

# Transparency in tender waivers in local governments during emergency situations

André Precinotto<sup>1</sup>

 <https://orcid.org/0000-0001-7011-3877>

Email: precinottoandre@gmail.com

Lidiane Nazaré da Silva Dias<sup>2</sup>

 <https://orcid.org/0000-0002-7546-5174>

Email: lidianedias@ufpa.br

André Carlos Busanelli de Aquino<sup>3</sup>

 <https://orcid.org/0000-0002-0329-410X>

Email: aaquino@usp.br

<sup>1</sup> Câmara Municipal de Guaíra, Departamento de Contabilidade, Guaíra, SP, Brazil

<sup>2</sup> Universidade Federal do Pará, Instituto de Ciências Sociais Aplicadas, Faculdade de Ciências Contábeis, Belém, PA, Brazil

<sup>3</sup> Universidade de São Paulo, Escola de Artes, Ciências e Humanidades, São Paulo, SP, Brazil

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## ABSTRACT

Using the organizational paradox perspective, the study discusses how a context of national emergency modifies the propensity for transparency in tender waivers in municipalities. The empirical analysis indicates that there are tensions in the transparency of the public procurement process and that the public control literature should consider emergency and normal contexts differently. Emergency situations, in which budgetary funds are urgently allocated to emergency contracts, require greater transparency and control to reduce the risk of misuse of funds. Paradoxically, there is a reduction in transparency and a weakening of social control. The level of transparency of local governments under the same legislation varies according to the political support and understanding of the authorities in different legislatures and mandates, and between periods of emergency and normality. It is desirable for supervisory agencies and civil society to be aware of possible regressions in transparency practices in times of emergency, even for municipalities that are examples of transparency in times of normality. A content analysis was conducted on 1,528 tender waivers in 32 small municipalities in São Paulo State from 2019 to 2020. The level of transparency of the tenders was compared before and during the first year of the pandemic. Interviews were then conducted with public officials with experience in transparency practices in these municipalities, as well as with journalists and leaders of non-governmental organizations (NGOs), to validate the analysis on the transparency of the procurement process during the pandemic. Emergency situations can alter practices related to fiscal transparency in local governments when national authorities relax procurement rules. The study shows that the COVID-19 pandemic emergency led to reduced transparency in the procurement of supplies in some municipalities, particularly in contracts for supplies and services to cope with the pandemic crisis.

**Keywords:** transparency, paradoxes, public procurement, waiving of tenders, pandemic.

## Correspondence address

André Precinotto

Câmara Municipal de Guaíra, Departamento de Contabilidade

Rua Dezesseis, 1245 – CEP: 14790-000

Maracá – Guaíra – SP – Brazil

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## 1. INTRODUCTION

Public transparency, and more recently the effects of the pandemic on governments, has been the subject of several studies in the context of the Brazilian public administration. In this empirical analysis, we address “local government transparency” as something dynamic and subject to regressions, not as a level that is reached and maintained over time. Contract transparency, for example, can increase or decrease with changes in government or social context. In this case, we discuss the reduction in transparency caused by the tensions created by a national health emergency.

Periods of emergency, such as that of the coronavirus disease 2019 (COVID-19) pandemic, are characterized by unexpected and uncertain events that significantly change the way services and care is provided to the population (Ansell et al., 2020). In Brazil, the COVID-19 pandemic affected vulnerable populations more severely (Rodrigues et al., 2020), posed regulatory challenges (Guerra et al., 2020), and created serious coordination challenges in managing the crisis (Rodrigues et al., 2020). Such emergency periods require rapid responses and flexibility in the allocation of resources for the necessary solutions, including autonomy, prototyping, and other governance features not typically found in bureaucratic organizations (Ansell et al., 2020), as well as changes in the dynamics of procurement and accountability (Leoni et al., 2021; Sian & Smyth, 2021).

The literature suggests that times of emergency require new forms of governance to deal with periods of turbulence (Ansell et al., 2020; O’Flynn, 2020). In times of national emergency, the responses of governments and other authorities must be quick in order to serve vulnerable populations, and they typically face “distributive and moral conflicts” (Peci et al., 2021) and require the execution of high-value contracts as a matter of urgency. In these periods, accountability practices, for example, must go beyond simply counting and reporting deaths, to avoid that an unacceptable number of deaths becomes the norm over time (Yu, 2021).

In Brazil, Law no. 13,979 of February 6, 2020, relaxed legal requirements to make it easier to deal with COVID-19. However, such emergency periods create tensions between procurement with more relaxed rules and greater demands for transparency to mitigate instances of corruption and favoritism (Costa, 2020). During this period, allegations of misuse of public resources

surfaced at various levels of government in Brazil. For example, the Parliamentary Commission of Inquiry of the Federal Senate presented evidence of how the window of opportunity opened up by the emergency favored illegalities in public procurement. Other evidence from the press, inquiries, and investigations launched during the pandemic suggests that government transparency deteriorated in many municipalities.

Despite these reported facts, we are not aware of any studies that systematically analyze the reduction in government transparency during these periods. Among the few studies on procurement transparency in Brazil, that of Pinho et al. (2020) analyzed Transparency International – Brazil’s survey of Brazilian state capitals during the pandemic (May and July 2020). The study found that while the governments of some capitals increased the content disclosed during the period, the governments of other capitals reduced transparency during the same period. Another study examines how the Courts of Accounts had to increase the demand for transparency regarding public funds used to fight the pandemic (Ribeiro et al., 2020).

