

Building Trust

in Government Procurement Procedures

The Big Issue

Public construction procurement can be a lengthy and complex process. When that process is opaque, risk rises for the project owner – both that the project will not follow procurement regulations, thereby increasing the risk of legal penalties, and that there may be a breakdown in public trust.

Why it Matters

For state and local agencies, maintaining flexible and transparent construction processes are crucial to public trust. It is critical that community stakeholders understand where and how public money is being spent, so they know it is being managed properly. Particularly when using federal funds for construction or in the event of a disaster, clarity into the process helps both the contractor and agency work together to ensure quality, efficiency and compliance with the law.

A Government Need

Government procurement is responsible for the lion's share of the construction contracting industry, and that number is continuing to grow. In 2020, civilian agency contract spending reached a record high of \$228 billion, a 17% jump from the previous year, primarily driven by funding to state and local agencies in the fight against the coronavirus.¹ The American Rescue Plan would send \$350 billion in emergency funding to states, localities, and tribal lands, and an additional \$10 billion for capital projects like broadband infrastructure.²

With this increase in federal funding, there is a proportional need for transparency in spending.

Beyond how government agencies spend their money and track their spending, transparency also helps agencies mitigate audit risk. Purchasing construction services using a transparent, documented process helps government employees ensure they can defend their decisions to the public and to auditors.



Transparency & Auditability

A transparent procurement process is defined by the clear documentation of rules, and the means to verify that these rules were followed. The more transparent an agency is, the more its taxpayers and stakeholders can hold them accountable – and, in turn, the more likely they are to trust their honesty and integrity.

Further, as agencies strive to create more equitable communities, pursuing and expanding diversity, equity and inclusion (DE&I) goals will continue. Transparent processes allow greater scrutiny into whether these goals are translating into action by prioritizing the inclusion of historically disadvantaged businesses or groups.

Portland, Oregon

In 2012, the city of Portland adopted a suite of initiatives, including contracting equity programs, with the goal of using the city's large purchasing power to decrease race and gender disparities in construction procurement. However, a 2020 audit found that their procurement processes were still not fully transparent, that the city had not reached their goals, and that there was general dissatisfaction with the program. In some cases, inaccurate budget predictions hampered implementation; in others, white-owned firms still won contract dollars intended for women and minority-owned firms (in some cases with men falsifying ownership by using their wives' names). The city also awarded \$33.6 million in eligible contracts to firms on the open market, \$18.6 million of which was not approved by the Chief Procurement Officer.

The lack of transparency and accountability during the procurement process impacted public trust in the city's government. Members of the community and other stakeholders reported frustration with the lack of clarity and perceived favoritism. In the end, although the program did in fact fulfill some of its goals, the report notes that nearly all parties involved did not consider it to be a success.³



What Does Transparent Construction Procurement Look Like?

Agencies can employ tools, processes and practices to procure construction services in a transparent way that fosters public trust.

Option 01

Using independent, local cost data.



Option 02

Using software to track spending.



Option 03

Conducting outreach to minority-owned contractors and subcontractors.



Option 04

Using a reliable and easily repeatable procurement process with defined steps.



Option 05

Working with experienced third parties with the expertise to ensure compliance with regulations.



Government Regulations

As regulations and expectations continue to mount, it is crucial for government agencies to adopt and adhere to sound procurement practices that will uphold their credibility with the citizens in their community, and avoid making the news.

However, governments are not the only stakeholders who are held to high standards in the contracting process. Construction companies are also faced with an increase in government regulations while upholding stringent labor and safety requirements. These increased requirements have led to significant price increases in the private construction sector.

In Dollar Amounts

There has been a **10.9% increase** over the past five years in the cost of regulations associated with buying a single-family home.

Regulations imposed by federal, state, and local governments account for **\$93,870, or about 24%** of the current average sales price (\$397,300).

Of this \$93,870, **\$41,330** is due to regulation during development, and **\$52,540** is due to regulation during construction.⁴

In Dollar Amounts

These costs are not just borne by the end-user. Increasingly strict regulations are also impacting the ability of government contractors to do business. In a recent survey of the contracting industry, respondents repeatedly identified regulations and cost calculations as their biggest challenges.



The number of small businesses reporting that compliance was costly or very costly doubled to 16%, up from 7% the previous year, and 42% expected that cost to increase.



57% of respondents reported 'satisfying government system security and regulatory requirements' as their top IT challenge.



34% reported 'staying compliant with government regulations' and 29% considered 'calculating true costs' as their top manufacturing challenges.

