

Open Contracting – what is it and how good is it?

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Abstract

Public procurement accounts for 16-18% of a country's GDP and can be vulnerable to corruption, mismanagement and inefficiencies. The concept Open Contracting promotes transparency and participation in government contracting with the goal to improve public procurement processes worldwide. In this paper, a framework of good public procurement is developed which is later contrasted with the objectives, operating mode and benefits and effects of Open Contracting. The analysis of Open Contracting found evidence that the concept only supports several satisficing s of good public procurement by promoting their global principles, by developing open data standards for disclosure of contracting information, by supporting practitioners with training, resources, seed funding, coaching, coalition and network building and finally by building evidence for open contracting through research, monitoring and evaluation. Open Contracting was found to not support a government's broader government objectives (objectives that create additional value for society, for instance through innovations).

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1. INTRODUCTION

Transparency is an issue that has increasingly gained attention in the recent decades. The demand for transparency can be found in national and global legislation, but also civil society organisations and organisations that are founded by international bodies are working to improve transparency worldwide. Transparency in the government sector is of particular importance as it concerns all citizens. Public procurement is an area of distinct interest since it amounts to 16-18% of a country's GDP (Rolfstam, 2009). In absolute numbers, all governments worldwide spend 9.5 trillion USD every year with public procurement (Estefan, 2014), while it can be very vulnerable to corruption, inefficiency and mismanagement.

This paper will analyse a way to achieve transparency in public procurement, Open Contracting, which is promoted by the Open Contracting Partnership. In 2013, the World Bank Institute founded this transparency initiative, among others. Open Contracting basically includes disclosure of information and participation of citizens during all contracting stages (Locke & Henley, 2013). In order to achieve these objectives, the Open Contracting Partnership offers trainings, web resources, knowledge exchanges, research, the development of data standards and advocates the importance of Open Contracting. Some public bodies are practising open contracting, but are not explicitly stating it. For instance, the City of New York publishes all spend data in an understandable way on a website that is accessible for anyone (see CheckBookoNYC.com).

This paper is structured as follows: First, a framework for good public procurement and also methods to achieve these characteristics will be developed by analysing and synthesizing scientific literature. After that, the concept Open Contracting will be analysed with regard to its objectives, characteristics, operating mode and effects. The paper will conclude with a discussion of the results, implications for policy-makers, the Open Contracting Partnership and recommendations for future research.

1.1 Research Goal

Open Contracting advocates a transparent and participative design and execution of public (and private) purchasing processes. The Open Contracting Partnership offers support to public procurement professionals in numerous ways in order to make procurement processes more efficient and to deliver more value for money (Marchessault, 2013a). The goal of this research is to analyse the way Open Contracting helps to perform good public procurement. At the same time, characteristics of good public procurement will be analysed and contrasted with the concept Open Contracting. The result will be an overview of the objectives and benefits of the Open Contracting Partnership, a confrontation with theoretical insights and finally a judgement on the performance of the concept Open Contracting and ultimately the Open Contracting Partnership.

1.2 Research Questions

The Open Contracting Partnership is a transparency initiative with the aim to improve public procurement worldwide, disregarding the country's development stage. This research will examine the contents of Open Contracting and the extent to which Open Contracting is helping to further good procurement. The first step is to build a framework of the characteristics of good public procurement (research question 1). The next step is to introduce the concept Open Contracting and the characteristics of this initiative. Subsequently, Open

Contracting will be contrasted with the ideal public procurement characteristics by answering the following research question:

Does the Open Contracting Partnership support any of these characteristics through its objectives, its operating mode, its characteristics, or its effects? (research question 2).

This paper will conclude with characteristics that the Open Contracting Partnership does not consider and limitations of the approach (research question 3).

1. What are the characteristics of good public procurement?
2. Does Open Contracting support any of these characteristics through its objectives, its operating mode, its characteristics, or its effects?
3. What characteristics of good public procurement does Open Contracting not consider?

1.3 Research Methodology

As the Open Contracting Partnership is a very recent initiative, there is not much scientific literature on the movement and its possible effects. However, there is considerable information available on the Internet, which will be used in order to identify the objectives, characteristics, operating mode and effects of the Open Contracting Partnership. The effects of possible realizations of the Open Contracting Partnership's objectives will be analysed by using scientific literature. In order to build the framework with characteristics of good public procurement, both scientific literature and legislation (like the Government Procurement Agreement) will be analysed. An overview of the research methodology is presented in table 1.

	Research question	Methodology	Data sources
1	Characteristics of good Public Procurement?	Literature review	Scientific literature and legislations
2	Characteristics of Open Contracting Partnership?	Data collection and literature review	Internet sources and scientific literature
3	Missing factors	Data analysis	n/a

Table 1: Overview of the research methodology

1.4 Research Interest

Several organizations and individuals might have an interest in the results of this research. First, this research will be interesting for the Open Contracting Partnership, as this paper will assess the performance of the initiative and possible weaknesses of their objectives. Moreover, this paper will be of great interest for procurement professionals and governments that are evaluating the benefits and drawbacks of joining the Open Contracting initiative. Third, this research might be interesting for individuals that are in the process of the formulation of objectives for their (public) procurement processes. The second chapter of this research gives a framework of possible public procurement characteristics. Finally, this research might be of interest for researchers on public procurement as it synthesizes scientific literature on public procurement characteristics to a framework of good public procurement characteristics.

2. THEORETICAL FRAMEWORK

This chapter will elaborate on characteristics of good public procurement. The term good public procurement is based on the term good governance being a description of the perfect way to do governance. Boas (1998) defined good governance as the

natural opposite of bad governance, while bad governance refers to an underdeveloped political system (Moore, 2001). Similarly, this research will try to explore and analyse characteristics of good public procurement, being public procurement how it *should* be. By synthesizing legislation, international agreements and scientific literature, a framework of characteristics will be developed that will be used in the following chapters to assess the Open Contracting Partnership. Further, this chapter will elaborate on usual ways to deliver these characteristics.

Public procurement has been seen as the counterpart to private sector procurement. In private sector procurement, companies are forced to transmit pressure from competitors to the way they purchase their goods and services. In contrast, the public sector does not face any similar competition. Regulation is used to achieve the goals attained through competition in the private sector by setting pricing policies, performance requirements, budgetary constraints and stipulated procedures to be followed (Cousins, 2008). Public procurement characteristics are usually formulated in policies of governments or international organisations like the World Trade Organization (WTO). The policies of the European Union are based on the principles of “no discrimination on the grounds of nationality, equal treatment of potential bidders, proportionality, mutual recognition and transparency” (Cousins, 2008, p. 231; European Parliament, 2004). Especially the Agreement on Government Procurement is requiring countries to procure their goods and services in an accountable way (Hoekman, 1998; WTO, 2012). In short, the characteristics are fair (no discrimination, no corruption), delivering value for money, competitive, transparent and accountable. The main aim of these characteristics is to ensure that public funds are used in order to satisfy public needs. Therefore, these five characteristics will be categorized as satisficing characteristics (cf. Brown, 2004). Only these five satisficing characteristics are subject of this study due to limitations in time and scope. However, scholars suggest that public procurement can go one step beyond the aforementioned characteristics by supporting and delivering broader government policy objectives. Broader government policy objectives can be job creation, strengthening of specific industries, regional development, diversity, stimulation of innovation, sustainability or development aid (cf. Telgen, Harland, & Knight, 2007). Due to time and scope limitations of this study, only stimulation of innovation (Edler & Georghiou, 2007; Uyarra & Flanagan, 2010), sustainability (Walker & Brammer, 2009) and achievement of social outcomes (McCrudden, 2004) are considered. The aforementioned characteristics that go beyond sufficient and satisfying characteristics are categorized as characteristics that create additional value for society. The identified characteristics are summarized in table 2.

Satisficing	Creating value additional for society
Fair	Stimulator for innovation
Delivering value for money	Promoter of sustainability
Competitive	Social
Transparent	
Accountable	

Table 2: Characteristics of good public procurement

The following sections will explore scientific literature on characteristics of good public procurement. In order to assess the concept Open Contracting it is essential to identify the

characteristics of good public procurement that are supported and also those that are not.

2.1 Literature Review Methodology

In order to only review scientific articles that are of high quality, it is essential to follow a methodology that excludes articles that are of low quality, and those that do not guarantee validity and are not peer reviewed. This literature review will follow a systematic approach by Moody (2009) as adjusted by Lohmann (2010) due to the limitations of this study. If the methodology by Moody (2009) does only provide three articles or less, a forward and backward citation analysis will be performed and a keyword search on Google Scholar will be performed. Table 3, which can be found in the appendix, summarizes the approach by Moody (2009) and the adjustments. The first two steps will not be adjusted for each characteristic as all characteristics are related to public procurement and the stages that usual public procurement projects go through.

The literature review will not only focus on public procurement but also on procurement in the private sector, as there might be private sector studies that are also applicable to the public sector. Searching for ‘Procurement OR Purchasing OR Contracting’ will make the first selection of articles. The articles that are found with these criteria are then filtered by the terms ‘Supplier selection OR tendering OR Supplier evaluation’ and ‘contract awarding’. The search engine Scopus will be used to identify relevant articles, as it has a high coverage of scientific journals. The search will be limited to finding the keywords either in the title, abstract or in the keywords.

