

# Does the Public Procurement Law of Ghana Promote Accountability? Matters Arising from an Empirical Research

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## Abstract

Models of public procurement accountability properties were used to analyse the contents of the Public Procurement Law of Ghana (Act 663, 2003) to determine the presence of such properties in it. The findings on the existence of such properties were used to test the capacity of the law to ensure accountability in the public procurement system of Ghana. It was concluded that, the Act has the properties of a standard law designed to ensure accountability in the public procurement system although some limitations of the law with regards to its capacity to ensure public procurement accountability have been identified for improvement. It therefore becomes imperative for the review of the law on public procurement in Ghana so that it can enable better accountability. This paper builds upon an earlier report on the transparency assuring capabilities of the Public Procurement Law of Ghana.

**Keywords:** Public Procurement Accountability, Public Procurement Accountability Properties

## 1. Introduction

Accountability, the process by which officials and participants whose actions determine public procurement outcomes are held responsible for such outcomes, is a critical ingredient in public procurement corruption control (Schooner *et al* 2008). A public procurement law should provide means for stakeholders to determine whether procurement officials are behaving in accordance with the rules of the game and whether objectives are being achieved. A public procurement system not based on the principles of accountability is doomed to fail since accountability enables public procurement officials and stakeholders in general to behave responsibly and through that reduce the danger of corruption (Jeppesen 2010). Where there is accountability, players in the system are forced to behave responsibly and to deliver to expectations (Organisation for Economic Co-Operation and Development 2008).

Procurement entities and indeed tendering organisations and their officials must be held accountable for their actions in the public procurement process. For example procurement officers with delegated procurement authority must be held responsible for the effectiveness, efficiency, legality and the ethics of public procurement decisions and actions they take or advise others to take (Wittig 2005). Indeed, they must be made to offer explanations and provide justification for their successes and failures. Appropriate responsibility must be laid and sanctioned for failures traced to proven misbehaviour of participants in the procurement system (Beth 2005). Public procurement activities involve the use of funds in the procurement of goods, services and works in the course of public governance. As a principle of accountability in governance and in particular financial management, he who spends must account for amounts spent to establish whether the amounts were spent for the intended purpose and were judiciously used.

Control, the supervisory function that enforces compliance with the established order is a logical extension to the process of accountability. Control mechanisms monitor compliance with public procurement regulation and procedures and take actions to correct identified systematic weaknesses and specific deviations arising either out of error or intentionality.

Then also, there cannot be accountability in the absence of effective anti-corruption measures. Anti-corruption measures are those specifically put in place to detect, deter and prevent corrupt practices in the procurement system. Although, fair competition, transparency, equal treatment of tenderers often emphasised in public procurement laws may provide a general congenial environment in fighting corruption in public procurement, these laws can be flouted with reckless abandonment by officials. Consequently, the need arises for more specific anti-corruption measures and procedures to be built into the law on public procurement (Arnaiz 2009). Hence a public procurement system intended to achieve accountability must be laced with adequate doses of anti-corruption provisions.

The question as to whether the Public Procurement Law of Ghana (Act 663, 2003) (PPL) has the capacity to ensure public procurement accountability was answered in an empirical research on the corruption-resisting capabilities of the law. One of the sub-questions answered in that research was whether the PPL contains provisions that can enhance accountability in the procurement system of Ghana. The report on the aspect of the

research that sought to provide evidence to support the assertion that the PPL has been designed to achieve public procurement accountability forms the basis of this paper. This paper is a narration of the part of the research that attempted to answer the question on the capacity of the law to enhance accountability, one of the critical properties of corruption-resistant public procurement law, by searching through the law to confirm the presence of such properties in it.

## 2. The Problem

One of the objectives cited for promulgating the PPL was to prevent occurrence of public procurement corruption. The critical corruption-resisting properties of a standard public procurement law have been identified to include public procurement accountability. Therefore if a public procurement law is purported to resist corruption it is expected to contain sufficient provisions indicating and exacting accountability and eliciting control. Since the PPL is presumed to be corruption resistant, it is only rational for one to conjecture that it contains sufficient provisions indicating accountability. In this paper, empirical evidence is provided to answer the question as to whether the PPL contains sufficient properties of public procurement accountability.

## 3. The Hypotheses

### 3.1. Hypothesis I

Let  $H_{0_1}$  and  $H_{1_1}$  be the null and alternative hypothesis respectively for the first hypothesis.

:  $U_1 \approx U_2$  [There is no significant difference between the number of accountability enhancers, with or without reservations, present in the PPL ( $U_1$ ) and the total number of accountability enhancers expected in the PPL ( $U_2$ )].

:  $U_1 << U_2$  [There is a significant difference between the number of accountability enhancers, with or without reservations, present in the PPL and the total number of accountability enhancers expected in the PPL ( $U_2$ )].

### 3.2. Hypothesis II

Let  and  be the null and alternative hypothesis respectively, for the second hypothesis.

