“Opportunities for Open Contracting in public sector procurement: a review of legislation”

AUTHORS	Lawson Naidoo https://orcid.org/0000-0001-5841-4765 Vinessa Naidoo https://orcid.org/0000-0002-2358-5588 Marcus Ambe

ARTICLE INFO	Lawson Naidoo, Vinessa Naidoo and Marcus Ambe (2018). Opportunities for Open Contracting in public sector procurement: a review of legislation. *Public and Municipal Finance*, *7*(1), 21-31. doi:10.21511/pmf.07(1).2018.03
DOI	http://dx.doi.org/10.21511/pmf.07(1).2018.03
RELEASED ON	Thursday, 14 June 2018
RECEIVED ON	Monday, 30 October 2017
ACCEPTED ON	Tuesday, 23 January 2018

LICENSE	This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License

JOURNAL	"Public and Municipal Finance"
ISSN PRINT	2222-1867
ISSN ONLINE	2222-1875
PUBLISHER	LLC “Consulting Publishing Company “Business Perspectives”
FOUNDER	LLC “Consulting Publishing Company “Business Perspectives”

NUMBER OF REFERENCES	NUMBER OF FIGURES	NUMBER OF TABLES
32	2	4

© The author(s) 2026. This publication is an open access article.

Lawson Naidoo (South Africa), Vinessa Naidoo (South Africa), Marcus Ambe (South Africa)

Opportunities for Open Contracting in public sector procurement: a review of legislation

Abstract

The main purpose of the study was to establish the conformity of South African legislation and policies to the global principles of Open Contracting. The specific objective of the study was to establish whether South African legislation supports the application of Open Contracting in public sector procurement. The study employed a descriptive survey research design. Primary data was collected using questionnaires targeting members of the Chartered Institute of Procurement and Supply Chain (CIPS) employed in the South African public service. A total of 300 (100%) completed questionnaires were returned. Fifty-two (52) of the targeted 300 respondents were excluded from the study. They were found not to be "public procurement champions". This would imply that a final total sample size of 248 was employed in this study, thus a realization of 82.7%. The study findings revealed that although government institutions have policy statements for Open Contracting, the principles are not fully implemented. The study recommends that the National Treasury put forward a single coherent, comprehensive and overarching procurement law to standardize and clarify the procurement process to be followed by procuring entities in South Africa. Particularly the study recommends the development of a policy framework for the implementation of Open Contracting in the South African public sector procurement system.

Keywords: public procurement, transparency, Open Contracting, legislation, policies, survey, South Africa.
JEL Classification: D83, H57, D86.
Received on: 30th of October, 2017.
Accepted on: 23rd of January, 2018.

Introduction

Throughout the world, public procurement is big business. According to Roodhooft and Abbeele (2006, p. 494), public bodies have always been big purchasers, dealing with huge budgets. Rolfstam (2009) also reiterated that public procurement is an area of interest since it contributes between 16% and 18% to a country's GDP. All governments worldwide spend approximately 9.5 trillion USD every year on public procurement (Estefan, 2014), which can be very vulnerable to corruption, inefficiency and mismanagement. In South Africa, Chipkin, Tshimomola, and Brunette (2014) asserted that at least 42% of South Africa's national budget is spent on the acquirement of goods and services. This is an exorbitant number when compared to the overall national budget of South Africa. Public expenditure nevertheless continues on a large and necessary scale in South Africa. In 2013–2014, the South African public sector spent R500 billion on goods, services and construction works. This is an enormous amount of money and if wisely and efficiently spent, it can be a great force for service delivery. It can ensure that citizens receive basic services, such as water, electricity and sanitation. It can also guarantee that infrastructure such as roads and ports is built and maintained, that schools are well equipped and that health services are widely available. The priority targets of South Africa's National Development Plan (National Planning Commission, 2011, p. 39) include a corruption free society, high adherence to ethics and a government that is accountable to its people. With this in mind, the improvement and oversight in public procurement is explicitly addressed. Since corruption remains an impediment to the progressive development in South Africa, measures must be introduced to support the implementation of anti-corruption policies. These include the principles of openness and transparency in the public sector.