2.2. Satisficing Public Procurement Characteristics

2.2.1 Fair Public Procurement

In accordance with the legislation by the European Union, fair public procurement is defined as non-corrupt and non-discriminatory. Therefore, the following keyword combination will be used in order to find relevant articles: ‘corruption OR corrupt OR discrimination OR discriminatory OR fair’. The search yielded 87 scientific articles, which are scanned for their abstracts. The inclusion criterion is whether the article describes a way to ensure fair (that means non-corrupt and non-discriminatory) public procurement. Articles that are focused on the buyer-side are excluded.

Generally, corruption is defined as the misuse of the public office for private gains, usually including bribery (Treisman, 2000), while discrimination is the preference for one group of suppliers over another (Naegelen & Mougeot, 1998).

Arnold, Neubauer, and Schoenherr (2012) find in their research that both functional and organizational complexity lead to a greater inclination of a company towards corruption because greater complexity increases information asymmetry between individual buyers and, in the public procurement case, regulatory or oversight bodies. Falagario, Sciancalepore, Costantino, and Pietroforte (2012) describe the selection of the winning proposal as a highly complex task due to the necessary involvement of both price and performance criteria. The authors further argue that the increased complexity requires purchasing professionals to specialize, being the source for a knowledge edge and the reason for the information asymmetry. It is suggested to implement effective control and prevention instruments in order to reduce an individual’s inclination towards corruption (Arnold et al., 2012).

Falagario et al. (2012) describe the awarding method as very vulnerable to corruption and hence it requires the highest

possible degree of objectivity. They synthesize that the choice of weights by procurement officers prior to the publication of the request for proposal cannot be ideal and by that procurement officers are enabled to prefer specific suppliers and thus engage in corruption. Similarly Lorentziadis (2010) argues that the weights that are assigned to the criteria that are subjectively defined by the buyer are a potential source of corruption. As it is essential to ensure transparency, all weights should be publicized prior to the selection phase, however, Lorentziadis (2010) argues that post-objective methods of evaluation can enhance integrity and limit corruption.

Corruption entails, in most of the cases, opportunistic behaviour. Hawkins, Pohlen, and Prybutok (2013) found evidence that the environmental surroundings of a buyer directly influence the buyer's tendency to act opportunistically. These surroundings could be ignorance or opportunistic behaviour by the principal. It is recommended to screen buyers for honesty and integrity. Moreover, Hawkins et al. (2013) propose to train principals to detect and prevent situations in which individual buyers could face subjective expected utilities. Principals should act as role models and should expect similar values from their agents. The importance of the training of principals is also supported by the finding by Hawkins, Gravier, and Powley (2011) that the buyer's leaders in the public sector tend to show opportunistic behaviour. Ntayi, Ngoboka, Mutebi, and Sitenda (2012) also identify principals as the major influencer of opportunistic behaviour of procurement officers.

Lennerfors (2007) describes two ways to reduce the risk of corruption, (1) soft measures such as the promotion of values like honesty, trust or honour and (2) regulation that prevents procurement officers from acting opportunistically. It is also highlighted that there can be a trade-off between avoiding corruption and the individual flexibility of the procurement officers. The author points out that transparency and measures against corruption go hand in hand.

In summary, regulators can decrease both functional and organizational complexity in order to prevent corruption and discrimination. Further, effective control and prevention mechanisms can be implemented like the promotion of value such as honesty, trust or honour together with a clear regulation that prevents public procurement officers from acting opportunistically. Finally, all selection and award criteria and weights can be published with the tender notice in order to ensure objectivity. There are also methods that promise objectivity without publishing selection and award criteria and weights in advance.

2.2.2 *Delivering Value for Money*

The articles that were identified earlier were filtered by the term "value for money", leaving 27 articles. The aim was to identify articles that describe ways how public procurement can achieve greater value for money.

There is no distinct definition of 'value for money', however, it is referred to efficiency and effectiveness when defining the term 'value for money'. Erridge and Nondi (1994) define the term 'value for money' as "a concept combining multiple factors, with a need to balance price, quality, on-time delivery and operating costs" (p. 175). However, Loader (2007) remarks that a narrow definition of the term 'value for money' can lead to the exclusion of smaller and medium-sized suppliers in the tendering process. He suggests extending the definition of value for money, by including more criteria than only quality and costs. The exclusion of SME suppliers may also prevent the stimulation of innovation and the promotion of sustainability. Ways to achieve value for money in public tendering range from the use of e-procurement tools, over buying alliances

(Love, Mistry, & Davis, 2010; Naegelen & Mougeot, 1998), developing partnerships with suppliers to reduce transaction costs (Loader, 2010), to full disclosure of tender evaluation models (Mateus, Ferreira, & Carreira, 2010; Telgen & Schotanus, 2010). Moreover, many scholars state that 'value for money' is one of the key objectives of public procurement, but are lacking ideas to achieve it (see Loader, 2010).

E-procurement tools in the government context can take several forms. There are tools that assist purchasing officers in the creation of tenders, in their execution and in their evaluation. These tools can be attractive for purchasing authorities with respect to both time and cost savings (Gunasekaran & Ngai, 2008), resulting in a more efficient and effective use of public money. However, e-procurement tools and decision models may increase administrative and human resource costs, as most of the procurement officers need to be trained in order to use complex decision models (de Boer & van der Wegen, 2003). Therefore, it is essential to limit the number of decision models while still ensuring flexibility and a fitting model for each tender. The greatest value for money is achieved when objective decision models are used throughout the entire purchasing process (de Boer & van der Wegen, 2003).

Loader (2010) argues that the development of partnerships with suppliers can reduce transactions costs and in turn deliver greater value for money. However, close and long-lasting relationships can harm competition and lead to higher prices. The development of partnerships is part of a strategy that is originated in the private sector, namely to make procurement practices 'lean', which would require a closer buyer-supplier relationship. However, some of the 'lean' approaches contradict the principles of fair, transparent, competitive and accountable public procurement.

Another way to achieve greater value for money is proposed by Mateus et al. (2010): The authors suggest to fully disclose the tender evaluation models in advance, also because it is vital to provide relevant and meaningful information to possible suppliers as it helps them to better act according to the needs that are formulated by the procurement officer. Particularly the weights are important information for tenderers. Furthermore, the authors remark that transparency can ease the evaluation of the tenders by means of increased comparability and coherence of the tenders. This finding is also supported by Telgen and Schotanus (2010) who find that full disclosure of all details of the awarding mechanism can lead to better bids, which can ultimately result in improved value for money.

Erridge and Nondi (1994) found evidence from a survey among public procurement officers that on-time delivery can have a significant effect on the achievement of value for money, moreover, administrative requirements might jeopardize the achievement of value for money as the costs that are created due to over-bureaucracy do not create any value. Furthermore, it is found that competitive bidding might be incompatible with the achievement of value for money. The authors propose a hybrid of the competitive bidding model and a partnership model, that is characterized by medium-term contract periods, frequent communication with suppliers, pre- and post-tender negotiations and a limited supply base, that balances the need for a close buyer-supplier relationship and the risk of impropriety and corruption.

Summarizing, scholars suggest making use of e-procurement tools that assist purchasing officers during the purchasing process in order to increase efficiency and effectiveness. In addition, disclosure of tendering documents can increase value for money as suppliers can better tailor their offers to the needs of the buyer. It is remarked that administrative burdens can

lower the value for money due to increased effort on the side of the procuring agency.

2.2.3 Competitive Public Procurement

In order to find relevant articles that describe ways to ensure competitiveness in public tenders, the articles that were identified in the general search were filtered by the keywords 'competitiveness OR competition OR competitive'. As the number of identified articles was too high, the search was limited to those articles that included the keyword 'public'. This resulted in 45 articles. Only studies that explored or described ways to enhance competition during public tenders were included. Competition can lead to better results both by a higher number of suppliers or by a higher intensity of the competition, e.g. by making use of auctions.

The open tendering procedure offers can offer a great opportunity for competition in terms of number of suppliers since every (possible) supplier is invited to submit a bid; consequently, it is an efficient way to perform public procurement. However, this procedure may entail higher administrative costs due to a greater selection and evaluation effort. In contrast, restricted or negotiated procedures limit the number of possible suppliers and thus limit competition, but may help to achieve political goals such as the stimulation of the domestic market. It is also argued that the restriction of possible suppliers does not improve the domestic suppliers' industrial performance but may have an effect on the industrial structure of the domestic suppliers (Mardas, 1999).

It is important to create equal opportunities for all bidders in order to achieve equality. However, the administrative burden that bidding in government tenders entails is already a first selection as some suppliers might not have the capacity to participate in many government tenders, resulting in a disadvantage for small and medium sized suppliers and thereby reducing competition (Loader, 2011). Mathisen and Solvoll (2008) find evidence from the public transportation sector that government tendering can reduce competition in the longer term due to structural changes that are a consequence of increased competition. Increased competition resulted in companies getting larger by inorganic growth, which in turn resulted in a lower number of companies that are able to participate in the bidding process.

Parker and Hartley (1997) remark that partnership is superior to competitive sourcing as competitive sourcing usually entails higher costs and a focus on price and not quality. Their argument is that competition reduces the suppliers' profit margins which, as Parker and Hartley (1997) argue, cannot be in the long-term interest of the buyer. However, the authors conclude that in general no form of buying is superior to the other, but it is essential for organisations to be aware of the respective advantages and disadvantages of each form. Erridge and Greer (2002) outline the advantages of a closer buyer-supplier relationship, however, this would limit competition. Bergman and Lundberg (2013) found that highly complex and detailed product specifications result in increased transaction costs and most notably reduced competition.