:  $U_1 \approx U_2$  [There is no significant difference between the number of accountability enhancers present in the PPL without reservation ( $U_1$ ) and the total number of accountability enhancers expected in the PPL ( $U_2$ )].

:  $U_1 << U_2$  [There is a significant difference between the number of accountability enhancers present in the PPL without reservation and the total number of accountability enhancers expected in the PPL ( $U_2$ )].

## 4. Methodology

The methodology was predicated on the logic that if the existence of series of pre-requisite characteristics or properties in a public procurement law are said to enable it to enhance accountability in a public procurement system, then *ceteris paribus*, the presence of such characteristics (properties) in the PPL, is indicative of its capacity to enhance accountability in the public procurement system of Ghana (i.e. if x then y). The literature recognises various properties that are normally found in a typical law on public procurement intended to enhance accountability. If these could be found in the PPL then it can be concluded that the law has the potential of enhancing accountability in the public procurement system of Ghana.

Consequently, to provide an answer to the research question a content analysis of the PPL following the methodology described in Osei-Afoakwa (2012) was adopted to find out if there are provisions in it with the potential to enhance accountability in the public procurement system of Ghana. Textual analyses of documents were conducted in two stages.

First, the literature on public procurement law, public procurement regulation, public procurement accountability, public procurement reforms and public procurement corruption was reviewed to determine the critical properties of a public procurement system that enables it to enhance accountability. The target was to scan literature for international standards and best practices for public procurement accountability. The critical properties identified at this stage were used as baseline indicators for determining accountability in a typical public procurement system. These were then used as the basis for assessing the contents of the PPL in the second stage.

As in Osei-Afoakwa (2012), the literature search mainly consisted of a systematic search of electronic literature from databases in the World Wide Web (www) with entries on public procurement, accountability in public procurement regulation, anti-corruption measures in public procurement regulation, public procurement models, public procurement legal framework and public procurement reforms as supplemented by non-systematic search of literature from non-electronic sources such as publications, journals, magazines, published internal reports of world organizations on public procurement and specialized textbooks on public procurement. 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 were also slated for review. In this regard the public procurement frameworks and models provided by such reputable

world organizations and aid agencies as “the United Nations Commission on International Trade Law (UNCITRAL) (Arrowsmith 2004; 2009 & 2011); European Commission (Arrowsmith 2011; Rosenberg 2010; European Parliament 2004); the World Trade Organisation (WTO) [The Plurilateral Agreement on Government Procurement (GPA) 2012; Global Media Alliance 2010]; Reich 2009; Silva 2008 & Anderson 2007]; the Organisation for Economic Co-Operation and Development (OECD) (OECD 2009 & Rodney 2007) and the World Bank (OECD 2009) came up prominently for review. Further literature as could be gleaned from the websites and relevant publications of these organisations were also reviewed. Moreover, the OECD-World Bank Methodology for assessment of procurement systems developed by the OECD in collaboration with the World Bank (Rodney 2007 & OECD 2006) provided useful data for determining benchmark properties for accountability. Relevant citations from such reviews were also reviewed. The properties of accountability in public procurement suggested by literature were designated accountability enhancers.

The second stage consisted of reviews and analyses of the contents of the Public Procurement Act (Act 663 of 2003), the Public Procurement Bill, 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) (Public Procurement Authority-Ghana 2006; 2007 & 2008) to determine the key features and provisions of the PPL that will enhance accountability.

The provisions in the PPL on accountability identified in Stage 2 were compared with the models of public procurement accountability enhancers determined in Stage 1. If a provision of the PPL met the requirement set by the accountability enhancers in the models, it was considered a potential for enhancing accountability. Alternatively, if the PPL failed to reflect a requirement in the models for public procurement accountability, it was considered a lack of capacity to enhance accountability in the public procurement system of Ghana to that extent. The implication of this on the decision process is that the more the properties of accountability found in the PPL, the higher the indication of its capacity to enhance accountability and vice versa. The PPL is determined as consistent with the accountability enhancing models identified and therefore capable of enhancing accountability in the public procurement system of Ghana if it is found to contain a significant number of the required number of properties for accountability listed in Table 1. The significance of the numbers of properties for accountability was determined by testing Hypotheses 1 and 2.

## **5. The Properties of Accountability in a Public Procurement Law**

The properties for accountability as compiled from literature have been listed in Table 1.

In the first place transparency has been found to be an important property of accountability in public procurement. Transparency is directly related to accountability. The more transparent the system is, the greater is its capacity to exact accountability (United Nations Development Programme 2010). The PPL has been found to be capable of ensuring transparency in the public procurement system of Ghana (Osei-Afoakwa 2012). But transparency alone is not sufficient to provide accountability unless it is complemented by other accountability assuring imperatives (Kolstad & Wiig 2009).