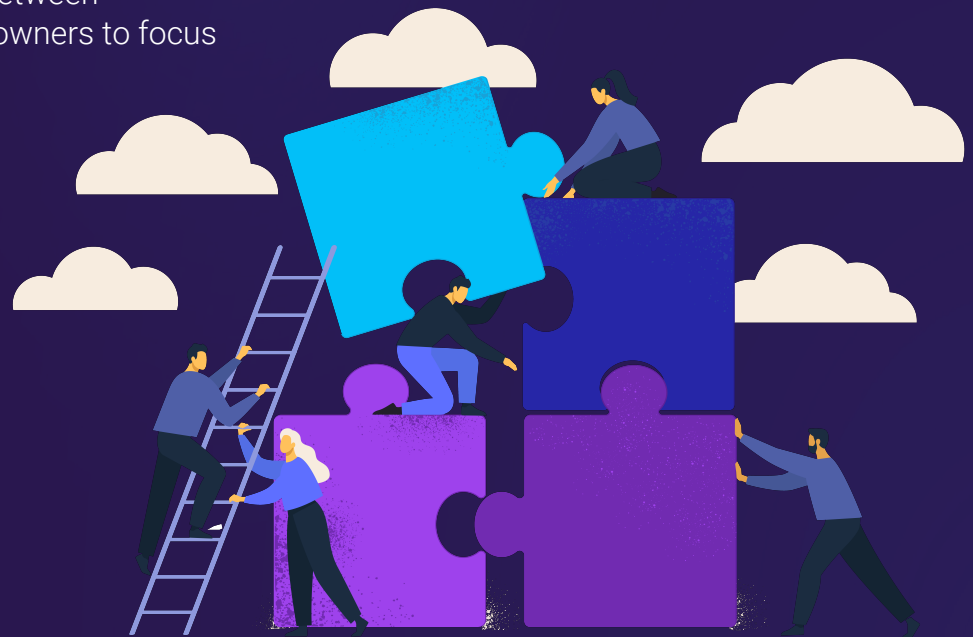


48% reported 'meeting compliance requirements' as their top area of risk.⁵

Between compliance adherence and audit demands, government contractors — particularly smaller players — are feeling pressure to keep up with increasingly complex regulatory structures.

When Disaster Strikes

In nearly every instance, the collaboration of government agencies and contractors leads to a better end product. Governments are stewards of taxpayer money, with a responsibility to use it wisely. This trust is often tested during a time of crisis. Not only can unclear procurement strategies cause significant delays and cost valuable time and money, but they can erode the public's trust in government to quickly and efficiently use taxpayer money on their behalf in the wake of disaster. Having set prices ahead of time eliminates the need for negotiation and allows for transparency into the process – crucial during a time when every second counts. This transparency fosters collaboration between stakeholders and contractors and allows project owners to focus on addressing the crisis at hand.



FEMA and Hurricane Maria

The Federal Emergency Management Agency (FEMA) deploys directly to provide immediate assistance in the aftermath of a natural disaster or crisis. The agency has an advance contracting tool, Acquisition Planning Forecast System (APFS) for contracts valued over \$250,000. However, the agency does not always take advantage of this procurement strategy, sometimes with serious consequences.

The Office of the Inspector General (OIG), conducting an audit of FEMA's activities after Hurricane Maria in Puerto Rico, found that the agency had not appropriately used advance contracts. Without these contracts to expedite acquisitions, goods and services for communities struggling to recover were delayed. The audit also found that necessary documentation was inaccessible or simply missing, hindering FEMA's ability to hold contractors responsible for deliverables.⁶ Developing and implementing this strategy for advance contracting would have made a significant difference in FEMA's ability to support Puerto Rico's recovery from this disaster.





Job Order Contracting: A Solution to Build Trust

There are many construction procurement methods available to government agencies. However, not all of them provide robust mechanisms for cultivating public trust and ensuring fair and legal practices. Job Order Contracting (JOC) is a streamlined method of construction procurement, particularly well-suited to public entities and agencies that put out detailed requests for qualifications (RFQs). JOC is an Indefinite Delivery Indefinite Quantity (IDIQ) method that enables many projects to be finished through a single, competitively-awarded contract, enabling projects to begin faster with readily available contractors. Qualified contractors are paid a pre-established unit price along with a predetermined coefficient, also called an adjustment factor. In other words, the price is non-negotiable, independently researched and published, and established at the start of the multi-year contract. This creates greater opportunity for strong partnerships and higher quality work, resulting in a faster process and a higher-caliber end product. This process also creates space for the inclusion of all stakeholder voices at the outset of the project, making it more likely that the final result will be successful and responsive to the actual needs of community stakeholders.

Conclusion

It is critical for all levels of government to be transparent about how they spend taxpayer money. Regulations and compliance requirements are intended to enforce this transparency, through audits and reporting structures. In turn, this transparency gives the public the confidence that their government's construction procurement practices are above board.

JOC is an example of a way that governments and contractors can work together, instead of in opposition. JOC saves time, improves project quality, increases opportunities for equity, and brings transparency to the process. For state and local governments, this can be a game-changer, particularly during a time of crisis when other construction procurement methods can cost valuable time and money. Through communication and collaboration, government agencies and contractors can both work to streamline projects and bring results of quality to their stakeholders and their community.



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Endnotes

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