

How the Ghanaian Public Procurement Law Ensures Transparency: The Reminisces from an Empirical Research

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Abstract

Templates populated with public procurement transparency indicators were used to collect data to analyse the contents of the Public Procurement Law of Ghana (Act 663, 2003) for the presence of such indicators in it. The findings on the presence of such indicators were used to assess the Ghanaian public procurement law as a promoter of public procurement transparency. It was found out that the Act exhibits a great deal of properties that make it capable of ensuring transparency in the public procurement system of Ghana. However, a few shortcomings in the law with regards to its capacity to ensure transparency were identified leaving room for improvement in some areas. The implication of this is that the legal framework for doing procurement business for the government of Ghana will benefit from some changes to enable it to ensure better transparency.

Keywords: Public procurement transparency, Public procurement law, Public procurement regulation, Public procurement reforms, Public procurement corruption

1. Introduction

All stakeholders affected by public procurement decisions, as of right, require to have unhindered access to all information regarding the laws, procedures, regulations and the existence of procurement opportunities as well as the facts, figures, mechanisms and processes relating to procurement activities they have interest in (Bertók 2005). The attribute of a public procurement system that enables this to happen is known as public procurement transparency (Arrowsmith 2011; Bertók 2005; Evenett & Hoekman 2003; Wittig 2005). Generally, transparency, in all forms, enables citizenry to peep into the operational aspects of government policies and programmes, bringing in its strides accountability to the process of governance and in the process reducing corruption (Evidence and Lessons from Latin America (ELLA) (2012).

Transparency is a major ingredient in the war against corruption in public procurement (Bovis 2009; Jeppesen 2010). Therefore the expectation of every public procurement system, law, policy, regulation, etc, designed to ensure integrity and corruption prevention is that it ensures transparency. Hence, a conscious effort must be made in the promulgation of every public procurement law to make provisions that will ensure that procurement processes and systems are transparent. Since the Public Procurement Law of Ghana (Act 663), hereafter referred to as the PPL, is reputed to be integrity promoter and corruption resistant, it is only logical for one to assume that it ensures public procurement transparency.

The question as to whether the PPL was designed to ensure transparency was answered in a documentary research on the capacity of the law to enhance integrity and resist corruption in the public procurement system of Ghana. Among the sub-questions in this research was one which sought to know whether the PPL contains provisions that can ensure transparency in the procurement system of Ghana.

In this paper, I report on the aspect of the research that answered the question on the capacity of the PPL to ensure transparency in the public procurement system of Ghana.

2. Can the PPL Ensure Transparency in the Public Procurement System of Ghana?

The major research question necessitating the original study was whether the PPL of Ghana (Act 663 of 2003) has the capacity to enhance the integrity of the public procurement system of Ghana and thereby ensure a corruption-resistant system. The solution to this question was provided from answers to series of sub-questions including that on transparency. This paper narrates the part of the research that attempted to answer the question as to whether the PPL can ensure public procurement transparency by searching for anti-opacity properties and general features and elements normally found in legislative framework designed to achieve transparency in the law.

2.1 Hypothesis

Let H_0 and H_1 be the null and alternative hypothesis respectively.



$H_0: U_1 \approx U_2$ (There is no significant difference between the number of Transparency Enhancers present in the PPL (U_1) and the total number of Transparency Enhancers Expected in the PPL (U_2)).

$H_1: U_1 \ll U_2$ (There is a significant difference between the number of Transparency Enhancers present in the PPL and the total number of Transparency Enhancers Expected in the PPL).

The null hypothesis was tested at 95% confidence level.

$$F = \frac{\chi^2_{\gamma_1} / \gamma_1}{\chi^2_{\gamma_2} / \gamma_2} = \frac{\frac{(n_1-1)S_1^2 / \sigma_1^2}{(n_1-1)}}{\frac{(n_2-1)S_2^2 / \sigma_2^2}{(n_2-1)}} = \frac{S_1^2 / \sigma_1^2}{S_2^2 / \sigma_2^2} = \frac{S_1^2 \sigma_2^2}{S_2^2 \sigma_1^2} \tag{1}$$

2.2 Methodology

The research was essentially documentary, employing content analysis of the PPL with the view to identifying provisions in it which can promote transparency in the public procurement system of Ghana. The process of documentary research followed a two-prong textual analysis of secondary data from existing documents.