Accountability is also enhanced through a clear chain of responsibility embedded in an effective control environment. It is enabled by clearly establishing authority levels for approval of spending with inbuilt mechanisms to ensure appropriate separation of functions (Organisation for Economic Co-Operation and Development 2009). Overall environment of controls should consist of both internal and external controls carefully coordinated to enable it to achieve its ends. In this regard, the audit function, consisting of a mixture of financial, performance, internal, external and procurement, conducted as frequently as the situation may demand is considered appropriate (Organisation for Economic Co-Operation and Development 2009).

Procurement activities should be the subject of regular auditing to ensure that public funds are expended for their intended purpose, in a manner that maximizes value for money, under a regulation compliant and accountable environment, identifying any weaknesses in the procurement system. A procurement audit is the process to ensure that procurement was for the intended purpose; followed correct procedure and achieved judicious ends. Procurement audit is vital for the achievement of accountability in the use of public funds.

In assessing procurement audits it is important to stress that public procurement law must be explicit on issues like the body responsible for the conduct of the audit, a definition of the relationship between those effecting and affected by the audit, the procedures for reporting on the audit results and measures for the enforcement of the recommendations of the procurement audit. There should be established a clear reporting procedure that enables auditors to promptly report to appropriate criminal investigating bodies for further investigation of their findings. Punishment for proven wrongdoing and violations in the public procurement process is also an accountability measure. A public procurement law designed to enhance accountability must compel procuring entities to address fraud and corruption, including conflict of interest and unethical behaviour in their tendering

documentation. They must also address how wrongdoing and violations would be dealt with.

Accountability may be further assured through a systematic empowerment of civil society organisations (CSO's), the media and the wider public to scrutinise public procurement (Organisation for Economic Co-Operation and Development 2009). Civil society can ensure accountability by monitoring and creating awareness on public procurement activities thereby putting pressure on public officials to use public resources responsibly (Jeppesen 2010). The role of the media as a watchdog, channel of communication and public educator in public procurement is equally essential for accountability (Jeppesen 2010). The press is well placed to investigate and uncover procurement scandals.

The requirement for adequate documentation and record keeping of all procurement actions is also a mechanism for accountability (Schooner *et al.* 2008). Relevant and complete record keeping throughout the procurement cycle will create an audit trail, facilitate challenge process and provide avenues for public scrutiny (Organisation for Economic Co-Operation and Development 2009).

A fair and prompt complaints resolution mechanism (including a system of bid protests) is also required to ensure accountability in a public procurement regime. Such a system must make provision for decisions of the procurement entity to be reviewed by an independent body (WTO/GPA 1996; United Nations Commission on International Trade Law 1994 & Gordon 2006). It is essential that the decisions and actions taken by the reviewer are made transparent and well publicised. The practice on this matter varies from judicial to pure administrative bodies; from those that can take binding executive decisions to those whose decisions are only advisory (WTO/GPA 1996; United Nations Commission on International Trade Law 1994 & Gordon 2006). Bid protest is now an important factor in determining public procurement accountability.

Another mechanism for accountability is a detailed investigation targeted at unearthing specific complex irregularities. These are more likely to detect corruption. The participants of the Global Forum (2004) agreed that fighting corruption has been rendered problematic by the difficulty in detecting wrongdoing (OECD 2005). Anti corruption measures should therefore consist of a very efficient and effective system for monitoring, detecting and punishing wrong-doing. That type of investigation would require auditors with specific knowledge, skills and expertise in procurement. Unfortunately, the literature clearly shows the inadequacy of the traditional financial audit, normally relied upon, for achieving this end (Hans 2009 & Lee *et al.* 2009).

In addition to the foregoing, a public procurement law should appropriately address the issue of conflict of interest, its meaning, how to avoid it and how to deal with it when it arises (Wittig 2005). There should be established, safe means to report wrongdoing including the use of hotlines.

In recent times, e-procurement, with its concomitant effect on improved transparency and accuracy of information is fast becoming a major means of providing for accountability (United Nations Development Programme 2010).

## **6. Presentation of Results, Analysis of Data and Discussion of Results of Content Analysis of PPL.**

The detailed results of the content analysis of the PPL for properties of accountability have been displayed in the completed template in Table 1. Populating Table 1 are the determinants of accountability identified in the literature in Stage 1 and used to provide the data for the determination of the extent to which the PPL contains properties of accountability.

In this analysis, the provisions for accountability enhancers in the PPL are divided into three groups, namely, Enhancers without reservations, Enhancers with reservations and Absentee Enhancers. In the first group are enhancers of accountability that have been reflected fully in the PPL without reservations. Enhancers of accountability without reservations are provisions of the law which as provided for, are considered adequate for the purpose of enhancing accountability. In terms of reliability as accountability enhancers, members of the group without reservations are of the highest quality. Others may be reflected in the law with reservations. Enhancers of accountability with reservations are provisions, which as provided in the law, require improvement to enable them to enhance accountability better. Members of the group with reservations are considered less reliable than those without reservations. A third group of enhancers of accountability in this analysis are the absentees. Although absentee enhancers are required for accountability, they have not been provided for in the PPL. Absentee enhancers represent the worst case scenarios. The absence of an enhancer indicates lack of capacity to enhance accountability.