This article explores the tensions that arise during periods of emergency with respect to government contract transparency, compared to periods of normality. The aim is both to shed light on how government transparency behaves during these periods and to contribute to the discussion of organizational paradoxes as applied to public administration (Klein et al., 2018; Luciano et al., 2018). Paradoxes and tensions are recurrent in the discussion of government transparency. If, on the one hand, increased transparency helps to enhance government efficiency (Kornberger et al., 2017), in certain contexts, greater transparency endangers the reputation of public officials (Bannister & Connolly, 2011) and exposes the government more intensely to public scrutiny and judicial authorities (Bannister & Connolly, 2011; Rowley, 2011) by allowing greater control over personnel expenditures (Di Pietro, 2009) and the detection of corruption (Campos, 2019; globo.com, July 20, 2015; Jusbrasil, 2015).

The organizational paradox approach is used to observe how the change from a context of normality to one of emergency affects the balance between the opposite poles of the “transparency versus opacity” paradox. The poles of the paradox are contradictory, interrelated (Lewis, 2000), and mutually exclusive (Berti & Simpson, 2021).

Tensions and contradictions arise from the consequences of choosing one pole of the paradox (Jarzabkowski et al., 2013; Putnam et al., 2016), i.e. making procurement actions more or less transparent (Alves, 2019). If something increases the incentives for opacity, it also reduces the effect of the benefits of transparency.

The study compared the transparency of 1,528 tender waivers in 32 small municipalities in São Paulo State (two to 90 thousand inhabitants) in the first year of the pandemic (March to December 2020) with the same period in the previous year (March to December 2019). The comparison of the level of transparency is based on the disclosure of contracts by each municipality (and not between municipalities), analyzing the documents made available for procurement processes carried out before and during the pandemic. Interviews were then conducted with professionals who routinely work with public procurement disclosure practices, such as municipal

accountants, analysts who manage transparency portals, and those who work in social control, such as journalists, trade unionists, and leaders of social organizations.

The article presents how the literature on government transparency can be linked to the discussion of organizational paradoxes. It then presents the methodology based on an analysis of the tenders published by the municipalities observed, the interviews carried out, as well as the analysis of the variation in the transparency of tenders, dividing the cases into groups according to the behavior observed, and the discussion, based on the interviews regarding the reduction in transparency in some of the cases. We argue that the sudden onset of an emergency context alters the tensions of the paradox and affects the balance of issues such as transparency versus opacity of contract disclosure. The article ends with conclusions and suggestions for future agendas on the topic.

## 2. TRANSPARENCY IN GOVERNMENTS AND SOLUTIONS TO THE PARADOX

The publication of data by governments (McDermott, 2010; Sandoval-Almazán, 2015) creates conflicting situations for all stakeholders (public officials, citizens, oversight bodies, etc.). Although governments are moving in this direction by opening up databases for public consultation, they remain remarkably opaque in essence (Lindquist & Huse, 2017). Politicians “overwhelmingly value opacity over transparency” (Michener et al., 2018) and tend to avoid opening up data and providing the public with material for criticism (Janssen et al., 2012).

The regulation of government transparency in Brazil has had its moment of expansion in the last decades. The evolution of government transparency has been slow and uneven in the different states of the federation (Abdala & Torres, 2016; Pinho, 2008; Prado & Loureiro, 2006; Sales, 2012; Souza et al., 2019), and it is still not complete and sometimes outdated (Antunes, 2018; Cruz et al., 2016; Klein et al., 2018; Leite et al., 2015; Luciano et al., 2018; Michener et al., 2018; Silva et al., 2019). The same slow and partial opening up of data also occurs with the disclosure of tenders and transfers to partner organizations (Ribeiro, 2009), civil servants’ remuneration (Jacques et al., 2013), and prior judgments of the Courts of Accounts (Sediyama et al., 2018).

The demand for transparency places public officials between the benefits and risks associated with choosing

between more transparent or more opaque management. Often, the interests and motivations behind opening up data are contradictory. For example, making government data and actions more widely available can lead to a loss of reputation or greater accountability for managers’ mistakes or misconduct. To deal with these contradictions, the study uses the theory of organizational paradoxes. A paradox consists of opposite and contradictory poles of the same social or organizational aspect (e.g., participation versus exclusion, transparency versus opacity) that are interrelated and persist over time (Farjoun, 2010; Poole & van de Ven, 1989; Putnam et al., 2016; Smith & Lewis, 2011).

In the case of government transparency, tensions arise between the legal requirement for public managers to disclose information about government actions and public accounts, while dealing with capacity constraints to provide such information with minimum quality (Fan & Zhao, 2017), and pressure from internal or external groups to reduce or expand data disclosure, depending on the interests at stake. An example is the pressure from some union representatives not to disclose details of civil servants’ salaries for fear of being questioned about their current salaries and benefits. Or mayors who need to justify allocating resources to projects of electoral interest rather than to services of public interest (Wagner, 2017).

In the presence of a paradox, the organization and its managers are subject to tensions, pressures, and discomfort, and need to justify their position or choice (Putnam et al., 2016). One way for organizations and managers to manage the opposing forces of the paradox is to balance the forces and reduce the consequences of violating the interests of those who position themselves at the opposite pole (Smith & Lewis, 2011). The empirical literature on organizational paradoxes describes the strategies that managers use to assimilate or eliminate the pressures arising from a paradox, in other words, to “resolve” the paradox. Different ways have been identified, but in general, the paradox does not go away. The organization simply finds a way to serve the various stakeholders or reduce the impacts of not serving them.