E-procurement tools can be used to increase the intensity of competition. Especially by using e-reverse auctions, competition can be encouraged and goods and services are more likely to be offered at market value (Cabras, 2010; Rossignoli, Carugati, & Mola, 2009). E-procurement tools that facilitate the disclosure and advertisement of government tenders can also improve competition by increasing the number of possible suppliers (Mateus et al., 2010). This effect can be achieved as well when non-local suppliers enter the market, because distance to the buyer does only play a secondary role.

In summary, a way to increase competition can be using an open procedure in which all documents that are related to the tender are published and everybody is invited to participate. Advertising government tenders can invite additional suppliers to place their (better) bids, which can be facilitated by electronic and web-based tools. Finally, it is important to choose an efficient and easy-to-understand language, as complexity in product specifications can exclude potential suppliers.

2.2.4 Transparent Public Procurement

In order to find relevant articles that describe ways to ensure transparency in public tendering, the articles that were identified earlier were filtered by the keywords 'transparency OR transparent'. 66 articles were evaluated on the basis of their abstracts. Only articles that describe ways to ensure transparency are included.

Transparent public procurement is in most of the cases related to the disclosure of information. Most of the scholars suggest using e-procurement tools in order to make the procurement process more transparent. Preuss (2009) gives the example of a British district council that listed all its current contracts on a website and thereby invited companies to bid on these.¹ Falagario et al. (2012) remark that the supplier selection process is in most of the cases a highly complex and expensive task due to a high number of bidders in relation to the value of the product or service to be bought. Complexity is increased if the purchasing authority decides to use the MEAT (most economically advantageous tender) criterion rather than the lowest price criterion because the MEAT method requires the purchasing agency to incorporate more criteria than only price. (Falagario et al., 2012) propose using a linear-programming method that enables contracting authorities to rank bidders without the need for subjective judgements. However, this method has the limitation that scores are not predefined. In order to tackle task complexity both in terms of regulatory requirements and efficient use of public funds, Csáki and Adam (2010) propose making use of electronic decision support systems. These support systems could take the form of compliance tools that help the contracting authority to adhere to the rules in terms of time management or release of information.

Mateus et al. (2010) argue that the contracting authorities are required to inform possible participants of the bidding process about the criteria for the award and the relative weights of each criterion in a timely manner. Next to that, it is proposed to publish the complete tender evaluation model (including all scoring rules) at the beginning of the procurement procedures, with the result that possible suppliers are enabled to calculate their scores on their own. Next to the improvements in terms of enhanced transparency, it also facilitates an easier comparison of the bids and will prevent bidders from appealing. Bergman and Lundberg (2013) find that price-to-quality scoring rules are not transparent and therefore not desirable in the public procurement context. They propose to use quality-to-price scoring, where monetary values are assigned to certain quality characteristics or levels. Moreover, they dissuade contracting authorities from using relative scores.

Vesely and Dohnal (2012) built a formalized qualitative model on government tenders and found, among others, that fuzziness of criteria, i.e. criteria that can be interpreted in many ways, and corruption have a negative effect on the availability of

¹ The City of New York, USA also publishes all contracts and purchases on a very user-friendly website called CheckbookNYC (<http://www.checkbooknyc.com/>).

information in government tenders. This implies that it is essential to fight corruption and to clearly define criteria and scoring mechanisms in order to achieve transparency.

Lennerfors (2007) argues that a right to appeal is an essential element of a transparent bidding process. The right to appeal is a reinforcement mechanism of transparency as it is economically better to have a perfect (i.e. transparent) bidding process rather than being punished for non-transparency (costs and delays). The author underlined the trade-off between maximum transparency and efficiency due to costs to assemble and disclose information.

In summary, transparent public procurement can be achieved – similar to achieving other public procurement goals – by making use of e-procurement tools that simplify the way information is published and standardized. Further, it is important to publish all data that are related to the tendering process (scoring rules, weights, etc.) together with the prior information notice. Finally, some scholars remark the trade-off between transparency and efficiency due to costs that are associated with publishing and standardizing information.

2.2.5 Accountable Public Procurement

In order to find articles explaining ways to perform public procurement in an accountable way the articles that were selected before are scanned for the keywords ‘accountability OR accountable’. Unfortunately, there are many articles that declare accountability as an important requirement of public procurement, but the number of articles that describe ways to achieve it, is limited.

The United Nations define accountability in the government context as condition when “rights holders and duty bearers both deliver their obligations” (UNDP, 2014, p. 1). Jeppesen (2010) proposes four accountability mechanisms to ensure that contracting authorities deliver their obligations, namely civil society involvement in public procurement, the role of media in public procurement, the use of e-procurement tools and transparency.

Civil society can enhance accountability by being invited to supervise and take part in public procurement processes by means that are convenient for citizens like it is done in the Philippines. Furthermore, civil society organizations can create agreements between the public authorities and bidders for a specific tender to commit to responsible acting. However, observers might also be a target for bribery, therefore it is essential to ensure independence and trustworthiness of observers (Jeppesen, 2010).

Media can play the role of a ‘watchdog’ that uncovers procurement scandals and promotes accountability. With regard to accountability, journalists should be able to observe public procurement processes in terms of independence and capabilities. Next to the oversight obligations, media can serve as an educator informing the public about the procurement systems in a country. Offering training to report on integrity and accountability of public authorities to journalists can reinforce the accountability of officials (Armstrong, 2005).

Finally, e-procurement systems can also create accountability by disclosing information about buyers, suppliers, prices and quantities because transparency can lead to greater accountability. Modern e-procurement tools, like any computer programme can offer the possibility to trace back decisions and communications. This enables principals to oversee and review actions of their subordinates more closely.

Trepte (2005) argues that transparency mechanisms need to complement accountability mechanisms. According to Trepte

(2005), the most important mechanism is the continuous reporting and recording of actions and decisions of purchasing officers. These should go hand in hand with both internal and external audits. These mechanisms are essential to monitor and verify compliance with the public procurement regulations. Lennerfors (2007) mentions the implementation of an evaluation system that enables suppliers or other civil actors to unveil irregularities and to contest decisions, which can be considered as an external audit system as mentioned by Trepte (2005).

Similar to mechanisms that are supposed to enhance transparency, scholars warn about the risk of overregulation that can reduce efficiency and professionalism of the purchasing process. Moreover, oversight mechanisms and public procurement regulation cannot eliminate all possibilities for corrupt activities, nor address causes of corruption (Trepte, 2005).

To sum up, purchasing officers and procurement agencies can be held accountable if the civil society is invited to participate in the purchasing process. Next to that, local media can play an important role in holding public authorities accountable. However, journalists need to be trained in order to be able to unveil wrongs. Finally, e-procurement systems can be used in order to record all actions and decisions that are related to the tender so that wrong decisions can be traced back.

2.3 Public Procurement that Creates Added Value for Society

Public procurement legislation should ensure that all contracting authorities in a country are organised in a way that they are fair, transparent and accountable, ensure competition and deliver value for money. However, scholars suggest going one step further than that by requiring contracting authorities to stimulate innovation, to source sustainable products and services and to achieve social outcomes. This is often grounded on the belief that public procurement can have a huge impact on an economy as it amounts to 16-18% of a country’s GDP (Rolfstam, 2009). The following sections will explore methods to achieve the aforementioned values.

2.3.1 Sustainable Public Procurement

In order to find articles that are addressing the topic of green public procurement, the articles that are identified in the first two steps are filtered by the keywords ‘green OR sustainable OR sustainability’. The article search yielded 38 articles that are reviewed by their abstracts. However, only a limited number of articles were useful for the topic, therefore, a search on *Google scholar* was performed that yielded 5 additional articles. Only articles that refer to sustainable procurement in the sense of green procurement were included.

The EU directives on public procurement allow ‘green’ criteria and requirements not only if they are economical by nature. However, these criteria should be clearly specified, measurable and proportional. Moreover, environmental requirements should not violate general EU public procurement requirements like transparency or non-discrimination (Palmujoki, Parikka - Alhola, & Ekroos, 2010). Day (2005) specifies the way public authorities can formulate technical specifications that require suppliers to act environmentally friendly. It is proposed using functional requirements instead of technical requirements in order to leave room for suppliers to find innovative solutions. In addition, in order to reduce administrative efforts, a procurement authority can require suppliers to comply with a range of eco-labels (it is not allowed to require only one label, due to the non-discriminatory requirement). Environmental issues can also be required in the selection criteria. As an

example, governments can require companies to show their capacity to apply environmental management measures (e.g. ISO 14001). Finally, a contracting authority can give a certain weight to the environmental quality of bids when it uses the economically most advantageous tender. Bolton (2008) has a similar view on the opportunities of public procurement to achieve environmental goals. Additionally, Bolton stresses the possibilities to take environmental factors in a preparatory stage of the tender into account, as this part of the purchasing process is not as regulated as the supplier selection or award.

Criteria that are used within the procurement process can be based on a life cycle assessment (EC, 2014). In the construction sector, this assessment can be based on an analysis on multiple levels: (1) local level (e.g. noise, fine dust emissions), (2) global level (e.g. greenhouse emissions due to energy consumption) and (3) internal level (e.g. health of the building's occupants). Analysing these levels during all stages of a building (construction, use, end-of-life) is essential for high environmental performance (Tarantini, Loprieno, & Porta, 2011).