In Table 1, enhancers without reservations provided "Yes (Y)" answers; those with reservations provided "Reservations (R)" answers whilst absentee enhancers provided "No (N)" answers.

The summary of the results and analyses has been presented in Tables 2 and 3. In Table 2, the number of enhancers of accountability that have been provided in the PPL, both with and without reservations, are compared with the number of accountability enhancers expected to be provided in it. All accountability

enhancers present in the PPL with or without reservations were both regarded simply as enhancers of accountability. Consequently, they were put together as such and the result compared with the number of accountability enhancers expected in the PPL to demonstrate the overall significance of accountability enhancers present in the PPL. In this case, the PPL is considered as capable if both enhancers without reservations and enhancers with reservations are together reflected in significant numbers.

Table 3 is the summary of the results and analyses emphasizing quality of accountability enhancers in the PPL. Table 3 gives prominence to quality of accountability enhancers in the PPL by distinguishing between enhancers without reservations, enhancers with reservations and absentee enhancers. This distinction was necessary to ensure that a decision based on Table 3 refined that based on Table 2 by excluding the less reliable enhancers with reservations in determining the overall significance of accountability enhancers present in the PPL. In this case, the PPL is considered as capable only if enhancers without reservations are reflected in significant numbers. Thus only enhancers without reservations are considered in determining accountability enhancing capacity of the PPL (i.e. enhancers with reservations are not counted as enhancers in the PPL). Thus, whilst Table 2 emphasizes quantity of accountability enhancers, Table 3 emphasizes both quantity and quality of such enhancers. It should be necessary therefore to read Tables 2 and 3 together.

The distinction between enhancers without reservations, enhancers with reservations and absentee enhancers was also to facilitate recommendations by ensuring that they took into account the quality of the property. Whilst those without reservations were to be left without review, it was to be recommended that those with reservations needed to be reviewed and those absent should be provided for.

There are 25 properties representing provisions that will enhance accountability in a legislative framework designed to enhance accountability as listed in Table 1 (i.e. there are 25 accountability enhancers expected to be present in the PPL). As displayed in Table 2, the PPL contains a total of 18 (72%) out of the 25 expected properties of accountability. On the other hand 7 (28%) of the properties expected were not found in the PPL. Further analysis in Table 3 indicates that out of the 18 expected to contribute to accountability provided in the PPL, 16 properties can do so with no reservations whilst 2 can do so with reservations. What this shows is that there are 68% of enhancers appearing in the PPL that can support accountability without reservations whilst 8% are enhancers but with reservations.

#### 6.1. Enhancers without reservations

The enhancers of accountability in the PPL without reservations include the following.

- (i) The PPL has been found in an empirical research to be an enhancer of public procurement transparency (Osei-Afoakwa 2012). Transparency is a key property of accountability in a public procurement system.
- (ii) By the combined effects of section 3(q), sections 15-20, sections 88-90, and sections 92-93, procurement entities and tendering organisations and their officials can be held accountable for their actions in the procurement process. Sections 15-20 provides for checks and balances among the Procurement Entity (PE), the Head of Entity, Entity Tender Committee (ETC), the Tender Evaluation Panel (TEP) and the Tender Review Boards (TRBs). Under section 15 (2) the head of entity is to be held responsible and accountable for the implementation of the Act and its related instructions and guidelines. But section 15(3) seeks to avoid “one man show” by the entity head when it provides that “procurement decisions shall be taken in a corporate manner...” More importantly, the head of entity’s responsibility for ensuring compliance with the law is considered so sacrosanct that not even the subsequent concurrent approval of his actions by a TRB is sufficient to absolve him from blame in case of mis-procurement traced to actions inconsistent with the law {section 15 (4)}. Section 20 (2) heightens accountability requirements through the TRBs whose functions include reviews of procurement activities and decisions, ensuring compliance, reporting to the PPA on activities of entities and receiving and dealing with complaints brought against the decision of the entity head. Sections 88-90 grants the PPA an overriding powers with regards to access to information on procurement activity and to cause investigation into any activity for which it suspects wrongdoing. Sections 92-93 outline offences relating to procurement such as collusion, seeking to influence procurement outcome by unfair means, forgery of records, falsification of information and unauthorised correspondence with a tenderer and the corresponding penalties. The PPL clearly establishes authority thresholds for procurement methods and review/approval of contracts award decisions under Schedule 3. Then also, tendering organisations can be held accountable under section 55 which provides for tender security to be forfeited on non-compliance with stated terms in the tender invitation documents.
- (iii) Sections 15-20 provide for the establishment of the PE, the ETCs, the TEPs and the TRBs all of which have their functions and responsibilities clearly defined. Through the operation of section 3(q) which empowers the PPA to punish derelict participants in previous public procurement contracts, participants providing false information or offering inducements, section 22 on qualification of tenderers, sections 89-90 on