For example, companies under pressure from environmental sustainability policies and under pressure to cut costs and improve efficiency try to resolve the paradox by dividing teams into specialized departments or units so that they have a single, coherent goal. However, they are simply transferring the tension to another organizational level. This is an example of spatial separation (each part

of the organization serves one pole). Another strategy is temporal separation (serving different poles at different times), in which the company can serve the interests of one of the interested groups in each period, prioritizing one pole at a time while reducing the importance given to the other pole. This does not mean that the paradox disappears. In other cases, the organization seeks a synthesis (a new way of serving both poles) and manages to shape the response in such a way as to convince both poles that the solution serves them satisfactorily. A comprehensive list of strategies identified in the literature is presented by Schad et al. (2016). In a recent example of the public administration debate, the disclosure of civil servants’ salaries was met with pressure for transparency on the one hand and resistance from some unions on the other, with arguments that this would violate privacy and put civil servants at risk (Precinotto et al., 2020). In deciding the issue, the Supreme Court resolved the paradox with a spatial separation, carving out what should be disclosed and guaranteeing the privacy of some data. In this case, the solution came from an external actor that better regulated the issue.

### 3. METHOD

The research is based on a comparative analysis of the disclosure of full documents from 1,528 tender waivers in 32 municipalities in São Paulo State. The level of disclosure was compared at two points in time: before the pandemic and during the first year of the pandemic. Documents published by the municipalities themselves on their websites were collected for all contracts mentioned in the State official gazette. Interviews were then conducted with professionals experienced in the practices of publishing these documents, as well as with potential users of this information for social control. Data collection began when the World Health Organization (WHO) declared the COVID-19 pandemic in March 2020. Thirty-two small municipalities (two to 90,000 inhabitants) in the State of São Paulo were selected, choosing the same state so that the municipalities observed were under the supervision of the same Court of Accounts.

The State of São Paulo was chosen because of the researchers’ prior knowledge of the Court of Accounts’ understanding and access to interviewees. It should be noted that there is no intention to generalize the results to the entire State of São Paulo; the study is typical of a small-N analysis (Mahoney, 2000), with the aim of better understanding the phenomenon and interpreting how the cases behave when the context or some specific aspect of the cases themselves varies.

To select the cases to analyze, we started with the 172 municipalities of São Paulo evaluated by the Office of the Comptroller General (CGU) [Transparent Brazil Scale (EBT)] between 2015 and 2017. A request was sent to all these municipalities, using the Access to Information Law (Law no. 12,527 of November 18, 2011), asking which systems or software solutions were used for (i) the Transparency website and (ii) the Integrated Budget Execution, Financial Management and Control System (SIAFIC). Of the 83 cases that responded to the request, the 32 municipalities that were using solutions from the same software company (for the two functions) at the time were selected for the final sample of the study. The name of the vendor has been omitted to avoid identifying the cases and respondents, given the confidentiality agreed in the interviews. All 32 cases adopted the two systems supplied by the same company, one of the largest suppliers of management software for municipalities in Brazil.

Therefore, the sample of cases is homogeneous in terms of the technological solution that supports the process of publishing documents on transparency portals. Thus, any variations in the level of publication of documents before and after the pandemic, or even between the cases analyzed, would not be explained by technological limitations of the financial management system or the Transparency Portal, since the system used is the same in

all cases. With this sample design, the explanation would lie in political choices or legal understanding on the part of managers to reduce, maintain, or expand transparency.

Table 1 shows the cases studied, the distance from the state capital and the population, the dynamics of

the first year of the pandemic in terms of deaths per 100,000 inhabitants, the epidemiological week in Brazil, the number of weeks in the red phase of the São Paulo Plan, and the dates on which mayors signed emergency and disaster decrees.

**Table 1**

*Municipalities in the sample whose tender waivers were monitored from March to December of 2019 and 2020*

Cases	Approximate distance from the capital (km)	Approximate population (thousand inhabitants)	Emergency decree (date)	Disaster decree (date)	1st death from COVID-19 (date)	1st death from COVID-19 (epidemiological week)	1st time in the red phase of the São Paulo Plan (epidemiological week)	Weeks in the red phase (n)	Deaths from COVID-19 in 2020 (n)	Deaths from COVID-19 per 100,000 inhabitants in 2020
1	500	90	03/16/2020	04/01/2020	05/11/2020	20	-	-	123	134.75
2	400	50	03/20/2020	03/23/2020	06/27/2020	26	27	6	32	63.86
3	400	46	04/07/2020	05/05/2020	04/24/2020	17	25	7	55	119.62
4	500	35	03/20/2020	-	05/12/2020	20	-	-	27	75.98
5	600	30	03/18/2020	05/28/2020	04/24/2020	17	27	3	11	37.87
6	600	20	03/17/2020	-	05/07/2020	19	26	3	14	67.06
7	300	15	03/23/2020	04/17/2020	07/04/2020	27	25	7	8	49.45
8	700	15	03/21/2020	04/01/2020	05/15/2020	20	25	4	8	51.75
9	400	15	03/17/2020	-	07/22/2020	30	27	2	7	46.31
10	400	15	03/19/2020	03/30/2020	08/05/2020	32	27	6	8	56.77
11	100	13	03/19/2020	-	08/06/2020	32	28	2	4	29.91
12	600	12	-	03/30/2020	08/17/2020	34	-	-	3	25.50
13	300	9	03/20/2020	04/15/2020	09/30/2020	40	-	-	2	23.28
14	600	9	03/23/2020	04/08/2020	09/05/2020	36	27	3	1	11.73
15	100	8	-	03/31/2020	08/26/2020	35	27	2	4	49.71
16	300	8	03/19/2020	04/02/2020	05/18/2020	21	23	6	6	76.65
17	400	7	03/23/2020	04/06/2020	09/03/2020	36	26	3	5	72.53
18	400	7	-	-	05/14/2020	20	25	2	3	43.59
19	500	6	03/23/2020	-	07/19/2020	30	-	-	12	201.95
20	500	6	-	07/16/2020	08/22/2020	34	-	-	5	84.60
21	500	6	-	-	06/04/2020	23	26	3	3	52.04
22	500	6	03/21/2020	06/18/2020	06/29/2020	27	27	3	7	123.11
23	500	6	03/20/2020	03/30/2020	06/09/2020	24	27	2	8	145.40
24	500	5	-	-	06/04/2020	23	-	-	10	182.15
25	400	5	03/24/2020	04/08/2020	08/14/2020	33	27	2	3	56.87
26	300	5	03/20/2020	03/31/2020	08/08/2020	32	-	-	3	65.12
27	700	4	05/28/2020	-	08/14/2020	33	25	4	5	120.02
28	600	4	-	03/27/2020	08/20/2020	34	-	-	5	127.81
29	600	4	03/20/2020	04/16/2020	10/21/2020	43	27	3	2	53.45
30	500	3	03/25/2020	05/27/2020	06/27/2020	26	27	3	4	144.09
31	600	2	03/23/2020	06/04/2020	05/31/2020	23	-	-	5	236.41
32	600	2	-	03/24/2020	-	-	-	-	-	-