The value of this research primarily lies in the fact that supply chain management, including procurement practices, is still not fully utilized in the South African public sector (Ambe & Badenhorst-Weiss, 2012). This study will thus assess the conformity of the existing legislation in South Africa against the global Open Contracting principles. The belief is that the results can contribute towards addressing some of the current procurement challenges in the South African public procurement system. It will also have immense benefits for the entire public sector, specifically in the area of public procurement disclosure and public participation. Specifically, it will assist senior and middle level procurement managers (as custodians of SCM) to improve their procurement transparency and openness strategies. It will further contribute towards an improved audit

© Lawson Naidoo, Vinessa Naidoo, Marcus Ambe, 2018.
Lawson Naidoo, Tshwane University of Technology, South Africa.
Vinessa Naidoo, Professor, Tshwane University of Technology, South Africa.
Marcus Ambe, Professor, University of South Africa, South Africa.

This is an Open Access article, distributed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International license, which permits re-use, distribution, and reproduction, provided the materials aren't used for commercial purposes and the original work is properly cited.

outcome with better quality services to communities. This study contributes to the existing body of knowledge about public procurement transparency, openness and public participation. Since no evidence of similar studies on Open Contracting in South Africa was found, this ground-breaking research study made a new contribution to the body of knowledge.

The Auditor-General Report (2012, p. 69) has highlighted significant supply chain management (SCM) findings, inter alia, weaknesses in internal SCM control. Major practical challenges of municipal SCM as pointed out by Horn and Raga (2012, p. 71), included non-compliance to the SCM policy. Most studies that have been conducted on this topic focused on the evaluation of SCM implementation only (Sandler, 2011, p. 2). These studies were focused only on the evaluation of the SCM implementation, which provides the rationale for this study to determine whether the principles of Open Contracting could improve disclosure in public sector procurement in South Africa.

Against this background, the purpose of this research is to answer the core research question:

"Does current South African legislation present opportunities for Open Contracting in public sector procurement?"

More specifically, this study has one research objective: to investigate the conformity of current South African laws and policies to the global principles of Open Contracting.

The paper is structured as follows. First, it reviews extant literature relevant to public procurement practices, framing the concept of Open Contracting. The research methodology is presented and data analysis techniques are discussed. Next, the findings are discussed and summarized. The paper concludes with a discussion of theoretical and managerial implications and direction for further research.

1. Literature review

1.1. Public procurement defined. The practice of procurement in the public sector is when government does business with the general public in an open, fair and transparent manner. Governments then need to account to the public that it has given all tenders for government contracts, a fair opportunity and that business was awarded to the most appropriate bidder at the best price in expediting taxpayer's expenditure. In developing countries, public procurement is increasingly recognized as essential in service delivery and it accounts for a high proportion of total expenditure (Davis, 2014, p. 79).

1.2. Public procurement practices in South Africa. It is important to gain a grounded perspective of public procurement in South Africa by reflecting upon: procurement practices pre-1994, the procurement transformation period post-1994 and current developments and trends in 2015.

1.2.1. Procurement practices pre-1994. According to Hamilton (1980, p. 331), "…government procurement was determined to a very large extent by the constitution of the Union of South Africa of 1910" (p. 331). The State Tender Board Act 86 of 1968, as amended, was established to provide for the regulation of:

- procurement for supplies and services;
- the disposal of movable property;
- the hiring or letting of anything;
- the acquisition or granting of any right for and on behalf of the State; and
- the establishment of the State Tender Board, to provide for the establishment of regional tender boards and to define their functions (Van der Walt, 2012, p. 54).

Van der Walt (2012) cites the following pertinent points to describe the starting point of the democratic roadmap for procurement reform:

> *Due to the legacy of the apartheid years, South Africa writing a "main stream" or first economy that was led by a minority of 13% of the population and an emerging (second) economy of small, medium and micro enterprises owned by historically disadvantaged groups, comprising of the balance of 87% of the population* (p. 54).

Government identified public procurement as a key mechanism to bridge the gap between the first and second economy (Van Vuuren, 2006, p. 2). The process government followed to procure goods and services became vitally important for the profitability, survival and development of specific economic sectors (Doyle, 2001, p. 217). Ambe and Badenhorst-Weiss (2012) critically analyzed the key footprints in the democratic roadmap required to initiate budgetary and financial reforms for public procurement.

1.2.2. Public procurement transformation, post-1994. South Africa's first multi-racial elections were held in 1994. The new African National Congress-led Government initiated a series of budgetary and financial reforms. This was an attempt to modernize the management of the public sector to make it more people-friendly and sensitive to meeting the needs of the communities it serves. They found that the previous tendering system denied fair and equitable opportunity for the

majority of South African citizens (Bolton, 2006, p. 193).