Unfortunately, there are barriers that prevent purchasing officers from incorporating 'green' criteria in the tendering process. Bouwer et al. (2006) suggest starting training programmes on the use of environmental criteria in order to overcome *perceived* barriers. Moreover, a handbook, or a website that explains procurement procedures and possible criteria for the assessment of bids can be vital for green public procurement.

Palmujoki et al. (2010) remark that the use of sustainable procurement criteria is widely used across the EU, but these criteria are not often implemented in the final contracts with the supplier. The efforts in the supplier selection become obsolete if these clauses are not integrated into the final contract clauses. Moreover, Brännlund, Lundberg, and Marklund (2009) doubt that public procurement is a more efficient policy tool to achieve environmental goals than taxes, subsidies and tradable permits. Further, green public procurement can have both a negative and a positive effect on competition. Green public procurement can limit the number of possible suppliers as it imposes a further entry restriction, but on the other hand, it may attract other suppliers and will thereby increase competition. However, there is no empirical evidence on the net outcome but it is most likely to depend on the market (Brännlund et al., 2009).

Summarizing, using 'green' criteria in the tendering process can be compliant with EU law, if they do not hamper other public procurement goals like competitiveness, transparency or non-discrimination. In order to find criteria for the evaluation of bids, it is suggested analysing the bids on three levels, namely the local, global and internal level. Finally, it is essential to remove perceived barriers to green public procurement, for instance by offering training or developing handbooks that provide detailed guidance for purchasing officers.²

2.3.2 Public procurement as a Stimulator of Innovation

In order to find articles that describe how public procurement can stimulate innovation, the articles that were identified before were scanned for the keywords 'innovation OR innovative'. The search yielded 27 articles. Unfortunately, the articles only focused on innovative procurement methods but not on methods to stimulate innovation in an economy. Therefore, a keyword

search on *Google scholar* was performed yielding ten additional articles.

In general, scholars agree on the potentially high impact of the public sector on innovation as it contributes to a large share of a country's GDP. The goods and services that the public sector procures often have high possibilities for innovation, for instance with regard to reduced CO₂ emissions in the transportation sector or new medical technologies. Edquist and Hommen (2000, p. 5 as cited by Rolfstam (2009)) define public procurement of innovation as something that "occurs when a public agency acts to purchase, or place an order for, a product – service, good, or system – that does not yet exist, but which could (probably) be developed within a reasonable period of time, based on additional or new innovative work by the organisation(s) undertaking to produce, supply, and sell the product being purchased".

The strategic focus of public procurement policy in both the USA and Japan towards a stimulation of innovation has motivated the EU to also use public procurement as a policy tool to stimulate innovation (Rolfstam, 2009). Rolfstam (2009, p. 351) distinguishes two types of public procurement of innovation: "as a response to an intrinsic need, acting as a proxy customer or as a linkage creator between suppliers and users". The latter case is also called catalytic public procurement for innovation as the public entity acts like a "catalyser, coordinator and technical resource for the benefit of end-users", implying that the good to be procured does not serve the need of the procuring authority but the need of other actors (Edquist & Zabala-Iturriagoitia, 2012, p. 1759). Co-ordination between various ministries and authorities is a precondition for procurement of innovation (Dalpé, 1994; Edler & Georghiou, 2007; Rolfstam, 2009). Procurement authorities can demand innovative solutions by specifying a desired outcome rather than using technical requirements (Aschhoff & Sofka, 2009; Lember, Kattel, & Kalvet, 2014). Another way to stimulate innovation can be the so-called pre-commercial procurement: The public buys products or services that are not yet ready for the market and thereby shares the risk of technology failure with the private supplier. This approach is used especially at European level (Edler & Georghiou, 2007). Further, market risk is also reduced because a specified amount of sales can be guaranteed (Aschhoff & Sofka, 2009). Next to that, the public sector can also purchase R&D, which is done basically in the area of basic research. For instance, the public sector can purchase prototypes that serve a certain societal need or even marketable solutions. Historically seen, this has happened most of the times in the defence sector. Finally, the public sector can also stimulate innovations without the intention to do so (Lember et al., 2014).

Dalpé (1994) advocates for using public procurement only as an indirect intervention. This implies that the government's need for high quality and high-performance goods and services will automatically lead to the procurement of innovative goods and services.

Summarizing, public procurement can act as a stimulator of innovation in a country by taking two distinct roles. It can either procure innovative items to serve its own needs or it can procure items on behalf of an external agent (catalytic public procurement). Especially the support in early stages of the product development can be important for innovative companies in order to ensure smooth market entry. Most important is the use of functional specifications in order to demand creative solutions from potential suppliers. Another view is taken by Dalpé (1994), who argues that the aspiration of the purchasing agency to buy high quality and high

² Cf. European Commission. (2011). *Buying green! A handbook on green public procurement*: European Commission.

performance goods automatically ensures the purchase of innovative products.

2.3.3 Public Procurement that Achieves Social Outcomes

In order to identify articles describing ways to achieve social outcomes with public procurement, the articles that were identified before are scanned for the keywords 'social'. The search yielded 23 articles. These articles were reviewed according to their abstracts. Unfortunately, only one of the 23 articles is useful for this research. Therefore, a search on *Google scholar* was performed, identifying two further articles.

Social procurement is generally understood as the use of public procurement to promote social values such as human rights, gender equality or labour standards. McCrudden (2004) states that the combination of social procurement and environmental procurement is sustainable procurement. For example, a purchasing agency can help employers of disabled people to bid on government contracts by offering them the possibility to 'offer back'. If the employers of disabled people do not win a tender, they are given the possibility to revise their tender. If the new offer matches the best offer, then the employer of disabled people is to be awarded. These preference mechanisms can also be applied to achieve other social outcomes (McCrudden, 2004).

González and Martínez (2004) remark that due to the exclusion of so-called Social Environmental Ethical criteria in the investment policies of EU member states, there is only a limited market incentive for companies to act socially responsible. The authors suggest using a policy that requires bidders to follow a solid CSR strategy.

However, McCrudden (2007) describes public procurement only as one way out of many to achieve social outcomes. To achieve social outcomes, McCrudden only names the use of 'social criteria' in the public procurement process.

To sum up, literature on the achievement of social outcomes by public procurement is limited. Basically, making use of creative ideas can be important when it comes to contracting with e.g. companies that employ disabled workers. Finally, a solid CSR strategy can be demanded in the selection criteria of a tender.

2.4 Summary of the Chapter

One needs to conclude that good public procurement can be defined as a combination of the characteristics that are required e.g. by the Directives of the European Commission or by the WTO's Agreement on Government Procurement. This legislation requires public procurement to be fair, transparent, competitive, and accountable and to deliver the maximum value for money. The prior analysis identified three additional characteristics of public procurement, namely the procurement of goods with a reduced environmental impact throughout their life cycle (sustainable public procurement). Next to that, public procurement can be used to stimulate innovation in an economy for instance by sharing risks with potential suppliers. Finally, public procurement can also be used in order to support a government's social support policy.

3. OPEN CONTRACTING

This chapter offers general information about the concept Open Contracting in order to analyse how it can support governments to achieve the aforementioned characteristics of good public procurement. It will begin with the organisation and the aims of the movement. Further, the main principles that were developed by almost 200 collaborators all around the globe and its implications are explored. The chapter will conclude with the introduction of the stakeholders and the benefits that can be

gained by adhering to the principles and proposed actions of the Open Contracting initiative. These insights are contrasted with the framework for good public procurement.

3.1 Organisation

The main reason for founding the Open Contracting movement is that wastefulness, mismanagement, inefficiencies and corruption are very likely to occur in public contracting (Beth, 2007; Messick, 2011). A lack of information about the way contracts are formed, the contents of the government's agreements, the progress of the agreements' performance and knowledge of government oversight mechanisms can reinforce the above-stated negative occurrences. Therefore, the Open Contracting Partnership develops and promotes the implementation of the later-stated Open Contracting global principles, develops open data standards for disclosure of contracting information, supports practitioners with training, resources, seed funding, coaching, coalition and network building, builds evidence for Open Contracting through research, monitoring and evaluation and finally, communicates and advocates the importance of Open Contracting (Marchessault, 2013b). In order to engage in Open Contracting, it is not necessary to become a member. In short, Open Contracting basically refers to the pro-active publication of government contracts.

3.2 Involved Institutions

The World Bank Institute (WBI) is chair of a steering group that runs the Open Contracting Partnership. The members of the steering group are diverse, some have a government-background, like the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Colombia Compra Eficiente and the Philippines Government Procurement Policy Board (GPPB). Others are non-governmental organisations, like Oxfam, Integrity Action, and Transparency International. The Construction Sector Transparency Initiative is – like the Open Contracting Partnership – a multi-stakeholder transparency initiative that is supported by both civil society and private sector organisations.

The WBI is an institution that assists the World Bank in its operative work by helping country clients to set and achieve their own development objectives over time. The WBI supports its country clients by providing knowledge (Open Knowledge), by mobilizing their people in order to take political action and promoting transparency and accountability (Collaborative Governance) and by scanning, incubating and testing innovations that address key development challenges (Innovative Solutions). Open Contracting is an effort that belongs to the area of Collaborative Governance (WBI, n.d.).