2.2.1. Stage 1

The first stage of textual analysis involved the review of materials and interpretation of secondary data from documents and texts from the academic, legal and professional literature on public procurement transparency, public procurement law, public procurement regulation, public procurement reforms and public procurement corruption. Several documents and texts published in these areas were targeted for review. The objective for this search was to analyse relevant public procurement texts, materials, models and frameworks (considered as sources of good public procurement practice) with the view to identify, evaluate and reconcile the critical elements and features that enhance public procurement transparency as addressed by them. The focus of this analysis was to identify benchmarks (baseline indicators) for quality on transparency in a typical public procurement system which was then used as the framework for the assessment of the PPL.

The search of the literature consisted of a systematic search of electronic literature from databases and homepages on the World Wide Web (www) with entries on public procurement using the SSRN, Google and Yahoo search engines. The databases searched were mainly those for which access was free or permitted through the University of Mines and Technology (UMaT). Some databases to which access had been gained through subscription by UMaT included EBSCO and Emeralds. The databases of the Public Procurement Research Group (PPRG) and Dissertation Abstracts International were found useful and therefore also given prominent attention.

To place the search in the correct perspective and to avoid the problem of overload (Sangster & Tyrall 2008), the reference years were limited to 2004 to 2011 and the key terms were limited to transparency in public procurement regulation, public procurement models, public procurement legal framework and public procurement reforms.

The systematic search was supplemented by further non-systematic search of literature outside the electronic medium such as published works in social science journals and magazines, internal reports of world organizations on public procurement, textbooks on public procurement and public procurement regulation. Special attention was given to literature references to public procurement theory, practices of donor agencies and international organisations and national policies, particularly those emphasising the law and the use of procurement as a tool for corruption control.

Furthermore, citations found in both the systematic and non-systematic reviews were earmarked as further literature for review. In the case of some citations for which full text could not be accessed for review because they had to be purchased at exorbitant prices, reviews were restricted to only their abstracts which could be accessed from Dissertation Abstracts International. Others whose abstracts were unavailable were simply ignored.

In addition, the documentary analyses covered public procurement frameworks and models provided by reputable world organizations and aid agencies as could be gleaned from their websites, homepages and relevant publications. The most resourceful of these organisations and sources were the UNCITRAL (Arrowsmith 2004; 2009; 2011), European Commission Procurement Rules (United Nations 2004; Arrowsmith 2011; Rosenberg 2010), the WTO/GPA (Anderson 2007; Global Media Alliance 2010; Reich 2009; Silva 2008), the World Bank (WB) procurement guidelines (World Bank 2009), the Organisation for Economic Co-operation and Development (OECD) procurement principles (OECD 2009; Rodney 2007), and the OECD-WB Methodology for assessment of

procurement systems developed by the OECD in collaboration with the World Bank (Rodney 2007; OECD-WB 2006). All these agencies and bodies have developed one methodology or another to assess the capabilities of the public procurement systems in the countries they operate in, either as consultants, donors or lenders (Rodney 2007). Consequently, some publications found at their websites were useful in identifying benchmarks for quality on transparency in a typical public procurement system. Credit is hereby given to OECD-WB (2006) (the OECD-WB Methodology) whose prescribed indicators were adapted for this purpose.

At some point of the search and after extensive reviews when similar qualities and properties of public procurement transparency kept recurring from source to source, when there was an indication that further search could not yield any additional knowledge (saturation point), it was decided to end the search.

The qualities and properties of public procurement transparency found from this search were designated benchmark transparency indicators for anti-opacity and indicators for comprehensiveness of legislative framework properties respectively. The existence of these benchmark indicators are measured by sub-indicators (also referred to as Transparency Enhancers) which were used to populate the public procurement transparency templates found in Tables 1 and 2.

2.2.2 Stage 2

The next set of analyses focused on the textual reviews and content analyses of relevant official documents including the Public Procurement Act (Act 663 of 2003), the Public Procurement Bill (2003), the official reports of the Parliament of Ghana on parliamentary debates on the Public Procurement Bill (2003) (Parliament of Ghana 2003), the Annual Reports of the Public Procurement Authority (PPA) (PPA 2006; 2007; 2008). The objective of these analyses was to find out key features and provisions of the PPL designed to ensure transparency. A review of the parliamentary debate on the bill aided a better understanding of the PPL and the rationale behind some of the provisions.

