyi-shhodo-budivnytvstva-ta-remontu-dorig/>.
42. The CoST Board has international advisors representing government, civil society and the private sector.
43. "System for the Publication and Monitoring of Public Works and Supervision Contracts"
44. Decreto Ejecutivo Número PCM 02 – 2015 https://sisocs.org/docs/decreto_sisocs.pdf
45. As of the date of publication the SISOCS platform publishes data on 1,782 projects, valued at USD1 billion, and the PPP platform is disclosing data on projects valued at 1.5 billion dollars.
46. Photographs from the Siguatepeque Road Maintenance Project social audit report.
47. Steps are underway to facilitate the interoperability of data between the National Procurement Office (ONCAE) and the Ministry of Finance (SEFIN), but much work remains to be done.

48. As established by the CoST MSG, in agreement with ONCAE and the Ministry of Infrastructure - *Decreto Ejecutivo Número PCM 02 – 2015*.
49. Presentation by Eduardo Engles at the World Bank, *Frontiers in PPP Economics* (2019) and cited from (Squeren & Moore (2015), Beuve, Moszoro & Saussier (2018)).
50. Marianne Fay, Hyoung Il Lee, Massimo Mastruzzi, Sungmin Han, Moonkyoung Cho (2019). *Hitting the Trillion Mark, A Look at How Much Countries Are Spending on Infrastructure*, World Bank, February 2019. Given the absence of fiscal and national account data to fully capture infrastructure spending, the authors identify three proxies for infrastructure investments: two are variants on gross fixed capital formation from national accounts system data following ADB (2017) and one is based on fiscal data from the World Bank's BOOST database. Two of these proxies rely on the World Bank's Private Participation in Infrastructure database to capture the private share of infrastructure investments.
51. Government is used here as a general term to refer to the procuring authority or related public entity that is responsible for the PPP policies, implementation or oversight.
52. This definition is taken from: World Bank (2017). *Public-Private Partnerships: Reference Guide Version 3*. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/29052> License: CC BY 3.0 IGO, page 184.
53. World Bank, 2017: *PPP Reference Guide*, page 27.
54. See: World Bank (2017). *Guidance on PPP Contractual Provisions*. <https://ppp.worldbank.org/public-private-partnership/library/guidance-on-ppp-contractual-provisions-2017-edition>, for best international practice for PPP standardized clauses including clauses related to change management.
55. An alternative to economic rebalancing in the case of user fees is to adjust a contract based on the present value of revenues. The contract can be adjusted over time to extend the length of a contract to compensate for temporary shortfalls. Similarly, it can be shortened in the case of excess revenue. For more on this topic see: Engel, E., Fischer, R., & Galetovic, A. (2014). *The Economics of Public-Private Partnerships: A Basic Guide*. Cambridge: Cambridge University Press. doi:10.1017/CBO9781139565615 (p. 122-130).
56. See Global Infrastructure Hub (2018). *Contract Management Tool*, Chapter 4, https://content.github.org/live/media/1464/updated-chapter-4_art2_web.pdf. The PPP Contract Management Tool provides practical guidance to government officials responsible for managing public-private partnership (PPP) contracts and concession contracts during construction and operations.
57. J. Luis Guasch. 2004. *Granting and renegotiating infrastructure concessions: doing it right* (English). WBI development studies. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/678041468765605224/Granting-and-renegotiating-infrastructure-concessions-doing-it-right>.
58. The information on Brazil and the Odebrecht scandal is based a presentation at the World Bank delivered by Alexander Galetovic: *Frontiers in PPP Economics*, World Bank, January 29-30, 2019.
59. Peru is refining this approach and is now aiming at greater negotiation flexibility, as embodied in modern contract types. The problem with lowball bids has been exacerbated by an over-emphasis on price in the bid evaluation process.
60. Delmon, J. 2011. *Public-Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*. Cambridge: Cambridge University Press, p. 169-171. <https://www.cambridge.org/core/books/publicprivate-partnership-projects-in-infrastructure/66B38CFE9CDDDB9293BA57DC8CCAB19F4>.
61. World Bank (2016). *PPP Certification Guide*, Chapter 7, *Managing the Contract Strategy, Delivery and Commissioning*, p. 59.
62. *Ibid*, *PPP Certification Guide*, p. 64-65.
63. *Ibid*, *PPP Certification*, Chapter 7, page 64
64. For more information (in Spanish): Campos Borja, Luis Miguel, et al. 2019. *Pliegos tipo como instrumento para la transparencia en la contratación estatal en Colombia*. <https://repository.unilibre.edu.co/handle/10901/17437>; and <http://www.infraestructura.co>.
65. For more information: open-contracting.org and <https://www.open-contracting.org/2019/05/03/a-little-data-goes-a-long-way-how-bidder-analysis-could-boost-competition-in-colombias-infrastructure-contracts/>.

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