The GIZ is a state-owned enterprise that supports the German federal government reaching its international collaboration for sustainable development objectives. The GIZ has multiple fields of work, ranging from economic development over the creation of states and democracy to the promotion of peace, security, food security and knowledge provision. Open Contracting falls within the scope of Good Governance (Ehritt, n.d.).

Colombia Compra Eficiente (CCC) is an initiative by the Colombian government with the goal to enhance efficiency in Colombian public contracting. The sub-goals range from increasing value-for-money to implementing e-procurement systems and knowledge management (CCC, n.d.-b). Colombia Compra Eficiente is part of the Open Contracting Partnership as it builds tools and develops policies to achieve better efficiency and transparency in public procurement (CCC, n.d.-a).

GPPB was established as a primary aspect of the Philippine Government's public procurement reform agenda, to serve as an independent body that is responsible for policy formulation, and the implementation and monitoring the public procurement reform. At the same time, the GPPB has the goal to promote and achieve good governance, which is understood as transparency, accountability, equity, effectiveness, efficiency and especially economy in government (GPPB, 2012, n.d.).

Oxfam is an international non-governmental organisation with the aim to fight poverty and injustice. Oxfam's strategy is subdivided into six areas of action: (1) helping people to claim their rights, (2) promoting gender justice (3) humanitarian aid, (4) nature protection, (5) safeguarding global food supply and (6) securing financial flows for people to sustain basic services (Oxfam, 2013).

Integrity Action (IA) is a non-governmental organisation that is concerned with helping communities by demanding integrity. This organisation tries to build an integer environment where public bodies are accountable, competent, act ethically and act without corruption. Integrity Action's approach consists of understanding the situation and the stakeholders, joint learning, social monitoring, creation of joint working groups, collection of evidence, and finally, incentivizing government contractors to deliver better services (IA, n.d.). It is popular for publishing the Corruption Perceptions Index. Transparency International collaborates both with citizens and governments in order to jointly develop ways to eliminate corruption.

Finally, the CoST is also a member of the steering group of the Open Contracting Partnership. CoST is, unlike most of the other members of the steering group, supported by both civil society and private sector organisations of the construction sector. CoST's aim is to promote transparency in the construction sector by involving multiple stakeholders (government procuring entities, oversight agencies, private sector consultants and contractors and civil society groups) (CoST, 2013). Next to the steering group, there are several countries and government bodies that are practicing Open Contracting.

3.3 Participants and Membership

Both the public and the private sector, which are also represented in the composition of the steering group, practise Open Contracting. Both governments of so-called developing (e.g. Guinea, Liberia), emerging (e.g. Brazil, Mexico) and developed (e.g. United Kingdom, United States of America) countries are adhering to the principles of Open Contracting. However, special focus is laid on so-called developing countries due to an increased occurrence of mismanagement, inefficiencies and wastefulness. Open Contracting can be used for revenue-generating as well as expenditure-making agreements (Marchessault, 2013a). There are institutions that are disclosing contracting information and inviting citizens to monitor their procurement practices without explicitly practising Open Contracting.³

3.4 Objectives of the Open Contracting Partnership

Following its description, Open Contracting refers to norms and practices that lead to **disclosure** and **participation** during all stages of the contracting chain, which are the core goals of this transparency initiative (Locke & Henley, 2013). The term contracting chain refers to five stages that usual public procurement projects go through. The first stage is the

definition of the need, followed by a first draft of a request for proposal (RFP). Further, the RFP is completed and publicized online. After that, eligible companies are invited to place their bids. Finally, a solution is picked and the contract is closed (GOVLAB, 2013b). Open Contracting is used to improve the entire process from the formulation of specifications to the completion of the order. The principles that Open Contracting builds on are related to access to information, transparency, social accountability, collaborative governance, value-for-money and participatory development. These principles have to be attended to during all stages of contracting.

One main aim of Open Contracting is to ensure that governments can be held accountable for their actions. The second main aim of Open Contracting is to make government actions more transparent. The third aim is that public contracts are awarded fairly and offer good value-for-money (OpenGovGuide, n.d.-j). The fourth aim is to improve availability and accessibility of information. Citizens, media and civil society have a stake in every public contract. Therefore, they need to know why roads are not repaired, why company X was awarded to build the new school, what the contract with the local hospital looks like or how much money was spent on project Y. Answering these questions is impossible without having information on contracts and documents available to the public.

Indicators for success of the effort taken are the number of contracts that are publicly disclosed, the accessibility of data, the strategic use of contracting data, opportunities and mechanisms for participation and the number of citizens that participate in the contracting process (Locke & Henley, 2013).

3.5 Operating Mode of the Open Contracting Partnership

There are several actions that the Open Contracting Partnership recommends to achieve greater transparency. Transparency in the procurement process, disclosure of data and participation are the underlying principles of all initiatives that are suggested by the Open Contracting Partnership. Marchessault (2013a, p. 77) argues, "disclosure and participation are mutually reinforcing drivers of accountability", meaning that if sufficient information is available, the public can be able to participate in public procurement processes and to thereby monitor them. The extent to which stakeholders engage in Open Contracting can be determined by existing incentives and capacity. Stakeholders that promote disclosure and participation automatically interact with governments, the private sector and civil society organisations leading to enhanced accountability and trust among these actors. Accountability and trust, in turn, can reduce mismanagement and inefficiencies and can improve the performance of contracts. Increased satisfaction with the process can reinforce the incentives to disclose information and to promote participation (Locke & Henley, 2013). This section will explore the operating mode of the Open Contracting Partnership by giving an insight into its global principles, the data standards the Open Contracting Partnership develops, its research and measurements, its implementation and support tools and the way it spreads knowledge and maintains its (online) community.

3.5.1 Open Contracting Global Principles

The principles were created in collaboration with around 200 professionals worldwide in order to guide and advance Open Contracting worldwide. The principles are subdivided into two major groups: Affirmative Disclosure and Participation, Monitoring and Oversight. The group of affirmative disclosure contains principles that deal with policies improving

³ An example is the website checkbooknyc.com, where the City of New York publishes all contracting data in a very accessible and understandable way.

transparency in the process of public procurement (OpenContracting, 2013). The Open Contracting global principles form the basis of the concept Open Contracting as they break down the two major objectives of the initiative, participation and disclosure in actionable goals. A list of the principles can be found in the appendix.

3.5.2 Data Standards

The Open Contracting Partnership advocates and develops data standards for disclosure in order to improve traceability of decisions. Thereby accountability and transparency can be improved. In addition, the Open Contracting Partnership set the goal to be better able to ‘follow the money’. Next to the development of a data standard, the Open Contracting Partnership “builds capacities for collecting, publishing, storing, accessing and sharing contract data” (OpenContracting, n.d.-a, p. 1). Thereby, the Open Contracting Partnership wants to make contracting information more useful and accessible, which can contribute to making the overall purchasing process more transparent (Preuss, 2009). One global data standard can enable the civil society to access contract data, to facilitate monitoring and it will save costs. Currently, there is no standard way to publish contract data.⁴ Hence, it can be difficult for the civil society to access, to understand and to monitor the contracts. Moreover, one data standard can also reduce costs by reducing the duplication of efforts when it comes to classification and categorization.

3.5.3 Research and Measurement

The research and measurement efforts of the Open Contracting Partnership have two goals: first it aims at finding out how Open Contracting contributes to more efficient and fair contracting processes and second, it wants to inform countries on a local and global level about the way Open Contracting works (OpenContracting, n.d.-c).

3.5.4 Implementation and Support Tools

In this workstream, the Open Contracting Partnership supports professionals and the civil society on a local level to improve their contracting processes. The Open Contracting Partnership offers training, knowledge exchanges, coaching, seed funding and tools. Unfortunately, these efforts are constrained by the limited financial resources of the Open Contracting Partnership. The local training and coaching can result in more fairness, increased accountability and greener procurement. Fairness can be increased with trainings if the principals of purchasing officers are trained to act upon values such as honesty or integrity. Thereby they act as a role model for their subordinates and incentivize fairness of the contracting process (Hawkins et al., 2013). Training can also contribute to the improvement of accountability. By offering training to journalists on the way government tenders work and on possible loopholes, the media can play an essential role holding government officials accountable (Armstrong, 2005). Finally, training can lead to more sustainable government procurement as many purchasing officers have trouble using ‘green’ criteria for their tenders. As an example, the European Commission published a handbook that assists purchasing officers reduce the environmental impact of the goods, services or works they procure (Bouwer et al., 2006; Commission, 2011).

Examples of e-procurement tools that are recommended by the Open Contracting Partnership are “RFP-EZ”, “screendoor” and

“Peer to Procure”. Next to these electronic programmes, the Open Contracting Partnership also recommends using non-e-procurement tools like social audits. “RFP-EZ” can enable governments to make their Requests for proposal (RFPs) more understandable and the connected process more open for smaller companies. This program was first introduced by the United States of America with the result that they received bids that were 30% lower than the bids they received via their actual website (FedBizOps). RFP-EZ allows businesses to respond online to a solicitation by the government, to sort through proposals and to scan through competitor’s orders (GOVLAB, 2014). The second tool is called “screendoor” (formerly “procure.io”). This tool is the successor of the RFP-EZ project. Apart from offering an improved contracting workflow, screendoor facilitates that everyone (residents, vendors, experts, activists) can comment on statements of work (GOVLAB, 2013a). This tool can facilitate participation in the contracting process and can thereby increase accountability of purchasing officers. The third tool that is recommended by the Open Contracting Partnership is called “Peer to Procure”. Peer to procure is an open and collaborative system to review, critique and improve technical specifications (Frew et al., 2013). This tool enables purchasing officers to collaborate on the preparation of tenders. Next to that, principals can also monitor the work that the purchasing officers do.