2.2.3 Analysis of PPL for Consistency with Transparency Indicators

Data from the textual reviews and content analyses collected from stage 2 were used to examine the consistency of the provisions of the PPL with the benchmark transparency indicators identified in stage 1 and shown in Tables 1 and 2. The test for consistency was facilitated by comparing the sub-indicators in the templates to provisions of the PPL. Conclusions were drawn on the basis of the extent of success or failure of the PPL to reflect the basic principles indicated in the templates. Thus with the aid of these templates, the potential shortcoming of and gaps in the PPL with regards to transparency were determined. For example, if a provision of the PPL met the requirement set by the benchmark indicators for transparency in the templates, it was considered a potential for promoting transparency. On the other hand, to the extent that the PPL failed to meet a requirement of the benchmarks for transparency, it was considered a lack of capacity to ensure transparency in the public procurement system of Ghana.

The more the sub-indicators were found in the PPL, the higher the indication of its capacity to enhance transparency and vice versa. The PPL is determined as consistent with the benchmark transparency indicators identified and therefore capable of ensuring transparency in the public procurement system of Ghana if it is found to contain a significant number of the required number of sub-indicators set by the benchmark indicators for transparency in the templates.

The OECD in collaboration with the World Bank has formulated a methodology for assessing public procurement systems in which they used a point system to measure extent of good practice in numeric terms (OECD-WB 2006). This researcher has been persuaded by the difficulties in awarding points for indicators in an objective manner to drop the use of scores in divergence from the prescription of the OECD-WB methodology. The risk of being subjective in making the assessments using quantitative measures were minimized by adopting three descriptive bases, namely, "Yes, No or Yes with reservation" in line with Rodney (2007). The main point of interest was in determining whether a characteristic exists or not. It is noted that the study was neither aimed at making an inter-systems nor inter-temporal comparison of levels of public procurement transparency. It only sought to determine potentials as measured by qualitative properties of the PPL. It was not quantitative which would have made the expression of results in numbers more appropriate. The OECD- WB methodology admits that many of its prescribed indicators are not open to factual and numerical measurability (OECD- WB 2006). In a qualitative research like the present one in which the results are best described in words, it was considered unnecessary to employ numerical scores. This was also the position taken by Rodney (2007) in adapting the OECD-WB methodology for use in his assessment of the public procurement law of Guyana.

2.3 Presentation of Results and Analysis of Data

The detailed results of the content analysis of the PPL for transparency-promoting properties have been displayed in the completed templates in Tables 1 and 2. Two benchmark indicators are used as the determinants of transparency, namely, indicators for anti-opacity and comprehensiveness of legislative framework to support transparency respectively. The presence of these benchmarks is further measured by the presence of sub-indicators listed in those Tables. The data in the templates were used to measure the extent to which the PPL contains provisions that promote transparency in the public procurement system of Ghana.

Table 1 is the completed template populated with the sub-indicators for comprehensiveness of legislative framework providing data for the determination of the extent to which the PPL covers elements and exhibits general features of internationally accepted standard public procurement legislative framework that promotes transparency.

Table 2 displays the result of the content analysis of the PPL for specific anti-opacity properties. It is the completed template populated with the sub-indicators for specific anti-opacity properties providing data for the determination of the extent to which the PPL provides for such properties.

For the purpose of the analyses of data the sub-indicators for transparency as found in the provisions of the law were grouped into three depending on the quality of their effect on transparency. The first group represents sub-indicators found in the PPL to be capable of enhancing transparency without reservations. These provided “Yes” answers in the completed templates and are provisions of the law considered adequate for the purpose of enhancing transparency. In terms of quality, these are ranked highest. The second group represents sub-indicators with reservations. They provided “Yes” answers in the completed templates but they are provisions that require improvement to enable them to enhance transparency better. They are ranked second in terms of quality. The last group represents non-existent sub-indicators. These are sub-indicators with “No” answers in the completed templates. Although non-existent indicators are required for transparency, they have not been provided for in the PPL. For the purpose of determining capacity to ensure transparency, both sub-indicators without reservations and with reservations are considered together as transparency enhancers.