- investigations and sections 92-93 on offences and penalties, appropriate chain of responsibility of participants in the public procurement system, clearly defined with related prescriptive penalties have been provided for.
- (iv) Through the combined effects of sections 3(q), 32, 86, 89 and 92-93 and the requirements of the tender and contract documents provided in Schedule 4 of the law, the PPL addresses corruption, fraud, conflict of interest, and unethical behaviour and sets out the actions that can be taken with regard to such behaviour. The meaning of corrupt practices as defined by the criminal code 1960 (Act 29) is also applicable to corrupt practice in the procurement process under sections 92-93. In addition it also provides for very harsh sanctions for violations of the Act under section 92. The implications of this for accountability are far reaching. Particularly, the threat of sanctions may deter and prevent violation of the law and thereby enhance accountability. Moreover PEs and other participants in a procurement process are all required by section 93 to abide by article 284 of the 1992 constitution of Ghana on corrupt practices and corrupt practice as defined in the criminal code, 1960 (Act 29) under section 93 (1).
  - (v) There is a provision which empowers the PPA to investigate and debar from procurement practice participants with proven misconduct under the Act {Section 3(q)}. When this happens, the PPA is mandated to publish the list of, all such suppliers, contractors and consultants with the proven misconduct {section 3 (r)}. Misconduct has been defined to include failure to meet obligations under previous contract or violation of the provision on false qualification information, offering of inducement to influence procurement outcomes (section 32). A further accountability assurance is offered by the provision in the law which seeks to disqualify tenderers any of whose directors is known to have been convicted in any country for any criminal offence relating to their professional misconduct or making false statements or misrepresentation with regards to his qualifications to enter into a procurement contract {(Section 22 e (i))}. Moreover, Section 22 (5 & 6) empowers the PE to disqualify tenderers submitting falsehood to enable qualification even when detected after qualification. Thus, it can be observed that the procurement regime strongly discourages dishonest people from participating in the procurement process.
  - (vi) Section 28 requires adequate documentation and record keeping of all procurement actions. This will create relevant audit trail that will facilitate procurement audit, monitoring and therefore accountability.
  - (vii) Sections 78-82 enable tenderers to have adequate access to administrative review of procurement decisions. Under a two-tier review system, appeals are first lodged with the entity head for the entity to review its own decision and if necessary, discontented participants may proceed to seek redress with the PPA. Also section 20 empowers a TRB to entertain complaints and review decisions of the entity. Thus the decisions of the procuring agency can be reviewed by an independent body.
  - (viii) There is a separation of functions in the public procurement system among the planning, initiation, supervision, authorisation/approval, accounting and custody functions creating a system of checks and balances that enhances accountability.
  - (ix) For small contracts or purchase orders for goods procured using shopping procedures Section 3 (p) requires the maintenance of a database showing the current market price for commonly needed items. Availability of such a data base may prevent over invoicing or padding.
  - (x) There are provisions that ensure that procurement decisions are based on pre-disclosed criteria. These include Section 19(2) which provides that “in the performance of its functions, a tender evaluation panel shall proceed according to the predetermined and published evaluation criteria”, section 59 (2) which provides that “no criterion shall be used that has not been set out in the invitation documents” and Section 22 (3 & 4) which requires the PE to “evaluate the qualifications of candidates in accordance with the criteria and procedures stated in” the tender documents which shall “apply equally to” all tenderers. The implication of this on accountability is that officials cannot manipulate criteria to the detriment of less favoured participants.
  - (xi) The law defines penalties for individuals and firms found to have engaged in fraudulent or corrupt practices. To enable it to ensure accountability, a public procurement law should be explicit on how errant participants should be disciplined, and on how enforcement measures would be implemented. These have been taken care of by the PPL which lays out acts considered offences in public procurement under sections 92 and 93. Section 92 (1) makes it a criminal offence with heavy fines or imprisonment or both upon conviction of a person found guilty of violating the PPL. Under section 92 (2), the law makes it illegal to enter into a collusive agreement which leads to the inflation of prices. Any acts or attempts to influence the outcome of a procurement decision by means of personal interventions, falsification of documents, alteration of facts, insertion of documents which seek to switch procurement decisions are all made illegal under section 92 (2). As a direct interpretation of these, tender splitting, tender rigging, padding and other corrupt practices are

- made illegal. Under section 22(5&6), tenderers perpetrating falsehood for qualification are to be disqualified.
- (xii) Special measures exist to prevent and detect fraud and corruption in public procurement by the combined effect of Sections 3(q); 32, 86, 89, 92-93.
  - (xiii) Under Section 31, the PE is required to “promptly publish notice of procurement contract awards” and under Section 95, “administrative rulings and directives” are to be promptly and fully made public.
  - (xiv) A further boost to accountability is provided by section 86 on Code of Conduct. The section provides for the compilation and publication of the Code of Conduct by the PPA to be observed by procurement officials, tender committees, review boards and participants in procurement process.
  - (xv) Sections 89-90 empowers the PPA to investigate any person or procurement entity for suspected actual or imminent breaches of the law and grants it wide right of access to information and records to enable meaningful investigation. It is further empowered to take actions to rectify, prevent or annul acts found to be inconsistent with the law.
  - (xvi) Section 15(3) requires that “any internal audit units concerned shall contribute to” the public procurement decisions.