**Note:** In case 32, the first death occurred on 02/26/2021. The distance from the capital and the population have been approximated so as not to identify the municipality and the respondents.

**Source:** Prepared by the authors based on *Congresso em Foco (2020)* and the São Paulo State Health Department (2020).

In the State of São Paulo, municipal governments had to adapt quickly during the first months of the pandemic to the new regulations on disclosure and procurement to cope with the pandemic. However, each municipality faced the arrival of the pandemic at a different time and with a different intensity. The São Paulo Plan, launched in June 2020, coordinated the state's response in the 17 health regions of the state, relaxing or tightening isolation measures based on criteria such as the occupancy rate of intensive care unit (ICU) beds exclusively for COVID-19 patients, the number of new hospitalizations, and the number of deaths (State of São Paulo, 2020). The change of phase from lesser to greater health criticality did not affect the procurement rules or the publication of contracts, but it increased the expectation of and justification for urgent procurement.

For all 32 municipalities, documents were collected and analyzed on the waivers of tender procedures carried out by the municipalities and reported in the official gazettes and transparency portals from March to December 2020 (pandemic) and March to December 2019 (pre-pandemic). The analysis identified 1,528 tender waivers by the 32 municipalities, including those that were canceled or interrupted during the procurement process, since a cancellation would not prevent at least part of the documents from being published. The period analyzed (2019-2020) covers the last two years of the mayors' terms and one year of municipal elections. Most of the municipalities decreed a state of emergency or public disaster (29 out of 32 cases). Following the pattern observed throughout Brazil, these decrees were generally issued when damage to health and public services became imminent (Agência Senado, 2019). Some of the mayors in charge of the pandemic response in these cases ran for re-election in their municipalities, and some aligned

their discourse on the pandemic with that of the federal government.

Table 2 shows the disclosure rate (0-1), the ratio of disclosed tenders to total tenders. The rate is presented for three different communication channels commonly used by municipalities: (i) the Transparency Portal, (ii) the Tender Portal, or (iii) the Contract Portal. It also shows the rate for "full disclosure," i.e. when all required documents are disclosed. The table is broken down by the object of the contract (whether or not it was related to actions to combat COVID-19) before and during the pandemic. In the year prior to the pandemic, there was no procurement of items to combat the pandemic, as the crisis was not anticipated. For this reason, actions are concentrated in the "other" category. In the first year of the pandemic, the tender waivers are classified according to whether they are related to the fight against "COVID-19" or "other."

The nearly 420 contracts (with no tendering) in the year before the pandemic were largely listed (mentioned) on the transparency portals (99%), but only 21% included the full publication of the tender waiver documents. In other words, the public would be aware that a tender waiver had taken place, but would not have access to the details. The use of waivers tripled when comparing the same periods before and during the pandemic (419 versus 1,109), but full disclosure of documents dropped from 21.7 to 6% for contracts related to the fight against COVID-19.

In addition to the document collection, approximately 30 professionals involved in the process of data publication or use of this information were interviewed. The semi-structured interviews lasted an average of 49 minutes (1,572 minutes in total), were recorded and transcribed, and the informed consent form was used in accordance with the research ethics committee (CEP FFCLRP/USP 4.415.315).

**Table 2**

*Average disclosure of tender waivers before and during the pandemic*

Time/object of contract	Number of tender waivers	Published on the Transparency Portal	Published on the tender portal	Published on the Contract Portal	Published with complete documents
Before the pandemic/other	419	0.997613	0.603818	0.513126	0.217183
During the pandemic/other	829	0.908323	0.741857	0.418576	0.176115
During the pandemic/COVID-19	280	0.982142	0.896428	0.321428	0.060714
Total	1,528	0.946335	0.732329	0.426701	0.166230

**Source:** Prepared by the authors.

The interviewees can be divided into two groups of professionals. The first group is made up of professionals who may come under pressure to reduce the amount of information disclosed, such as managers or civil servants in charge of information disclosure in municipal administrations and accountants. The accountants, in

particular, have extensive knowledge of the process of procuring supplies and services due to their contact with other departments in the municipality (human resources, taxation, warehousing, patrimony, purchasing, tenders, etc.). The second group represents potential users of tender information who may press for an increase in the

scope of disclosure, since they use government data for social or legislative control, such as representatives of civil servants in unions, councilors, journalists, and leaders of non-governmental organizations (NGOs) dedicated to social control. It is recognized that the representation is not so dichotomous, so the reality is more complex, but we adopted it as a feasible way of addressing the issue.