The summaries of the results and analyses have been presented in Tables 3 and 4.

Table 3 is the summary of the results and analyses of the documentary research comparing the number of sub-indicators that enhance transparency that have been provided in the PPL with numbers of sub-indicators which though could enhance transparency, have not been provided. The sub-indicators present in the PPL with or without reservations were both regarded simply as enhancers of transparency. Consequently, they have been put together as such and the result of the fusion has been compared with the number of sub-indicators absent to demonstrate the overall capability of the PPL to ensure transparency.

It was also necessary to consider the quality of transparency enhancers in addition to their numbers by distinguishing between sub-indicators without reservation, sub-indicators with reservation and absentee sub-indicators. For example, the presence of a sub-indicator without reservation is considered more potent than the sub-indicator with reservation whilst the later is regarded as better than complete absence. This was needed to facilitate the making of recommendations by ensuring that they took into consideration the quality of the characteristic. Whilst those without reservation were to be left without review, it was to be recommended that those with reservation needed to be reviewed and those absent should be provided for.

Table 4 is the summary of the results and analyses of the documentary research emphasizing quality of transparency enhancers in the PPL. It can be seen that whilst Table 3 emphasizes numbers of sub-indicators, Table 4 gives prominence to quality of properties of the PPL (by distinguishing between sub-indicators without reservation, sub-indicators with reservation and non-existent sub-indicators). It should be necessary therefore to read Tables 3 and 4 together.

There are 55 sub-indicators representing provisions normally found in internationally accepted standard public procurement legislative frameworks designed to promote transparency as listed in Table 1. As displayed in Table 3 the PPL contains a total of 48 (87%) out of the 55 sub-indicators that are expected in a comprehensive legislative framework designed to promote transparency. On the other hand 7 (13%) of sub-indicators expected are non-existent.

Further analysis in Table 4 indicates that out of the 48 expected to contribute to comprehensive legislative framework provided in the PPL, 43 sub-indicators can do so without reservations whilst 5 can do so with reservations. What this shows is that there are 78% of sub-indicators that can support comprehensive legislative framework for transparency without reservation whilst 9% are with reservation.

There were 25 anti-opacity requirements expected in the PPL. As displayed in Table 3, the PPL contains a total of

19 (76%) out of the maximum 25 anti-opacity sub-indicators. Six (6) sub-indicators representing (24%) are missing. Further analysis in Table 4 indicates that out of the 19 anti-opacity indicators, there are 15 (60%) indicators without reservations and 4 (16%) with some reservations.

To summarise (as in Table 3), out of a total of 80 sub-indicators identified as transparency enhancers expected in the PPL, there are 67 (84%) of them provided for. These are compared to the 13 (16%) expected transparency enhancing sub-indicators which are not provided for. Further analysis in Table 4 indicates that out of the 80 sub-indicators identified as transparency enhancers, the PPL has provided for 58 of them without reservation and 9 with reservation. This means that even if the decision is based on the highest quality sub-indicators for transparency alone, the PPL has an absolute majority (73%) of the number of quality sub-indicators that can enhance transparency.

2.4 The Test of Hypothesis

The null hypothesis (H_0) was tested using Table 3. By means of Microsoft Excel 2010, the calculated F is 0.97912909. The Critical Value from statistical table for $F_{0.05}(1,1) = 161.4$ (i.e. F table value at 95% confidence level with degrees of freedom 1 and 1 is 161.4. Since the calculated F, 0.97912909 is far less than the critical F, 161.4, there is no evidence to reject the null hypothesis for the alternative. Therefore, it is concluded that there is no significant difference between the number of Transparency Enhancers present in the PPL and the total number of Transparency Enhancers Expected in the PPL.

If there is no significant difference between the number of Transparency Enhancers present in the PPL and the total number of Transparency Enhancers Expected in the PPL, then it is concluded that the PPL has the capacity to ensure public procurement transparency in Ghana. This conclusion confirms the proposition that the PPL has properties, sufficient enough, to enable transparency in the public procurement system of Ghana.

5. Findings

It was established by the results and analyses that the PPL contains majority of the specific anti-opacity properties that can make it capable to ensure transparency in the public procurement system of Ghana.

Furthermore, it has been established that the general features and the contents of the PPL are fairly consistent with internationally accepted standard legislative framework designed to promote public procurement transparency.