The primary intention of government post 1994 was to move away from the previous legacy issues. The government's initial objective had two broad focus areas, namely the promotion of good governance and the introduction of a preferential system to address socio-economic objectives (Ambe & Badenhorst-Weiss, 2012).

The legislative framework for public procurement has constitutional status. Section 217(1) of the Constitution of the Republic of South Africa mandates every state body to procurement of goods and/or services in a manner that is open, fair, transparent, competitive and cost-effective. Section 217(3) of the Constitution stipulates that national legislation prescribes a framework within which the preferential procurement policy must be implemented.

To accomplish its task of transforming procurement practices, in the 2001–2002 financial year, the National Treasury embarked on a Country Procurement Assessment Review (CPAR) with the assistance of the World Bank. One of the issues raised by the CPAR was a need to replace the outdated and inefficient procurement and provisioning practices in government with the supply chain management function (National Treasury, 2003, p. 2). The CPAR also identified other deficiencies in practices related to governance, interpretation and implementation of the Preferential Procurement Policy Framework Act and associated regulations as cited by Ambe and Badenhorst-Weiss (2012).

Given the CPAR recommendations, the government took a firm stand by transforming procurement practices in South Africa. The benchmark was set on international standards so that procurement and broader financial management in government are improved. To this end, the Cabinet resolved in 2003 that the concept of supply chain management be introduced within the public sector.

Subsequently, the reference to public sector procurement in South Africa shifted from loosely used names like "provisioning administration", "logistics" and "stores" towards supply chain management. The government views supply chain management as an integral part of financial management that seeks to introduce internationally accepted best practice (National Treasury, 2003, p. 2).

1.2.3. Supply chain management in the South African public sector. The findings of the CPAR research prompted government to replace the outdated and rules driven procurement and provisioning practices. In September 2003, Cabinet adopted an integrated supply chain management policy to be implemented across all spheres of government[2]. In addition, an SCM guide for accounting officers and accounting authorities was compiled to provide comprehensive guidelines to mobilize these reform processes at ground level (National Treasury, 2004). The SCM system that was introduced to national and provincial departments, trading entities, constitutional institutions, national and provincial public entities, had the following objectives:

- to transform Government's outdated procurement and provisioning practices into an integrated supply chain management function;
- to introduce a systematic approach for the appointment of consultants;
- to create a common understanding and interpretation of the preferential procurement policy; and
- to promote the consistent application of best practices throughout Government's supply chain.