The protocol for the interviews with accountants and other civil servants covered topics such as: (i) the process of integrating data between the different systems of the municipality; (ii) difficulties and challenges encountered in the process of implementing the systems; (iii) requests for improvements to the systems; (iv) internal processes

prior to the implementation of the systems; (v) the possibility of adjusting the parameterization of the systems; (vi) the publication of information on the transparency portals; (vii) procedures for initiating procurement processes on the system; (viii) opinions on open government and transparency. The protocol applied to the city councilors, journalists, and NGO leaders addressed: (i) the quality of the publication of contracts by the municipalities on transparency portals; (ii) the transparency of tender waivers during the pandemic; (iii) the history of transparency in the public sector; (iv) the effect of the pandemic on local government transparency.

#### 4. TRANSPARENCY IN TENDER WAIVERS BEFORE AND DURING THE PANDEMIC

During the COVID-19 pandemic, governments used public emergency and/or disaster decrees in a cascading effect, starting with Legislative Decree no. 6 (2020, March 20), according to published material (Federal Senate, 2020). This decree suspended articles of the Fiscal Responsibility Law (Complementary Law no. 101 of May 4, 2000) (articles dealing with deadlines for the recovery of fiscal balance, such as Art. 23, 70, and 31) and made other points more flexible, such as the use of credit operations and the achievement of fiscal targets by December 2020.

The waiving of tenders as a public procurement modality, provided for by Law no. 8,666 of June 21, 1993, was the least time-consuming and simplest form of procurement (Lima et al., 2021). However, given the emergency of the pandemic, Law n. 13,979 of February 6, 2020, sanctioned the modality to accelerate, for example, the acquisition of medical and hospital supplies (Lima et al., 2021; Luiz, 2020). As of December 31, 2020, the Federal Government Procurement Portal (2021) recorded R\$6.8 billion in expenditures related to approximately 10,300 tender waivers.

At the very beginning of the health crisis, concerns were raised about transparency and the proper use of public funds. Just over a month after the onset of the pandemic, the São Paulo State Court of Accounts (2020) published Technical Note SDG no. 155, dated April 24, 2020, announcing that 361 municipalities in the state had confirmed that they had declared a public disaster and indicating procedures for procurement and disclosure. The note reiterated that the Court would review actions and expenditures in municipalities “where a state of emergency or a state of public disaster has been declared.” It clarified that the waiving of tenders under Article 4 of Law 13,979 of February 6, 2020, should be

disclosed on a website intended for COVID-19 on the day immediately following the act, including “the name of the contractor, its registration number with the Brazilian Federal Revenue Office, the duration of the contract, the value, and the respective procurement or acquisition process.” A simplified statement of work should also be published with the object, motivation, description of the solution, contract requirements, price estimates, and justification for acquisitions for amounts higher than the average market prices and for contracting suppliers with restrictions.

Table 3 shows the use of waivers by the 32 municipalities in the period analyzed (29 declared a state of emergency or disaster). The first part of the table shows the number of waivers identified (as already seen, 99% of the cases listed on the Transparency Portal) and, in brackets, the percentage of waivers with full disclosure of documents. The table separates contracts before and after the pandemic and by type of supply contracted (columns A, B, and C).

Among the various ways to analyze them, the following cases are aggregated by the reduction or increase in the proportion of disclosure of full documents. Dividing the cases into three groups compares the cases according to factors that would explain the difference in disclosure, in the logic of small sample analysis (Mahoney, 2000). We started with group 3 (19 cases sorted by whether or not they had emergency decrees), the municipalities that did not vary in their level of disclosure, as they maintained the pattern of operations before the pandemic, i.e., not disclosing full documents. Contrary to what was observed by Transparency International – Brazil for state capitals and governments (Pinho et al., 2020), the disclosure of full documents in the case of waiving tenders is low for the sample in question and was already low before the pandemic. In the remaining 13 cases, disclosure patterns

changed during the pandemic. Group 1 (seven cases) refers to municipalities that reduced disclosure during the pandemic, and group 2 (six cases) to those that increased disclosure only for “other objects.”