It contains majority of the specific elements of such laws covering such essential elements as:

- (i) Scope of application and coverage of the legislative framework.
- (ii) Procurement structures, methods and procedures,
- (iii) Advertising rules and time limit,
- (iv) Rules on participation,
- (v) Tender documentation and technical specifications,
- (vi) Tender evaluation and award criteria,
- (vii) Submission, receipt and opening of tenders,
- (viii) Complaints,
- (ix) Model tender documents for goods, works, and services,
- (x) Procedures suitable for contracting for services
- (xi) General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements.

However, there is the need to review certain portions of the PPL to include some missing transparency-promoting properties so as to make it more transparency assuring.

6. Conclusion

The conclusions that can be drawn from the findings are that:

The PPL indeed has the potential to promote public procurement transparency in Ghana. It exhibits a good number of the properties of legal framework designed to enhance public procurement transparency. However, there are various shortcomings leaving room for improvement in some areas. The implication of this is that the PPL requires

improvement to enable it to promote public procurement transparency better. These areas requiring improvement have been discussed under section 7 on recommendations.

It is speculated from this conclusion that barring any implementation hiccups, and making the necessary recommended changes and additions to the PPL, the law can promote transparency in the public procurement system of Ghana under the present public procurement legal regime.

7. Recommendations

On the basis of the findings and conclusion, the recommended actions to make the PPL more transparency assuring should be aimed at the following improvement in its transparency-enhancing properties.

Strengthening the Anti-Opacity Properties of the PPL

- (i) Clear and unambiguous rules regarding publication and advertisement of solicitation documents should be included in the law defining in clear and succinct terms time allowed for adverts for each procurement method used. Advertising rules and limits must be reviewed with the view to prescribing clear time limits for publication. The law should clearly state the criteria for setting the minimum time between advertisement and submission of tenders. The ambiguities arising from the net effect of sections 44, 47 and 48 which effectively leave no requirement under the PPL for the open publication of NCTs must be removed by providing clearly that the NCT and ICT must be published in a widely read medium. Additionally, the law should clearly prescribe “sufficient time” for advertising for both national and international competitive tenders.
- (ii) Appropriate guidelines should be prescribed on when to pre-qualify in addition to the threshold values provided under schedule 2.
- (iii) The law should empower the PPA to make the use of ICT the cornerstone for public procurement processes in Ghana. There should be appropriate provisions designed to encourage the use of e-Procurement methods. The medium for publication and distribution of information by all procurement entities should be supported by information technology. The website of the PPA should be dedicated and designated as a unique internet official site for the consolidation and dissemination of information on public procurement activities. There should be a mandatory requirement for all public procurement opportunities and decisions to be posted to that website. This should be made easily accessible for the publication of open tenders.
- (iv) A system of debriefing with detailed procedures provided should be made mandatory.
- (v) Specific provisions should be made to involve civil society, the media and the wider public in public procurement processes.

Improving the Comprehensiveness of Legislative Framework to Support Transparency

- (i) Section 21 should be amended to make pre-award issue of need assessment a prominent public procurement function. There should be provisions on rules to regulate need assessment. The responsibility for need assessment and procurement planning must be clearly identified. Similarly, there should be provisions on rules to regulate post contract award issues of contract management.
- (ii) A provision should be included to state the general principles constituting the basis of the national legislation on public procurement that will reflect the objectives of the PPL. It is important that the issue of transparency is reflected in such principles.
- (iii) Explicit provision should be included expressly authorising and regulating the use of framework agreement and PPP.

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Table 1: Template for Comprehensiveness and the Results of Documentary Analysis of PPL for Indicators of Comprehensiveness of Legislative Framework

A standard Public Procurement Law must of necessity provide, as a minimum, for certain internationally agreed general features of and elements normally found in legislative framework designed to support Transparency. The completed template in Table 1 provided data for the determination of the extent to which the PPL provides for such general features and elements.