3.5.5 Knowledge and Community

The Open Contracting Partnership maintains a website where purchasing professionals, civil society organizations or private persons that are interested in Open Contracting can interact, share ideas and organize meetings. One of the aims of the website is to collect knowledge about Open Contracting practices worldwide to enable others to learn from the experiences of other countries. The possibility for discussions enables users of the website to identify best practices and provides them with an argumentative basis that helps them to change the way public procurement is done in their country or city (OpenContracting, n.d.-b). Besides the website, the Open Contracting Partnership published a handbook that describes how Open Contracting works. This handbook aims at anyone that is in some way related to government contracting in a country. It is not necessary to have any prior knowledge on government contracting as this book explains all important terms and concepts. On top of that, the book offers checklists and action plans for practitioners that guide them through a possible change process.⁵

3.6 Benefits and Effects of Open Contracting

The claimed benefits for countries that are following the advice of the Open Contracting Partnership are complex. They can range from immediate financial impacts over easier fundraising to better trust. Chêne (2012) mentions in her report on the benefits of Open Contracting (1) lower costs, (2) increased accountability, (3) less corruption and (4) improved service delivery. This section will firstly explore the benefits that are claimed by the Open Contracting Partnership and will secondly analyse the benefits that are claimed by Chêne (2012). Finally, shared benefits for the public and private sector will be addressed.

The Open Contracting Partnership claims that countries can achieve economic benefits with Open Contracting in different ways. First, disclosure of contract information in user-friendly formats can lower monitoring efforts; projects can be more likely to be finished on time and budget, implying that

⁴ The Sunlight Foundation compiled a dataset on country level procurement disclosure. Among others, this list shows the different disclosure practices. The list can be downloaded via this link: <http://goo.gl/n3lkex> (retrieved on May 31, 2014)

⁵ The book can be downloaded from the Open Contracting website or by following this link: <http://goo.gl/IGQHPp>

government bodies can be able to calculate their budgets more accurately and to plan future investments (OpenGovGuide, n.d.-c). The data standard that is developed by the Open Contracting Partnership can have an impact on transparency and competition but can also reduce costs that are associated with the publication of contract data. The advertisement of projects with the help of e-procurement tools can result in increased competition but also in donations from non-governmental organisations or individuals. Another positive aspect of compliance with the Open Contracting guidelines can be increased ease to raise funds from the World Bank or similar institutions as funds could be used more efficiently and the procured goods could offer a higher value-for-money. Internally, transparency and thereby accountability can lead to increased confidence in the government and its institutions.

Chêne (2012) also mentions economic gains as a benefit of contract disclosure. First, non-transparent bidding processes can deter potential suppliers from bidding on government contracts. This might have the effect that only expensive suppliers are taking part in the tender (Evenett, 2003). Secondly, full disclosure can help governments to achieve greater value for money. As potential suppliers are able to access information on earlier tenders, they can be given the possibility to better ‘tailor’ their bids. The consequence might be that the government reduces its spending to the goods and services it really needs. Also, the evaluation of the tenders will be easier as suppliers will only bid on the goods, services or works that are demanded. On the opposite, implementing transparency can also be costly. The use of e-procurement tools can also reduce purchasing costs by increasing efficiency (Croom, 2000) and by reducing search costs and thereby increasing supply availability (Croom & Brandon-Jones, 2007). Finally, e-procurement can create economies of scale “if information is shared in open formats by multiple public bodies” (Dighe, 2011, p. 4). These economies of scale can be achieved with Open Contracting by using the Data Standard that is being developed by the Open Contracting Partnership.

Increased accountability is the second benefit that Chêne (2012) mentions in her report. Accountability as a consequence of transparent public purchasing processes is also supported by scientific literature (e.g. Trepte, 2005). Accountability can be achieved as transparency enables third parties to monitor the purchasing process. Therefore, it can be expected that resources are used in a more efficient way because waste and mismanagement can be reduced as they can be detected more easily (Kenny, 2010).

Proactively disclosing contract information may also have an effect on corruption. The argument is that transparency can have a positive effect on participation, leading in turn to greater accountability which can result in reduced corruption (Chêne, 2012). Likewise, the Open Contracting Partnership offers help to reduce both functional and organizational complexity, as they are found to have a positive effect on corruption in public procurement (Arnold et al., 2012).

The final benefit that is mentioned in the report by Chêne (2012) is improved service delivery. The Open Contracting Partnership also reports this benefit; expected outcomes of Open Contracting are better value for money and the purchase of high quality goods, works and services (Locke & Henley, 2013). However, scientific literature on the relationship between transparent *contracting* and the quantity and quality of public services is limited. Research focuses more on the effect of transparency in general on public service quality and quantity. Deininger and Mpuga (2005) conclude from their study of a large data set on Ugandan public services that

mechanisms that facilitate accountability (e.g. reporting channels) can improve the quality of public services.

There are also incentives for the private sector to engage in Open Contracting. Marchessault (2013a) underlines in her paper that individual companies can practise Open Contracting in several ways: First, they promote transparency and responsible contracting, second, companies are collaborating with civil society organisations to encourage them to monitor governmental contracts, third, companies can support the disclosure of contracts and related documents by joining forces with civil society and the government. One associated benefit can be trust, which is essential for the success of long-term projects (Pellegrini, 2011). Another benefit is related to citizen feedback. Companies try to encourage citizens to formulate their feedback and therefore being able to tailor their goods and services according to their customers’ needs. Finally, Open Contracting can create a “level playing field” among suppliers, which can lead to increased participation by small and medium sized enterprises in public contracting (Kaspar & Puddephatt, 2012). Companies that are able to retrieve information about prior contracts of a government can also be better able to tailor their bids according to the needs of the contracting entity (Marchessault, 2013a).

3.7 Examples of Open Contracting

The concept Open Contracting suggests actions to be taken that are based on the aforementioned principles. Those actions can be sorted by their associated effort. The first level of effort is called “initial” and includes the development of a legal framework for public procurement that incorporates the principles of Open Contracting and the recognition of the right of the public to access relevant data on public contracts. The second stage or illustrative commitment is called “intermediate”. This stage focuses on proactively disclosing core data and sharing this data in a way that is understandable for the public. The third stage named “advanced” is about participation mechanisms in public contracting. The final stage, “innovative”, deals with governments being creative in order to raise funds for the support of participation in public contracting (OpenGovGuide, n.d.-j).

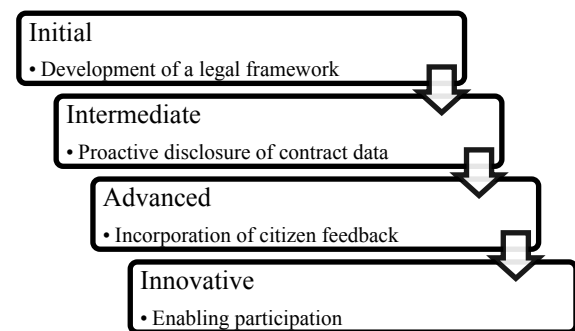


Figure 1: Stages of commitment

The development of a legal framework is classified as initial commitment. According to Open Government Guide, a clear, transparent and fair legal framework for public contracting can lead to time and money savings. These savings can be achieved by creating a public contracting framework with enforceable, clear and comprehensible regulations, guidelines and procedures. Tenders should be published in a standardized way, having clear and public selection and award criteria. Awards are to be disclosed for the public to hold the government accountable. If questions arise, the government should set up mechanisms for problem solving. Consequently, this commitment can require a new legislation (OpenGovGuide,

n.d.-b). For instance, Peru imposed a law that makes it obligatory to advertise a public land sale for at least 90 days in order to attract a greater number of bidders and thereby achieving better terms (OpenGovGuide, n.d.-g). The second initial commitment refers to the disclosure of data related to public contracts. This data should be as complete and understandable as possible; exceptions to the rule have to be defined clearly. The government should implement a rule on national or sub-national level that makes contracts and all related documents accessible to the public. As an example, poor governance of public procurement projects led to a change in Ethiopia's legislation: Prior to the new law, government bodies were prohibited to disclose information related to public contracts, consequently huge differences in budget and actual cost and time planning have been noticed. The new law, together with a new e-procurement system, allowed the government bodies to easily disclose information related to public contracts (OpenGovGuide, n.d.-c).

Intermediate commitments include the routine publication of contract data. The main benefits are that all members of the society have equal access to contract data and that money is saved as it might be cheaper to publish every contract rather than evaluating every request for file access individually. Open Contracting suggests organizing the information in a systemized and organized manner in order to be processed and analysed by computers and reused by all member of the society. E-procurement can be a method to have all these data structured and easily published. Moreover, Open Contracting suggests structuring the published data in four core classes: (1) contracts, (2) related documents, (3) key pieces of information concerning contract formation and (4) information related to performance of the contract and publishing those in an online portal. Such a portal can include an alert system, keeping the society up to date by sending them e-mails or text messages (OpenGovGuide, n.d.-h). Colombia introduced a system with which users can access contracts closed in the past two years. The system discloses information related to contracts, especially the costs involved (OpenGovGuide, n.d.-e). Another intermediate commitment refers to the effort of making information on contracts understandable for civil society. This can be done by (1) sticking to an understandable language and (2) by teaching the members of the society that are interested in monitoring public contracts on the way these contracts are written. Publishing public contract data makes only sense if the public is able to understand and process the data on public contracts (OpenGovGuide, n.d.-i).