**Table 3**

*Disclosure of full documents on tender waivers before and during the pandemic*

Cases	Emergency or disaster decree	Number of tender waivers (% of waivers with full disclosure of documents)			Variation in the percentage of full documents		
		Other pre-pandemic objects (A)	Other objects during the pandemic (B)	COVID-19 objects during the pandemic (C)	B-A (pandemic effect)	C-B (object effect)	C-A (general effect)
7 cases	Group 1 – Some disclosure before the pandemic, reduced disclosure of full documents for COVID-19 and other objects						
6	Yes	9 (100)	24 (87)	4 (75)	-13	-12	-25
1	Yes	12 (75)	57 (29)	36 (19)	-46	-10	-56
28	Yes	20 (60)	13 (-)	5 (-)	-60	-	-60
17	Yes	7 (43)	38 (7)	11 (9)	-36	+2	-34
2	Yes	8 (38)	24 (8)	15 (6)	-30	-2	-32
30	Yes	9 (33)	41 (7)	18 (-)	-26	-7	-33
31	Yes	7 (14)	5 (-)	31 (-)	-14	-	-14
				Median	-30	-7	-33
6 cases	Group 2 – Increased disclosure of full documents only for other objects						
29	Yes	20 (75)	27 (85)	1 (-)	+10	-85	-75
7	Yes	79 (45)	81 (65)	16 (18)	+20	-47	-27
5	Yes	6 (-)	18 (77)	3 (33)	+77	-44	+33
26	Yes	4 (-)	13 (38)	1 (-)	+38	-38	-
4	Yes	2 (-)	10 (30)	0 (-)	+30	-30	-
8	Yes	8 (-)	85 (2)	29 (-)	+2	-2	-
				Median	+25	-41	-27
19 cases	Group 3 – No regular disclosure of full documents						
12	Yes	29 (-)	31 (-)	0 (-)	-	-	-
10	Yes	29 (-)	21 (-)	6 (-)	-	-	-
14	Yes	18 (-)	15 (-)	4 (-)	-	-	-
23	Yes	17 (-)	6 (-)	0 (-)	-	-	-
16	Yes	14 (-)	11 (-)	13 (-)	-	-	-
15	Yes	14 (-)	16 (-)	1 (-)	-	-	-
32	Yes	12 (-)	14 (-)	0 (-)	-	-	-
3	Yes	12 (-)	10 (-)	1 (-)	-	-	-
25	Yes	9 (-)	0 (-)	0 (-)	-	-	-
19	Yes	8 (-)	30 (-)	16 (-)	-	-	-
13	Yes	3 (-)	1 (-)	0 (-)	-	-	-
11	Yes	2 (-)	10 (-)	0 (-)	-	-	-
9	Yes	NA	126 (-)	33 (-)	-	-	-
27	Yes	22 (-)	38 (-)	5 (-)	-	-	-
20	Yes	23 (-)	28 (-)	15 (-)	-	-	-
22	Yes	13 (-)	16 (-)	0 (-)	-	-	-
18	No	2 (-)	15 (-)	12 (-)	-	-	-
21	No	1 (-)	2 (-)	2 (-)	-	-	-
24	No	0 (-)	3 (-)	1 (-)	-	-	-
Total		419 (21)	829 (17)	280 (6)			

Source: Prepared by the authors.



The right part of the table shows three effects (according to the difference between columns A, B, and C). The pandemic effect is seen by comparing the level of disclosure of full documents on waivers not related to COVID-19 before and during the pandemic. The object effect is seen by comparing the level of disclosure of full documents on waivers related to supplies to combat the pandemic with purchases of other supplies during the pandemic. And the general effect is the comparison of waivers for COVID-19 supplies (during the pandemic) with waivers before the pandemic (for other supplies).

The cases in group 1 (ranked by the proportion of full disclosure before the pandemic) show a generalized decrease in disclosure with the onset of the pandemic (median -30%), and waivers related to COVID-19

supplies show an even lower propensity for full disclosure compared to other objects (median -7%). It is interesting to note that the municipalities in group 2 increased their disclosure of full documents for other objects compared to before the pandemic (median +25%), but the disclosure of contracts for COVID-19 supplies did not follow the same propensity to publish full documents (median -41%), which we identify as an effect of the object of the contract.

There seems to be a selection of what is disclosed and what is not. Given that all the municipalities analyzed use the same financial and accounting management software and Transparency Portal, the variation in the disclosure rate is not a matter of technology in the process of publishing documents.

## 5. CHANGES IN THE BALANCE IN THE PARADOX OF OPACITY VERSUS TRANSPARENCY OF PROCUREMENT

In this section, we present evidence from the interviews conducted and discuss the responses to the pressures for transparency or opacity. In the interviews, when comparing what it was like “before the pandemic” and how they were dealing with the current situation, the interviewees mentioned some factors that caused confusion and uncertainty, that justified decisions regarding the publication of contracts, or that were grounds for criticism or concern on the part of social control agents regarding the risk of misuse of contracts. Table 4 shows the main factors or “disturbances” to the balance of the paradox mentioned by the interviewees.

The pandemic itself, the need to procure non-cataloged supplies, and the sense of chaos provided the context. At the onset of the pandemic, the more than 300 municipalities in the State of São Paulo, when they declared a state of disaster, began to use tender waivers as the main method of procuring supplies to combat COVID-19.

The delegation of the management of the health crisis to local and state governments, with the transfer of resources to fight the pandemic, the delegation of the flexibility of the procurement regime, and the implementation of public policies without central coordination, opened up a context for procuring services that was different from the one that had long been institutionalized in the country. When mayors were forced to procure quickly under a more flexible regime, the public administration operated for 45 days without clear guidelines until the release of the Technical Note of the São Paulo State Court of Accounts (2020). It is worth noting that, until then, the waiving of tenders was a procurement model used (as an exception) and with limitations by the

public administration. The relaxation of the procurement rules, coupled with the distorted understanding that this relaxation through the use of waivers could reduce the amount of documents to be published, led to the initial destabilization of publication practices.