No	Contributors to Integrity Enhancement and Corruption Resistance	Is this Contributor Present in the PPL?			
		Y	R	N	REMARKS
1	There is a separate body of law which regulates public sector procurement.	Y			The separate law is the PPL (Section 14)
2	There is a wide coverage for the procurement legal framework. It covers all government procurement including security and military procurement.		R		But allows different procedure to be used if the Minister decides it is of national interest (Section 14)
3	The procurement function is decentralized.	Y			Sections 15- 17
4	There is an oversight entity responsible for procurement functions through public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance).	Y			The Public Procurement Authority, established under Part 1 of the PPL.
5	The law establishes a Central Tender Board and Decentralised Tender Boards.	Y			Sections 17-20
6	The law covers goods, works, and services (including consulting services) for all public procurement in which public funds are used.		R		Section 14 But scope can be restricted by 14 (1) which allows the Minister to exempt certain activities from being covered by the law
7	The law is published and easily accessible to the public at no cost.	Y			Distributed freely to public institutions. It can be accessed on the website of the PPA.
8	Clearly establishes agencies responsible for procurement.	Y			Sections 15 and 16 establishes Procurement Entities, through a declaration of the Minister
9	There are provisions for the segregation of responsibilities for procurement decisions (e.g. among an identified head of the procuring agency, the tender board, tender evaluation panels and review boards where necessary).	Y			Sections 15-20
10	There is a requirement for decisions of tender boards to be reviewed by a higher review board where necessary.	Y			Section 20
11	There is a requirement for proper needs assessment and procurement planning and contract management and payment.		R		(Section 21) But no emphasis on needs assessment and no provisions for post-contract management and payment.
12	The law clearly provides for allowable procurement methods with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.	Y			Sections 35-43
13	The law makes competitive procurement as the default method of public procurement.	Y			Section 25, 35, 44-46

14	There are stringent conditions set for any exceptions to the general rule in 13	Y			Sections 38-43
15	The law prohibits fractioning of contracts to limit competition.	Y			Sections 21 (5)
16	The law specifies appropriate competitive tendering procedures which are consistent with international standards.	Y			Part 4 (Sections 44-65)
17	The law makes provision for PPP methods of procurement			N	
18	The law makes provision for framework procurement agreements			N	
19	The law provides special rules for low value procurement items			N	
20	The law requires that all procurement opportunities other than sole source or price quotations should be publicly advertised.		R		Procurement opportunities should be publicly advertised in the Procurement Bulletin or newspapers of wide circulation (section 47) but this applies to only International Competitive Tendering (ICT) and Pre-qualification (S.44-47) Refer to Sections 44 (2); 47(2&3); 48 (2e); 53 (1e & 2)
21	The law requires that publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential tenderers to obtain documents and respond to the advertisement.		R		But sufficient time provision applies to (ICT) (S.44-47) and Pre-qualification only Refer to Sections 44 (2); 47(2&3); 48 (2e); 53 (1e & 2)
22	The law requires that open tenders are published in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible.			N	Public procurement opportunities may be posted at the official Website of the PPA but this is not a requirement of the PPL.
23	The law requires the use of E-Procurement methods?			N	There is no legal requirement for the use of E-Procurement method in the PPL
24	The law requires that the content of publication includes sufficient information to enable potential tenderers to determine their ability and interest in tendering	Y			Sections 48-50
25	The law establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements.	Y			Section 22
26	The law requires the use of pass/fail basis for determining qualifications to extent possible.	Y			Section 22
27	The law requires justification for the use of sub-competitive methods.	Y			Restricted Tendering (sections 38-39); Sole sourcing(sections 40-41); Request for quotations (sections42-43)
28	The law ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory	Y			



	association with other firms.				
29	The law provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.	Y			Section 22 (e) disqualifies companies whose (i) director has been convicted for criminal offence relating to their professional conduct or making false statement or misrepresentation as to their qualification... (ii) disqualified pursuant to administrative suspension or disbarment proceedings.
30	The law establishes rules for the participation of government owned enterprises that promote fair competition.	Y			
31	The law establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenderers to be able to respond to the requirement.	Y			Sections 48-50 and 68. Schedule 4
32	The law requires the use of neutral specifications citing international standards when possible.	Y			Section 33
33	The law requires recognition of standards which are equivalent when neutral specifications are not available	Y			Section 33
34	The legal framework mandates that the evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents.	Y			Section 59
35	The legal framework mandates that criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible.	Y			Section 59
36	The legal framework mandates that the evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered.	Y			Sections 69-76
37	The legal framework mandates that during the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process	Y			Sections 63 & 77.
38	The system of tender evaluation provides for a means to identify or detect abnormally low tenders and provide for how they should be treated			N	
39	The law requires that there is public opening of tenders in a defined and regulated proceeding immediately following the closing date for tender submission.	Y			Section 56
40	The law requires that records of proceedings for tender openings are retained and available for review.	Y			Section 28
41	The law requires that security and confidentiality of tenders is maintained prior to tender opening and disclosure of specific sensitive information during debriefing is prohibited.	Y			Section 63
42	The modality of submitting tenders and receipt by entities is well defined to avoid unnecessary rejection of tenders.	Y			Section 53