An advanced commitment is concerned with opening the public contracting process in a way that it invites the civil society to monitor and review public procurement processes. This commitment is grounded on the belief, that citizen feedback can improve contracting processes and outcomes. To achieve this, a government should establish legislation where it is required to have monitors from civil society that accompany the public procurement process. Moreover, the government should protect whistle-blowers that reveal fraudulent transactions (OpenGovGuide, n.d.-a). For instance, in 2004, Mexico passed a law to require involving so-called "social witnesses" in tenders over a certain threshold value. At the end of the tender, the social witness issues a short report about its observations that is published together with the contract data (OpenGovGuide, n.d.-f).

The final stage of commitments is concerned with raising funds to support participation in public contracting. Open Contracting suggests setting aside funds from public contracts in order to distribute them to civil society organizations (CSO) that are monitoring those contracts. Another way to finance CSOs can

be opting into the Global Partnership for Social Accountability. This organization is a donor-funded grant system that supports organizations monitoring public contracts (OpenGovGuide, n.d.-d).

Summary of the Chapter

This chapter provided an insight into the Open Contracting Partnership and Open Contracting. The Open Contracting Partnership is a transparency initiative that promotes disclosure and participation in government contracting. This approach is called Open Contracting. Any country or institution can practise Open Contracting; it is not necessary to become a member. The Open Contracting Partnership advances and promotes Open Contracting by offering support and training, developing a data standard for the publication of contracting data and by research and measurement. The benefits that a country or any other public institution can achieve range from lower costs over increased accountability and less corruption to improved service delivery.

4. OPEN CONTRACTING – A SUPPORTER OF GOOD PUBLIC PROCUREMENT?

This section will analyse the Open Contracting Partnership according to its objectives, operating mode and benefits and effects in order to find out whether the Open Contracting Partnership supports the characteristics of good public procurement. This section will conclude with factors that are not considered by the Open Contracting Partnership and its limitations.

4.1 Objectives of the Open Contracting Partnership

The two basic objectives of the Open Contracting Partnership are disclosure and participation, which can be translated, with regard to the framework for good public procurement, as transparency and accountability. The objective to proactively disclose information that is related to government contracting supports the characteristic of transparent public procurement. Next to that, the Open Contracting Partnership wants to improve the availability and accessibility of this information. Participation is understood as a way to monitor officials, to give feedback and to shape government tenders according to the needs of the citizens. Arising thereby, government officials can be held accountable. Additionally, the concept Open Contracting has the objective to achieve high value for money, which can also be found in the characteristics of good public procurement (deliver value for money). The objective of Open Contracting to fairly treat suppliers and to prevent discrimination of suppliers can be understood as an attempt to have a non-corrupt and non-discriminatory public procurement process, which is summarized in the framework of good public procurement as fair public procurement. However, neither competition nor characteristics that create additional value for society are explicitly incorporated in the Open Contracting Partnership's objectives, which is contrary to the theoretical framework that was developed at the beginning of this thesis. Nevertheless, the characteristics that create additional value for society may still be achieved as a by-product of adhering to the aforementioned objectives.

4.2 Operating Mode of the Open Contracting Partnership

The Open Contracting Partnership works in five different workstreams, namely the Open Contracting Global Principles, data standards, research and measurement, implementation and

support tools and knowledge and community in order to promote participation and disclosure during all stages of governmental contracting processes. These workstreams are analysed separately in order to find out whether they support the characteristics of good public procurement.

4.2.1 Open Contracting Global Principles

The Open Contracting Global Principles form the basis of the Open Contracting Partnership as they break down the two major objectives of Open Contracting, disclosure and participation, into sub goals that are specific and achievable. These principles support the characteristics of the Open Contracting Partnership by specifying the ways to achieve disclosure and participation. Adherence to the Global Principles can support transparency (right to access information; timely, current and routine publication of contracting information; data management standards), accountability (right for participants to participate; governments have to ensure oversight; citizen consultation), competition (complete information), fairness (public procurement is to be conducted in an equitable manner) and delivery of value for money (monitoring until the completion of the contract). This implies that the Open Contracting Global Principles show support for all satisficing criteria of good public procurement. However, the principles do not support any characteristic that creates additional value for society.

4.2.2 Data Standards

The data standards are developed to assist purchasing officers to collect, publish, store, access and share contract data. These mechanisms distinctly support transparency, accountability and fairness. The automatic collection, publication and storage of data that is related to government contracts can help to hold a government accountable as citizens are enabled to monitor contracts, officials and the execution of contracts. Further, the characteristic of non-discrimination and non-corruption is also supported, as data can be stored and made public enabling discriminated suppliers to collect evidence for raising a complaint.

4.2.3 Research and Measurement

Research and measurement build the foundation for Open Contracting as it is essential to have evidence for the success of Open Contracting in order to promote it. These efforts indirectly support the characteristics of good public procurement as they reinforce the basis of the Open Contracting Partnership.

4.2.4 Implementation and Support Tools

The e-procurement tools that the Open Contracting Partnership suggests support the characteristics of good public procurement to achieve value for money, transparency, accountability and competition. Value for money is achieved as efficiency of the purchasing process can be improved; transparency can be achieved with the single data standard that makes it easier to understand contracting data for suppliers and individuals that are interested in monitoring public contracting. Purchasing officers can be held accountable as e-procurement tools can record all decisions that are made, and finally, competition is increased as the tendering tools can allow anyone to view and bid on government tenders. The support that the Open Contracting Partnership offers could also lead to an increased use of green criteria, however, the practical use is not reported.

4.2.5 Knowledge and Community

Similar to the research and measurement workstream, this effort does not have any direct effect on the way public procurement is performed. Nevertheless, purchasing practitioners, civil society activists and citizens that are interested in public

contracting in their country can get information about Open Contracting, ways to implement it, experiences of other countries or institutions and success stories of Open Contracting.

4.3 Benefits and Effects of Open Contracting

The effects of Open Contracting support the satisficing characteristics of good public procurement. Public procurement can become more transparent as information about contracts can be disclosed and individuals can be invited to participate. As a consequence, accountability can also be improved due to more and better possibilities to monitor the public procurement process. Increased accountability is also reported by Chêne (2012). Furthermore, advertising tenders and an open data standard can stimulate competition by increasing the number of possible suppliers. Chêne (2012) also reports improved service delivery, which supports the value for money characteristic of good public procurement. Also lower purchasing costs support the value for money characteristic as the purchasing processes can be organised more efficiently. Finally, the characteristic of fair public procurement (at least in the non-corrupt sense) is also supported by the effects of open contracting: Transparency and participation can both lead to a lower risk of corruption (Chêne, 2012). However, no effect that is reported supports any characteristic that creates value for the society.

4.4 Limitations of Open Contracting and the Open Contracting Partnership

The Open Contracting Partnership is basically offering a platform that spreads knowledge about public procurement practices and creates awareness for the concept Open Contracting. In addition, all efforts are only focused on procurement; this means that problems like corruption or mismanagement that may also arise in other government sectors are only addressed in the context of public procurement. The logic behind this is that government contracting can account for a high share of a country's GDP and can also be vulnerable to mismanagement, corruption and inefficiencies. The Open Contracting Partnership's engagement is focussed on the development of the above-stated global principles, the provision of a website that enables practitioners to exchange knowledge and experiences, by offering training, support and contacts and by developing open data standards for disclosure of information that is related to public procurement. This implies that the Open Contracting Partnership does not offer a global platform for the publication of tenders (like EU's tenders electronic daily), neither is it a provider of other e-procurement tools; it only refers to tools that are useful for obeying the OC's principles. Next to that, the OC's principles are not a standard; it is more a government's commitment to values like transparency, value for money and accountability. Moreover, the Open Contracting Partnership does not have a standardized form of presentation for the data that is to be disclosed but is currently developing a unique data standard for publishing contracting data.

Summary of the Chapter

The analysis has shown that the objectives, operating mode and effects of Open Contracting basically support all satisficing characteristics of good public procurement. This implies that Open Contracting per se does not cover green procurement, public procurement as a stimulator of innovation and the achievement of social outcomes, i.e. it is not provided that public procurement supports or delivers broader government policy. According to Telgen et al. (2007), countries that practise Open Contracting would be in the fifth development stage in public procurement, which means that it delivers value for

money but does not support or deliver any broader government policy.

5. DISCUSSION, CONCLUSION AND RECOMMENDATIONS

5.1 Discussion

The goal of this paper was to evaluate the concept Open Contracting and the efforts that the Open Contracting Partnership takes to convince public procurement officers and policy makers to implement the Open Contracting principles. A literature review and an analysis of web sources were performed in order to develop a framework for good public procurement. First, this framework was used in order to assess the objectives, the operating mode and the effects of the Open Contracting Partnership and second, to find areas of improvement.