#### 6.2. Enhancers with reservations

The enhancers of accountability with reservation include the following.

- (i) By the operation of section 3 (f) and (g) the PPA is to “establish and implement an information system relating to public procurement” {3 (f)} and publish a monthly Public Procurement Bulletin on information on public procurement {3 (g)}. However, there is no requirement in the PPL for decisions to be publicly posted in a government website or another easily accessible place.
- (ii) Section 91 provides for statutory annual audit to be performed by the independent Auditor-General. In addition the Auditor-General may perform specific procurement audit of procurement activities of participants in a procurement process on request by the PPA. However, the adequacy of section 91 and the competence of the Auditor-General in this regard are very doubtful. For example, it is not clear whether the Auditor General, who has problems with dealing with the normal financial audits of the MDAs and the MMDAs, will be pre-disposed to performing procurement audit. The Auditor General may lack staff with the right psyche, skills and professional competence in the right numbers to handle a specialised area like procurement. Moreover, it is known that the so called procurement audit carried out by the Auditor General and his staff or professional accounting firms hired to do so, has tended to be a repetition of the financial audit performed along the lines of traditional audit, which is not meant to detect fraud. It is noted that traditionally, financial audits have been erroneously but unsuccessfully relied upon for the prevention, deterrence, and detection of fraud.

Then also, under the PPL, annual procurement audit and specific ones are to be conducted when the need arises. The question that arises is who determines when and how the need will arise. To enable accountability, procurement audit should be a regular mandatory affair with appropriate definition of “regular” provided. But the PPL does not empower the Auditor General or whoever is carrying out the audit, to carry out the audit at any time and at any stage of the procurement cycle that he deems fit. Thus there appears to be some restrictions of scope.

#### 6.3. Non-Existent Enhancers

The absentee enhancers of accountability include the following.

- (i) The law does not require the creation of accessible and secure process for tenderers to report suspected wrongdoing including bribes by others, solicitation or extortion of bribes or other unethical behaviour by government officials.
- (ii) There is no direct requirement of the law enabling the use of a combination of financial, performance, internal, external and procurement audit functions to be deployed as and when necessary.
- (iii) No specific rules or procedures for tenderer suspension and debarment although Section 89-90 sets out elaborate rules and procedures under which investigations may be conducted.
- (iv) There is no requirement for public procurement officials at whatever levels to declare their assets.
- (v) Although e-procurement methods have been recognised as a contemporary means of ensuring accountability in public procurement, there is no reference to it either directly or by implication under the PPL.
- (vi) There is no provision to ensure that audit reports are appropriately and swiftly acted upon. Under the cumbersome constitutional arrangement in Ghana, the report of the Auditor General must go to Parliament before action can be taken. Even criminal investigations may not be found necessary until this has happened. The process of reporting to Parliament by the Auditor General may take so much time that the question of swiftness does not even arise.
- (vii) The law does not make any specific provision for the systematic empowerment of civil society organisations,

the media and the wider public to scrutinise, oversee and monitor public procurement civil society organizations to be involved in the public procurement process. The absence of a provision to involve civil society organisations, the media and the wider public in procurement inhibits its capacity to ensure accountability.

### 7. The Test of Hypotheses

The two Hypotheses were tested to arrive at conclusions as to whether the PPL could ensure accountability or not. In Hypothesis I the decision model assumed that once a property of accountability appeared in the PPL it was to be counted as an enhancer irrespective of its quality as in Table 2 (i.e. an enhancer was said to be present whether there is reservation or without reservation). For Hypothesis II, it was based on the assumption that only properties of accountability appearing in the PPL without reservation were to be counted as enhancers of accountability (i.e. the decision is based on only enhancers without reservation since quality is considered important). Thus the decision process in Hypothesis II is stricter than that in Hypothesis I. If the null hypothesis I ( $H_{01}$ ) is rejected, it may not be necessary to test the Hypothesis II. Hence Hypothesis II is necessary to confirm Hypothesis I. A decision that the PPL ensures accountability on the basis of Hypothesis II is therefore stronger than that based on Hypothesis I alone.