43	The law provides for the right to review for participants in a procurement process	Y			Very elaborate, two-stage review process (sections78-82)
44	The law provides for response to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review.	Y			Review at the procuring agency level (section 79); Administrative review by PPA (section 80) and Tender Review Board (s. 20 (e). The law does not specifically refer to right to judicial review but that right is implied in the rule of law in Ghana. Section (20e) enables complains against decisions of Entity Head to be reviewed by Tender Review Boards
45	The law clearly establishes the matters that are subject to review	Y			Section 78
46	The law establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.	Y			Section 79 (5) and section 80 (4).
47	There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies;	Y			Schedule 4. Standard Tender Documents.
48	The documents are kept up to date with responsibility for preparation and updating clearly assigned.	Y			The PPA is responsible for preparing and updating Standard Tender Documents falling under Schedule 4.
49	There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering.	Y			Schedule 4. Standard Tender Documents.
50	Provide for limitations on the content of pre-qualification criteria that are based on the needs of the specific procurement	Y			Section 48
51	Provide guidance on when to apply a pre-qualification procedure.			N	No guide is given in the law on when to pre-qualify except that schedule 2 states the threshold of values beyond which pre-qualification may apply.
52	The law provides for conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate.	Y			Section 71, 74-76
53	The law provides clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.	Y			Sections 75-76
54	There are GCC for the most common types of contracts and their use is mandatory.	Y			Included in the Standard Tender Documents (Schedule 4)
55	The content of the GCC is generally consistent with internationally accepted practice.	Y			Included in the Standard Tender Documents (Schedule 4)
	TOTAL	43	5	7	



Table 2: Anti-Opacity Template and the Results of Documentary Analysis for Anti-Opacity Properties of the PPL

A standard Public Procurement Law designed to ensure Transparency must of necessity contain, as a minimum, certain specific anti-opacity properties. The completed template in Table 2 provided data for the determination of the extent to which the PPL provides for anti-opacity properties.

No	Contributors to Transparency	Is this Indicator Present in the PPL?			
		Y	R	N	REMARKS
1	The law requires all stakeholders to have access to published information on public procurement, distributed through an easy to find, comprehensive and user friendly medium.	Y			Sections 28, 31, 48, 50
2	The law requires that all procurement opportunities other than sole sourcing or price quotation should be publicly advertised.		R		Procurement opportunities should be publicly advertised in the Procurement Bulletin, newspapers of wide circulation (section 47) but this applies to only International Competitive Tendering (ICT) and Pre-qualification (S.44-47) Refer to Sections 44 (2); 47(2&3); 48 (2e); 53 (1e & 2)
3	The law requires that publication of opportunities provide sufficient time, consistent with the method, nature and complexity of procurement, for potential tenderers to obtain documents and respond to the advertisement.		R		But sufficient time provision applies only to (ICT) and Pre-qualification Refer to Sections 44 (2); 47(2&3); 48 (2e); 53 (1e & 2)
4	The law requires that open tenders are published in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible.			N	Public procurement opportunities may be posted at the official Website of the PPA but not a requirement of the PPL.
5	The law requires the use of E-Procurement methods			N	There is no legal requirement for the use of E-Procurement method
6	The law requires that the content of publication includes sufficient information to enable potential tenderers to determine their ability and interest in tendering	Y			Sections 48-50
7	The medium for publication and distribution of information is required to be supported by information technology			N	The use of information technology to support publications is not a requirement of the PPL.
8	The law ensures the consolidation of information into a common place using a dedicated website created for the dissemination of information			N	Although not a legal requirement and not dedicated, the website of the PPA may be used for the dissemination of procurement information
9	If there is a website, there is a legal requirement to ensure that procurement entities duly post the relevant information on a timely basis.			N	Although there is a website there is no legal requirement for procurement entities to post relevant information to it
10	The law makes provisions to protect the disclosure of proprietary, commercial, personal or financial information of a confidential or sensitive nature	Y			Section 63
11	There are easily identifiable legal rules, throughout the procurement process which promote transparency.	Y			