**Table 4**  
*Identified factors affecting the balance of the paradox*

Opacity	Factors	Transparency
<<<	General uncertainty in the emergency context	>
<<<	Flexibility in the procurement rules	
<<<	Uncertainty regarding the normative basis	>
	Position of the Court of Accounts	>>>
<<<	Perception of tolerance	
<<	Lockdown, remote working	
<<<	Seeking favors	
	Avoiding accusations of favoritism	>>>

**Note:** *The number of arrows indicates the frequency or weight with which the statements appeared in the interviews, about how the factor contributes to each pole of the paradox.*

**Source:** *Prepared by the authors.*

Following the note from the São Paulo Court of Accounts, the attempt to meet the requirements quickly led to poor or only partial disclosure of procurement data. Although the São Paulo Court of Accounts’ recommendation did not increase the number of items to be disclosed, but only reinforced the need to disclose pandemic related issues in an identifiable manner, there was still some confusion about how to publish information on emergency contracts:

*At first I thought “right, it has to be published,” ok, everything has to be published, it’ll be there and I’ll indicate what’s COVID, but no. It had to be separate, there had to be an icon just for COVID.” (Accountant)*

Several accounts, such as those of an accountant and a journalist, portray the attempt to understand how disclosure should be carried out.

*All the expenses, all the income and expenditure that ... occur because of this emergency situation, right? You also have to publish the reports of confirmed cases, deaths, ... hospitalizations, ... In an individualized way ... you click there [on the COVID-19 icon on the Transparency Portal] and you’ll see the income, the expenses ... contracts, official actions related to dealing with COVID, right? Decrees, right? Decrees, rules for commerce, rules ... and so on. (Accountant)*

Such uncertainty could lead city governments to increase the rigor of their procurement transparency practices out of caution. Although less common, this was the approach taken by some governments, which not only widely published contracts, but also expanded the scope of COVID-19 information in general. Some health departments began issuing COVID-19 bulletins with the number of cases, ICU beds, cases treated, deaths, vaccination schedules, and number of people vaccinated. Specific announcements were made about actions and contracts to combat the pandemic. In some cases, as reported by the journalist below, the event brought visibility and a level of detail not previously seen on the municipal website.

*... in the municipalities here in the region, visibility [was given] to the data related to COVID that they had never been given before. If you go to the municipal website, for example, the first piece of information you’ll see in huge letters is the vaccination schedule. ... state COVID rules, ... COVID bulletin. And if you go to the Transparency Portal... they’ve created a specific page for revenues, contracts, tenders... COVID personnel and within the general expenditures page of the municipality they’ve also created an option for you to see the spending on COVID. (Journalist)*

However, this improvement occurred only in isolated cases. In most cases, as seen in the previous section and in Table 3, there was a deterioration in disclosure. Another factor that came up in interviews with journalists or NGO managers was the possible perception of tolerance signaled by the federal government at the time with regard to the suppression of information on transparency portals. Below, we transcribe the opinion of one journalist, which was similarly expressed by NGO leaders.

*During the pandemic, the Ministry of Health had many regressions [in relation to transparency] ... the federal government portal that monitored cases of infection and deaths during the pandemic was taken offline and then reinstated in*

*a much smaller format than before ... Then, when the minister changed, this portal went offline and features were removed, and only after a lot of pressure from society were they reinstated. (Journalist)*

However, other explanations for the decrease in transparency can be linked to the turbulent period for the public administration. It is worth recalling that the transparency portals and accounting management systems were the same as before the pandemic, and the practices were supposedly not hampered by a more simplified procurement regime; there was nothing necessarily new or more complex about public contract disclosure during the pandemic. Although the waiving of tenders was a model already used by all the municipalities analyzed, the local governments had to contract on an emergency basis, with demand for unknown supplies inflated by general demand, without adequate procedures and controls. In addition, when lockdowns were put in place and officials began working remotely, procurement officials and accountants had trouble accessing their in-house computing systems from home, as cloud computing was not the standard for local governments at the time. In some cases, governments even published photos of handwritten reports, as discussed in the following account.

*I’d make a list of what I’d bought... syringes, tests, rapid tests, right? So many tests, paid so much per unit [of test], total value so much. They took a photo [of the handwritten notes] on a piece of paper and put it there [on the Portal]. It’s practically useless, isn’t it? ... they put the CNPJ of the supplier, they didn’t even put the name ... it took a huge amount of work to ... try to understand what was going on [to carry out social control] ... it took days. (NGO manager)*

In the cases that responded positively in the direction of transparency, the portals were improved over the months, similar to what the following respondent describes.

*The portal has evolved over time as needed, and today it contains a wealth of information. It was the same with the expenses associated with COVID. At first, there was no requirement to separate the data on the portal. Then [the Court of Accounts] demanded that we separate the data on the Portal itself, clicking on the item [COVID-19] to access the expenses related to COVID. Then it started demanding other things, tenders, decrees, personnel hired... (Accountant)*

Finally, the issue of favoritism and the fear of managers being involved in illegal schemes were raised. Some of the third sector leaders interviewed pointed out that the large volume of funds, the urgency, and the flexibility of procurement created opportunities for managers who were not committed to the good use of public funds. NGOs and journalists mentioned this window of opportunity for rogue managers, as in the example mentioned below.

*This [pandemic] law [Law no. 13,979 of February 6, 2020] has exempted emergency purchases from having greater controls. And billions are being spent. So this allows bad managers to be opaque ... because they justify with the law that they're ... COVID has to be fast, it has to be this way, and they don't have to provide much information. (NGO manager)*

The same was said by the city councilors and journalists. The following two statements suggest that the analysis of savings and cost-effectiveness gave way to the urgency of procurement, reducing control and exposing public managers to the risk of being involved in illegal acts.