#### 7.1. Testing the Hypothesis I

Testing Hypothesis I using Table 2, the calculated Chi Square test value ( $X^2$ ) = 1.139. Since this is lower than the Chi Square critical value of 3.14 with  $\alpha=0.05$  at degrees of freedom (df) being 1,  $X^2$  is within the acceptance level (see Figure 1). Therefore we fail to reject the null hypothesis ( $H_{01}$ ) so it is concluded that there is no statistically significant difference between the number of accountability enhancers present in the PPL ( $U_1$ ) and the total number of accountability enhancers expected in the PPL ( $U_2$ )

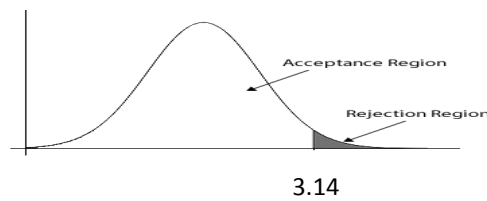


Fig 1: Accept  $H_{01}$

If there is no significant difference between the number of accountability Enhancers present in the PPL and the total number of accountability Enhancers Expected in the PPL, then it is concluded that the PPL has the capacity to enhance public procurement accountability in Ghana.

#### 7.2. Testing the Hypothesis II

Testing Hypothesis II using Table 3 the calculated Chi Square value ( $X^2$ ) = 2.0. Since this is lower than the Chi Square critical value of 3.8 with  $\alpha=0.05$  and degrees of freedom (df) =1,  $X^2$  is within the acceptance level as in Figure 2. Therefore we fail to reject the null hypothesis ( $H_{02}$ ) so it is concluded that there is no statistically significant difference between the number of accountability enhancers present in the PPL without reservation ( $U_1$ ) and the total number of accountability enhancers expected in the PPL ( $U_2$ )

If there is no significant difference between the number of accountability Enhancers present in the PPL without reservation and the total number of accountability Enhancers Expected in the PPL, then it is concluded that the PPL has the capacity to enhance public procurement accountability in Ghana even if we emphasise the highest quality of enhancers.

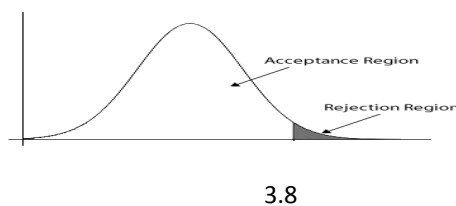


Fig 2: Accept  $H_{02}$



## 8. Findings and Conclusion

The conclusions from the results, analyses and the test of hypotheses confirm the proposition that the PPL has properties, sufficient enough, to enable accountability in the public procurement system of Ghana. It was found that the PPL contains significant numbers of the properties of accountability expected in a standard public procurement law. It is therefore concluded that the PPL can enhance accountability in the public procurement system of Ghana. However, there are provisions that as provided, will not enable accountability as expected. There are also properties that enhance accountability but which have not been provided for at all.

## 9. Recommendations to improve Accountability

It is recognised that some of the suggestions to improve accountability in this paper formed part of the recommendations made in an earlier report by Osei-Afoakwa (2013). Nevertheless, they are repeated here to ensure completeness of this report.

- (i) The anti-corruption measures of the law should be widened to make corruption more difficult to take place. The law should address fraud and corruption, conflict of interest and unethical practices, how they can be identified and how procurement entities can address them in the tender documents. It should compel procurement entities to put in place specific anti-corruption programmes to detect and penalise corruption in procurement.
- (ii) A strict system for disciplining errant officials must be provided for, whilst officials and participants sanctioned for corrupt practices are named and shamed.
- (iii) There should be included in the law a standard conflict of interest policy. Conflict of interest situations should be clearly defined with provisions on how to handle them. All procurement officials including members of TEP, Tender Committees and Review Boards should be made to make written and signed declaration of interest in procurement activities they sit on.
- (iv) Members of tender committees and review boards must be made to declare their assets on appointment and on their point of exit.
- (v) The law should require the establishment of hotlines (and other secure means) for reporting suspected or actual wrongdoing (including offers, solicitation or extortion of bribes and other unethical behaviour) by procurement officials, tenderers, suppliers, contractors and consultants. People who report wrongdoing should be rewarded whilst being protected from exposure. This will provide the necessary confidence to whistleblowers that they are encouraged to report wrongdoing in the public procurement process without the fear of retribution from officialdom.
- (vi) Given the importance of the media and civil society input in efforts against corruption generally, it is recommended that any reforms of the PPL occasioned by this research should consider the inclusion of the media and civil society organizations, particularly, those with anti-corruption interest in the monitoring of the award and implementation of public procurement contracts. These could be encouraged to sniff and raise red flags on incidents and suspicion of non-compliance with procurement rules. They may be co-opted into the relevant tender committees and review boards. They must also be granted easy access to information in the public procurement process. Engaging Civil Society in monitoring contract implementation will also broaden the frontiers of transparency and compliance and prevention of misconduct.
- (vii) A system of monitoring and reporting on the progress of projects in specific communities by members of such communities must be put in place.
- (viii) The law should be reviewed to provide for periodic forensic procurement audits for effective accountability. One of the reasons suggested for the ineffectiveness of current arrangement is that the training and procedures of traditional auditors fall short of providing the skills for fraud detection. The literature on forensic accounting rather supports the use of forensic accounting principles as a better alternative for this purpose than the traditional financial audit. On the other hand, the PPA may be empowered to expand its monitoring functions to cover regular procurement audit and investigations.