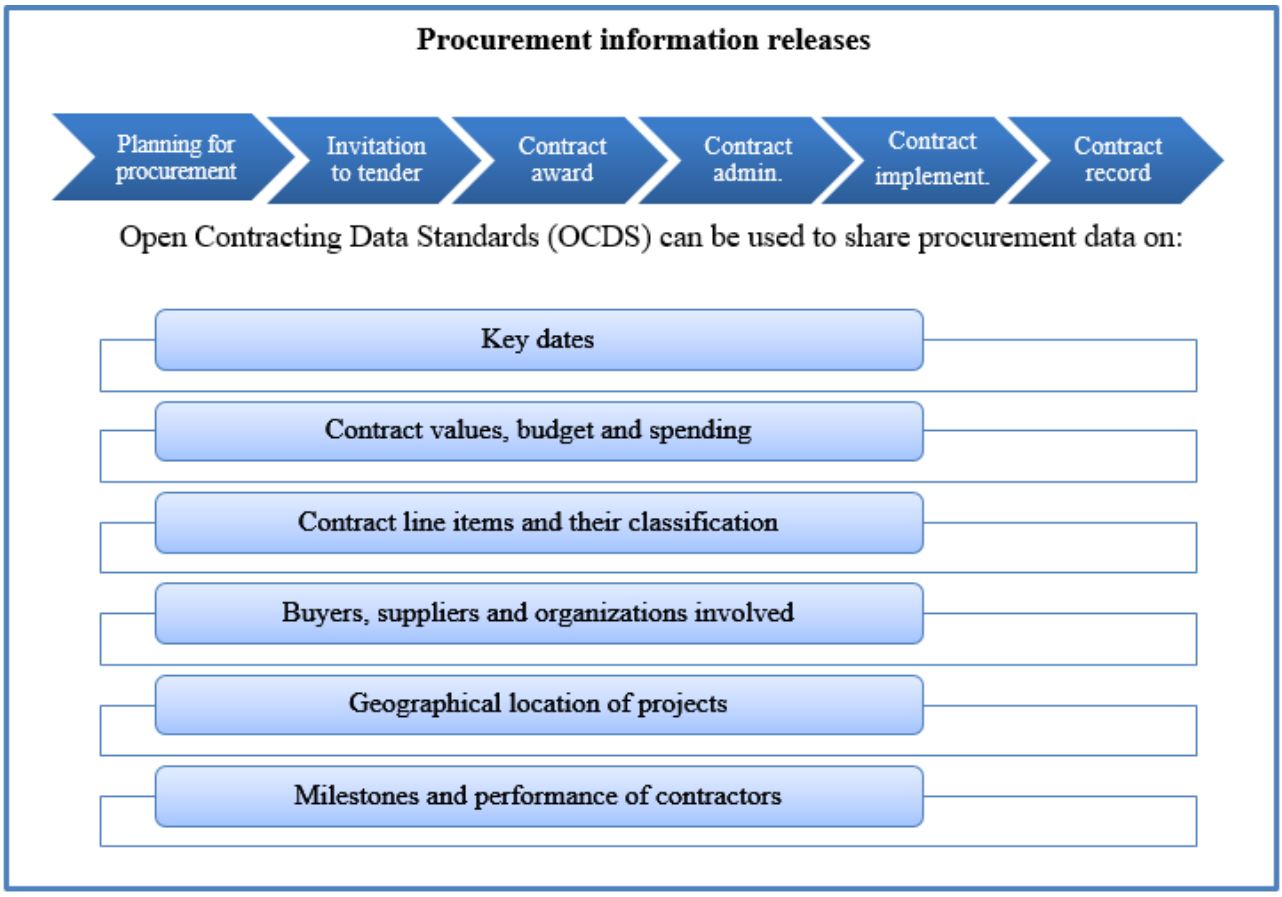
The next section provides an in-depth interpretation of the relevant and applicable legislation, guidelines or instructions governing public procurement in South Africa as represented by the national, provincial and local government, including constitutional institutions and public sector entities.

1.3. What is Open Contracting? Open Contracting (OC) is a growing global concept that aims at increasing disclosure and public participation at all stages of government contracting. It asserts that contracting that is more transparent will help ensure that public resources are managed effectively and that citizens receive the services and goods they deserve. OC will help communities understand how government contracts are awarded and inevitably expose any irregularities in the evaluation and awarding thereof. Gatjen (2014) eloquently summarizes Open Contracting as "…the proactive publication of government contracts" (p. 8).

OC refers to norms and practices for increased disclosure in public contracting. It covers the entire process, including formation; award; execution; performance and completion of public contracts; the full range of contract types, from basic procurement to joint ventures; licenses and production sharing agreements.

[2]Although section 217 of the Constitution refers to procurement and the terms are used inter-changeably; for the purpose of clarity and common understanding in this study, procurement is used to describe the process of implementing a decision to buy, flowing from the pre-tendering process within the supply chain system. Whereas supply chain management (SCM) refers to the all processes, procurement is viewed as a component of the SCM umbrella.

Figure 1 illustrates the application of Open Contracting Data Standards (OCDS). It indicates regular stand-alone releases of data and documents, provides information about the specific stages of a procurement process, with a snapshot record of the full contracting process and its history.



Source: Adapted from Open Contracting Partnership (2015).

Figure 1. Application of Open Contracting principles

The public procurement process starts with identifying and defining (planning) the need, followed by the compilation of the tender specification (goods) or terms of reference (service). Further, the approved request for proposal (RFP) is publicized in various platforms (i.e. online, print media, notice boards). Prospective bidders are then invited to submit their offers on a stipulated closing date and time. All tenders received on time are evaluated and adjudicated to determine and appoint the winning company. Finally, the contract is implemented and completed with contract records available for audit and verification purposes. OC can therefore be used to improve the entire procurement process from the time the need arises until the contract has been completed (Gatjen, 2014, p. 9).