The theoretical framework for public procurement that was developed at the beginning of this paper can also be applied for the assessment of other transparency initiatives in the area of public procurement. Furthermore, it can be used for assessing a country's or institution's public procurement performance as it includes characteristics of good public procurement and also methods to organise a purchasing function accordingly.

The Open Contracting Partnership was found to be a transparency initiative that focuses only on the achievement of the satisficing characteristics for public procurement by promoting transparency and participation with its objectives, effects, characteristics and effects. It was not found that the Open Contracting Partnership directly considers any of the characteristics that achieve additional value for society. This finding suggests that (1) countries are not yet in a development stage that allows them to use public procurement to achieve political goals like the promotion of sustainability or (2) the Open Contracting Partnership deliberately decided to improve the way public procurement is done only to the point where contract data are disclosed and the communities are invited to join and monitor public contracting. A reason for not incorporating characteristics that add value to the society could be that the achievement of characteristics that add value to the society can require purchasing officers making use of functional requirements which can be associated with an increased evaluation effort.

It has to be remarked, that most of the efforts that are associated with Open Contracting can require investments in terms of infrastructure, legislation and people. For instance, making public procurement processes more transparent can entail greater costs, as data has to be transformed into understandable and readable information. Furthermore, people may have to be trained in order to fully understand and incorporate the new way of purchasing.

Open Contracting is not, and cannot be the one and only solution for good public procurement. However, it is a good starting point for improving a country's procurement as it also offers guidance for basic public procurement problems. The *Open Contracting guide for practitioners by practitioners* is only one example of the resources that the Open Contracting Partnership offers to create awareness of public procurement and to promote Open Contracting. The guide does not require any prior knowledge of public procurement and is therefore a good example of the guidance that is offered by the Open Contracting Partnership. Hence, Open Contracting is a flexible approach that is applicable for many countries, regardless of the public procurement development stage. It can also raise the citizens' interest in public procurement by offering them basic knowledge on public procurement.

5.2 Conclusion

Accountability, competition, transparency, high value for money and fairness were found to be minimum requirements for good public procurement, therefore they were defined as satisficing public procurement characteristics. Of course, there are more characteristics for public procurement, but these were the ones that were subject of this study. These characteristics are also imposed by law in many countries (e.g. European Union member states, United States of America). Furthermore, it was found that public procurement can also achieve additional value for society, for instance by sourcing sustainable products, services and works, by stimulating innovation or by achieving social outcomes.

Open Contracting can obviously be a good initiative for countries to improve their public procurement practices, however, countries should also care about how public procurement can add additional value by incorporating green criteria, social, and explicitly stimulating innovation. This implies, that Open Contracting is not the one and only strategy for public procurement, but it covers a great part of good public procurement. This fact is of distinct importance for public procurement professionals, policymakers and activists in public procurement as it classifies the Open Contracting Partnership in the range of public procurement transparency initiatives⁶ and gives an impression of possible achievements.

5.3 Recommendations

5.3.1 Policy Recommendations

The Open Contracting Partnership is a great initiative in the era of information technology and increased interest in public affairs. It is not only a suitable initiative for countries that have problems with corruption and thereby receive low value for money, but also for countries with highly developed public procurement mechanisms as it can further foster participation and monitoring as, for instance, EU legislation only requires to publish tenders that are above a certain threshold. Therefore, policy-makers should invest in the disclosure of information and the participation of citizens in tendering processes and build on the resources that are provided by the Open Contracting Partnership. The principles can also improve compliance with existing legislation and regulations.

5.3.2 Recommendations for Further Research

It is recommended to validate the effects of Open Contracting by using more data. Evidence can be generated from country examples, interviews with purchasing officers or with Civil Society Organizations that engage in the improvement of purchasing processes.

5.3.3 Recommendations for the Open Contracting Partnership

The Open Contracting Partnership is advised to extend its global principles in a way to consider characteristics that achieve additional value for the society. Further, the Open Contracting Partnership could offer guidance to achieve value for society with public procurement in compliance with a country's legislation and with the Open Contracting global principles. Additionally, the Open Contracting Partnership should further diffuse its global principles by promoting Open Contracting and by collecting more data of successful implementations of Open Contracting.

⁶ Locke and Henley (2013) provide an overview of transparency initiatives that are active in the sector of public procurement.

5.4 Limitations

The study is subject to several limitations. First, to synthesize the framework for good public procurement, only a limited literature review could have been performed. It is possible that other characteristics or ways to achieve the named characteristics exist. Moreover, mostly Internet sources were used in order to analyse the Open Contracting Partnership and its work. Finally, most of the benefits are not validated, implying that a country or institution might not achieve all

benefits that are described in the paper when adhering to the global principles of the Open Contracting Partnership.

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7. APPENDIX

7.1 Literature Review Methodology

	Step	Original	Adjusted
1	Clearly defined and justified choice of search engines.	Determine top-25 relevant journals based on rankings and ensure 100 % coverage. Hand search journals not covered by the search engine used.	Top-25 journals should be covered satisfactorily. Journals not covered will not be hand searched.
2	Clearly defined choice of key words.	Search on a topic using all terms used for that topic and all different ways of spelling them.	Same approach.
3	Clearly defined selection criteria.	Review paper-abstracts to include or exclude papers based on inclusion and exclusion criteria.	Strictly formulated criteria to avoid including too many papers.
4	Clearly defined prioritization criteria.	Prioritize papers based on criteria. For instance, based on journal rankings or number of citations.	Number of citations will be used as criterion.
5	Critical evaluation and synthesis of papers.	Clearly describe which studies make the same claims and which contradict. Evaluate the strength of the arguments used.	Same approach.

Table 3: Literature review methodology

7.2 Open Contracting Global Principles⁷

1. Governments shall recognize the right of the public to **access information** related to formation, award, execution, performance and completion of public contracts
2. Public contracting shall be conducted in a transparent and equitable manner, in accordance with publicly disclosed rules that explain the functioning of the process, including policies regarding disclosure.
3. Governments shall require the **timely, current, and routine publication of enough information** about the formation, award, execution, performance, and completion of public contracts to enable the public, including media and civil society, to understand and monitor as a safeguard against inefficient, ineffective, or corrupt use of public resources.
 - a. Contracts, including licenses, concessions, grants or any other document exchanging public goods, assets, or resources (including all annexes, schedules and documents

- incorporated by reference) and any amendments thereto;
- b. Related pre-studies, bid documents, performance evaluations, guarantees, and auditing reports.
- c. Information concerning contract formation, including:
 - i. The planning process of the procurement;
 - ii. The method of procurement or award and the justification thereof;
 - iii. The scope and specifications for each contract;
 - iv. The criteria for evaluation and selection;
 - v. The bidders or participants in the process, their validation documents and any procedural exemptions for which they qualify;
 - vi. Any conflicts of interest uncovered or debarments issued;
 - vii. The results of the evaluation, including the justification for the award;
 - viii. The identity of the contract recipient and any statements of beneficial ownership provided;
- d. Information related to performance and completion of public contracts, including information regarding subcontracting arrangements, such as:
 - i. General schedules, including major milestones in execution, and any changes thereto;
 - ii. Status of implementation against milestones;
 - iii. Dates and amounts of stage payments made or received (against total amount) and the source of those payments;
 - iv. Service delivery and pricing;
 - v. Arrangements for ending contracts;
 - vi. Final settlements and responsibilities;
 - vii. Risk assessments, including environmental and social assessments;
 - viii. Assessments of assets and liabilities of government related to the contract;
 - ix. Provisions in place to ensure appropriate management of on-going risks and liabilities; and
 - x. Appropriate financial information regarding revenues and expenditures, such as time and cost overruns, if any.
4. Governments shall **develop systems** to collect, manage, simplify and publish contracting data regarding the formation, award, execution, performance and completion of public contracts in an open and structured format, in accordance with the Open Contracting Data Standards as they are

⁷ The principles can be downloaded from:
http://www.open-contracting.org/global_principles

developed, in a **user-friendly and searchable manner**.

5. Contracting information made available to the public shall be as **complete as possible**, with any exceptions or limitations narrowly defined by law, ensuring that citizens have effective access to recourse in instances where access to this information is in dispute.
6. Contracting parties, including international financial institutions, shall **support disclosure in future contracting** by precluding confidentiality clauses, drafting confidentiality narrowly to cover only permissible limited exemptions, or including provisions within the contractual terms and conditions to allow for the contract and related information to be published.

The remaining five are more related to enabling participation, monitoring and oversight:

7. Governments shall **recognize the right of the public to participate** in the oversight of the formation, award, execution, performance, and completion of public contracts.
8. Governments shall foster an **enabling environment**, which may include legislation, that recognizes, promotes, protects, and creates opportunities for **public consultation and monitoring of public contracting**, from the planning stage to the completion of contractual obligations.
9. Governments shall work together with the **private sector, donors, and civil society** to build the capacities of all relevant stakeholders to **understand, monitor and improve public contracting** and to create **sustainable funding mechanisms** to support participatory public contracting.
10. Governments have a duty to **ensure** oversight authorities, including parliaments, audit institutions, and implementing agencies, **to access and utilize disclosed information**, acknowledge and act upon citizen feedback, and **encourage dialogue and consultations** between contracting parties and civil society organizations in order to improve the quality of contracting outcomes.
11. With regard to individual contracts of significant impact, contracting parties should craft strategies for **citizen consultation and engagement in the management of the contract**.

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