*At the beginning of the pandemic, they weren't holding any more tenders. The Supreme [Federal Court] ... gave [legitimized] powers to mayors and governors, if the person wants to benefit*

*from this [given the lack of transparency], there's no way to find out because you don't know where they're investing the money. (Journalist)*

*... good on the one hand [waiving tenders], it becomes a quick process, less costly, without the obligatory publications in major newspapers, in the official gazette of the state ... But because it's a price survey, I think it's a bit difficult to have more effective control. (Councilor)*

In short, given the change in the general context and how the public administration interpreted and responded to the context, the balance point shifted toward opacity. The interviews indicate that the factors and their effects change the equilibrium point and thus how those responsible for disclosure will deal with the current pressures.

## 6. DISCUSSION AND SOLUTIONS FOR BALANCING THE PARADOX

In this study, we analyzed how the balance in the paradox can be altered by factors that emerge with abrupt external shocks, such as the health crisis. For example, the tendency toward opacity in this context was influenced by how mayors and civil servants interpreted the application of regulations and transparency recommendations during the pandemic, by the disorganization of the bureaucracy due to the interruption of working hours as a result of isolation measures, or by the decision to reduce social control. These are not isolated factors, and they combine over time.

Municipalities handled this disturbance in the balance of the paradox differently. It was shown that while the cases in group 2 (Table 3) selectively expanded disclosure for waivers of other objects (not related to COVID-19), the transparency policy of the cases in group 1 moved closer to more opacity. The adequacy of the level of disclosure varies with the object of the contract (supplies related or not to COVID-19), indicating a certain choice on the part of the local administration in terms of transparency. Since the financial management and Transparency Portal systems were integrated, and the same Court of Accounts acted in all cases, neither the technology nor the coercion of the supervisory body explains the variation in transparency between the cases analyzed and between the objects of the contracts (related or not to COVID-19). Moreover, the hypotheses of error or randomness in what is or is not disclosed do not seem to be the case for groups 1 and 2, given the pattern observed.

Differences in the level of disclosure of full documents could be due to selective disclosure by the administration of these governments. If this is the case, governments may be separating into groups of tender objects whether

they intend to be more or less transparent. This is a typical “spatial separation” that has already been identified in other contexts, as revealed in the review by Schad et al. (2016). Governments are more likely to disclose tender waivers for objects not related to COVID-19, which to some extent meets the demands of the Court of Accounts and civil society. In cases related to COVID-19, disclosure is reduced, perhaps because of the risk of exposing inefficiency or misuse of funds.

To reduce this effect on society, especially in situations of national emergency, it is necessary to rebalance the pressures arising from the different interests of the political-economic system. Supervisory bodies and federal government authorities can (i) reduce the costs of compliance with the transparency pole (e.g. by creating systems for cross-checking supplier data in public procurement) and (ii) reduce uncertainty about what should be done in such cases (by providing for emergency procedures in legislation and manuals). Courts of Accounts, which develop data collection systems for various audit topics (Aquino et al., 2021), could (iii) include modules in the data collection that receive such waivers, including emergency periods, and automatically publish them on a state procurement portal, in addition to (iv) having a clear and immediate position at the time of a crisis (as opposed to the 45 days for the first guidance from the Court of Accounts analyzed).

In addition, technological solutions could be used to create barriers to selective disclosure. For example, the entire procurement process could be carried out on a dedicated national or state platform, where registration, selection of suppliers, and payment of purchases are handled using tokens and security mechanisms, including

government-issued certificates (e.g., tax compliance). All information would be registered on the platform in

advance and available for consultation. This would reduce the discretionary nature of selective disclosure.

## 7. CONCLUSIONS

In times of normality, municipalities develop their transparency policies, which may regress or advance in times of emergency, such as the COVID-19 pandemic. The balance of pressures, contradictions, and actions of the various groups interested in the use of public resources changes over time as they respond to the context, potentially leading to a regression in the policy of transparency of government actions or public accounts.

In this case, the obligation to fight the pandemic quickly led governments to opt for greater use of tender waivers, but with limited disclosure of the contracts. Public officials adapted the level of disclosure to the emergency context, notwithstanding the interest and pressure of the press and social control agents. In the various cases, the technology used to disclose information and the officials involved in public procurement did not change significantly from one year to the next, but the urgency of procurement and the uncertainties created by the pandemic did. What would affect the success of the procurement process resulting from the health emergency would be the identification of suppliers of items that had not been used before or were unknown to most municipalities, or even unavailable given the unexpected demand. However, the justification that it would be difficult to identify sources of supplies or that work overload during the lockdown months would make it difficult to publish the tender waiver documents seems implausible.

The research has two main implications for the discussion of government transparency. First, the level of government transparency is not determined solely by static contingencies for a given period, such as demographic

or social characteristics [e.g. human development index (HDI), gross domestic product (GDP)], or material and human resources in the municipality, but by a delicate balance between different pressures from key stakeholders that change with the context. Cross-sectional studies of government transparency have not captured these dynamics. Second, periods of crisis or emergency demand special attention from oversight bodies and civil society. Even municipalities that are exemplary in their transparency policies during periods of normality can easily lose transparency when the balance of the paradox is disturbed.

The consideration that the implementation of transparency policies is something to be maintained and subject to regression due to changing contextual pressures opens up an agenda for research on other emergency situations. In addition to national crises, such as pandemics, local events, such as floods and landslides caused by summer rains, may lead governments to engage in selective disclosure in the emergency situation. This study was based on the logic of small samples and does not intend for its results to be generalized to a larger group of cases. However, the results of the sample of small municipalities could be tested with other states of the federation, for example, by observing whether a clear understanding and disclosure by the Courts of Accounts in other states reduced the effect observed in the São Paulo sample. If so, this would demonstrate an important function of the oversight bodies in their preventive and guiding role.

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