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**Table 1: Template Showing Expected Public Procurement Accountability Enhancers**

No	Expected Enhancers of Public Procurement Accountability	Is this Enhancer Present in the PPL?			REMARKS
		Y	R	N	
1	The law provides for an overall environment of transparency	Y			Osei-Afoakwa (2012)
2	PEs, tendering, organisations and their officials can be held accountable for their actions in the procurement process.	Y			Sect. 3(q). Sect. 15(2) and (4); 20 (2); 55; 89-90; 92-93;
3	The law lays down a clear chain of responsibility and sanctions for wrongdoing and violations.	Y			Sect. 15-21; 89-90; 92-93;
4	There is a separation of functions in the public procurement system in relation to the planning, initiation, supervision, authorisation/approval, accounting and custody functions	Y			Functions are distributed among, the Entity Head, ETC, TRB, the PPA (Sections 15-20)
5	The law enables persons or PEs suspected for actual or imminent breaches of the law to be investigated	Y			Sections 89-90
6	The law provides for the establishment of a conflict of interest policy.	Y			Section 86
7	The law addresses corruption, fraud, conflict of interest, and unethical behaviour and sets out the actions that can be taken with regard to such behaviour.	Y			Combined effect of Sections 3(q), 32, 86, 89, 92-93,
8	Special measures exist to prevent and detect fraud and corruption in public procurement.	Y			Combined effect of Sections 3(q); 32, 86, 89, 92-93,
9	The law defines penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.	Y			Combined effect of Sections 3(q); 32, 86, 89, 92-93,
10	The law enables the suspension or debarment of tenderers for proven misconduct in the procurement process	Y			Tenderer suspension or debarment( Sect. 3(q)); 32; 89)

11	The law provides for rules or procedures regarding tenderer suspension or debarment			N	No specific rules for tenderer suspension or debarment.
12	The law requires adequate documentation and record keeping of all procurement actions are required	Y			Section 28
13	The law provides that notice of contract awards and all administrative rulings and directives must be promptly and fully made public	Y			Sections 31 and 95
14	The law requires the use of modern methods of information technology (i.e. e-procurement) in public procurement?			N	
15	All decisions are publicly posted in a government web site or another easily accessible place			R	By the operation of section 3 (f) and (g) but...
16	Tenderers have adequate access to administrative or judicial review/appeal.	Y			Sections 78-82 and 20
17	The law requires for procurement audit to be performed regularly by competent and independent body.			R	Section 91 but competence is doubtful
18	The law requires that Audit reports are to be appropriately and swiftly acted upon and if necessary findings are reported to appropriate criminal investigating bodies for further investigation of their findings			N	
19	The law requires the internal audit of procurement function.	Y			Section 15 (3)
20	There is a requirement for asset declaration at the most influential levels of public procurement officials.			N	
21	The law requires an appropriate mixture of financial, performance, internal, external and procurement audit functions, conducted as frequently as necessary.			N	
22	The law provides for a systematic empowerment of civil society organisations, the media and the wider public to scrutinise, oversee and monitor public procurement.			N	
23	The law provides for the creation of an accessible and secure means for reporting suspected corruption and other unethical behaviour by participants.			N	
24	There is a database maintained showing the current market price for commonly needed items.	Y			Section 3 (p)
25	Procurement decisions are based on pre-disclosed criteria	Y			See: Sections 19(2) & 22 (3&4)
	<b>TOTAL</b>	<b>16</b>	<b>2</b>	<b>7</b>	

Note: Credit is given to Organisation for Economic Co-operation and Development and World Bank (2006) for the use of some of its prescribed indicators for accountability adapted for the purpose of building the model in Table 1.

**Table 2: Number of Accountability Enhancers Provided in the PPL Compared with Numbers of Accountability Enhancers Not Provided for.**

<b>Numbers of Accountability Enhancers Present in or Absent from the PPL</b>		
Accountability Enhancers Present in the PPL	Accountability Enhancers Absent from the PPL	Accountability Enhancers Expected in the PPL
(a)	(b)	(a+b)
18 (72%)	7 (28%)	25 (100%)

**Table 3: Accountability Enhancers Emphasising Quality**

<b>Number (%) of Accountability Enhancers</b>			
Accountability Enhancers Present in the PPL Without Reservation	Accountability Enhancers Present in the PPL With Reservation	Accountability Enhancers Absent from the PPL	Accountability Enhancers Expected in the PPL
(a)	(b)	(c)	(a+b+c)
16 (64%)	2 (8%)	7 (28%)	25 (100%)

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