12	There is a national gazette (or other similar publication) dedicated for announcing tender opportunities, published in a timely fashion and easily available to the general public.		R		Tender opportunities are required to be publicly gazetted in the Procurement Bulletin (section 47) but this applies to only ICT and Pre-qualification (S.44-47)
13	There is a mandatory requirement for the maintenance of records of the procurement process.	Y			Sections 27 and 28.
14	The procurement records are available to the general public.	Y			Section 28. Some on request from the general public (section 28 (2), some on request to competing suppliers, contractors or consultants {section 28 (3)} and others on the orders of a competent court.
15	Contract award is based on pre-disclosed objective criteria and to the lowest evaluated tenderer.	Y			Section 59; Section 22 (4 & 3).
16	There is public tender opening to which stakeholders are invited.	Y			Section 56 (3)
17	There is a requirement for a debriefing process that seeks to widely disclose the results of the procurement process.		R		Section 65 (9), and section 24 (4) but not a comprehensive debriefing.
18	Tenderers have adequate access to administrative or judicial review.	Y			Sections 78-82
19	All decisions relating to the administrative or judicial review are published and made available to all interested parties and to the public.	Y			Section 95
20	There is a legal requirement for public disclosure of procurement legal texts.	Y			Section 95
21	Negotiations after tender opening or award selection are not allowed.	Y			Negotiation is prohibited by section 64 except where the lowest evaluated tender is in excess of the budget when section 64 (2)(b) allows negotiation on the authority of the Review Board.
22	The conditions for the use of various procurement methods are clearly established.	Y			Parts IV and VI
23	There is an explicit requirement that open competitive tendering is the preferred or default method	Y			Section 25 & Section 35 (1).
24	Summaries of information about public procurement (e.g. number of tenders received, number of contracts awarded, names of successful tenderers are required to be published regularly	Y			Section 3 (g) requires the PPA to publish a monthly Public Procurement Bulletin which shall provide information on matters germane to public procurement and section 65 (9) requires notice of procurement contracts to be given to unsuccessful tenderers and beyond given thresholds published in the procurement bulletin.
25	The law enables Civil Society and the Media to formally monitor public procurement proceedings			N	
	TOTAL	15	4	6	

Key: Y= Yes without Reservation; N=Non-Existent; R= Yes with Reservation

Table 3: Summary of Content Analyses of PPL Showing Numbers of Transparency Enhancers Provided in the PPL as Compared to Numbers of Transparency Enhancers Not Provided for.

Main Indicator	Numbers of Transparency Enhancers Present or Absent in the PPL		
	Transparency Enhancers Present in the PPL	Transparency Enhancers Non-Existent	Transparency Enhancers Expected in the PPL
	(a)	(b)	(a+b)
Provisions normally found in legislative frameworks designed to promote transparency in the public procurement system of Ghana (see Table 1).	48 (87%)	7 (13%)	55 (100%)
Specific anti-opacity provisions in the public procurement system of Ghana (see Table 2).	19(76%)	6 (24%)	25 (100%)
Total	67 (84%)	13 (16%)	80 (100%)

Table 4: Summary of Results from Content Analyses of the PPL for Transparency Enhancers Emphasising Quality

Main Indicator	Number (%) of Transparency Enhancers			
	Yes Without Reservation	Yes With Reservation	Non-Existent	Total Indicators
	(a)	(b)	(c)	(a+b+c)
Provisions normally found in legislative frameworks designed to promote transparency in the public procurement system of Ghana (see Table 1).	43 (78%)	5 (9%)	7 (13%)	55 (100%)
Specific anti-opacity provisions in the public procurement system of Ghana (see Table 2).	15 (60%)	4 (16%)	6 (24%)	25 (100%)
Total Number of Indicators in Group	58	9	13	80
Percentage of Group in Total Indicators	73%	11%	16%	100%

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