1.4. Legislation and its conformity to the South African public procurement system. An important objective of reforming South Africa's system must therefore be to make procurement information accessible to suppliers and purchasers alike. This will enhance planning, accountability and oversight. Open Contracting is a powerful tool that can be used to combat corruption and ensure good governance, value for money and good-quality service delivery (National Treasury, 2015, p. 1). Legislations supporting public procurement are important aspects of any public sector procurement system that will support Open Contracting practices and thus are critically discussed below.

1.4.1. The Constitution of the Republic of South Africa Act 108 of 1996. The Constitution of the Republic of South Africa (South Africa, 1996) includes a Bill of Rights. The Bill of Rights encompasses socio-economic rights, as well as rights to dignity, equality and freedom. It is the state's duty to respect, protect, promote and fulfil these rights.

The public sector procurement concept has its roots in the new Constitution of South Africa, adopted in 1996, section 217(1). Section 217 of the Constitution with the heading "Procurement" states that when any institution identified in national legislation contracts for goods and services, it should be done in a fair, equitable, transparent, competitive and cost-effective manner. This requires

the state to take positive steps to ensure transparency of all public procurement processes. It also includes investigating allegations of corruption or improper conduct in procurement processes.

1.4.2. The Public Finance Management Act, Act 1 of 1999. The Public Finance Management Act, Act 1 of 1999, as amended by Act 29 of 1999 (South Africa, 1999) is one of the most important pieces of legislation passed by the first democratic government of South Africa. The PFMA aims to improve accountability by placing responsibility for decisions in the hands of each accounting officer or authority in national and provincial institutions. This enables them to manage their financial affairs within the parameters laid down by prescribed norms and standards. Section 76(4)c of the PFMA mandates the National Treasury to issue guidelines for the development of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. As much as the PFMA encourages transparency and accountability, the lines of the same accountability and responsibility are clarified. For example, section 38(1) (a) (iii) clearly outlines the responsibility of accounting officers to maintain an appropriate procurement system that is fair, equitable, transparent, competitive and cost-effective.

1.4.3. The Preferential Procurement Policy Framework Act, Act 5 of 2000. Following the enactment of the Constitution and the PFMA, further important and applicable legislation was promulgated that stimulated the public sector procurement reform process. The purpose of The Preferential Procurement Policy Framework Act (PPPFA), No. 5 of 2000 (South Africa, 2000) and its associated Preferential Procurement Regulations (PPR), 2017, is to enhance the participation of black people and the small, medium and micro enterprises (SMMEs) in the public sector procurement system. Despite the constitutional principles and other relevant legislative frameworks, state bodies may still implement procurement policies to give preference in the allocation of contracts and to prevent unfair discrimination against disadvantaged persons. These policies are regulated by the Procurement Act, with the main objective to provide a framework for the implementation of procurement policies via the guidelines stipulated under the Act, which include a preference point system for the awarding of tenders (South Africa, 2000).

The PPPFA provides the enabling legislation for government institutions or entities to implement a preferential policy and gives effect to section 217(3) of the Constitution. The National Treasury has developed Preferential Procurement Regulations (PPR) that gives effect to section 217(3) of the constitution as published under Government Notice R32 of January 20, 2017 (South Africa, 2017).

According to the new evaluation system contemplated in the updated PPR of 2017, preferences will be applicable to all tenders, irrespective of the amount. An 80/20-point system is applicable for tenders up to R50 million, while a 90/10-point system will be applicable for tenders above R50 million. For the first system, a maximum of 80 points for price will be allocated to the lowest acceptable tender, while tenderers who tendered higher in price will score a lower number of points. A maximum of 20 points will be awarded to tenderers for achieving specified broad based black economic empowerment (BBBEE) contributor levels. The tender will be awarded to the tenderer who scored the highest number of total points. For tenders with a value above R50 million, a similar 90/10-point system is followed during the evaluation process where a maximum of 90 points will be scored by the lowest (price) acceptable tender and a maximum of 10 points can be scored for achieving specified broad based black economic empowerment (BBBEE) contributor levels (South Africa, 2017).

1.4.4. The Municipal Finance Management Act, Act 56 of 2003. Local government is a key part of the reconstruction and development efforts in South Africa. The aims of establishing a democratic society and growing the local economy inclusively can only be realized through a responsive, accountable, effective and efficient local government system that is part of a developmental state (Department of Planning, Monitoring and Evaluation, 2014). The cornerstone of the financial reform initiatives in local government was implemented through the Municipal Finance Management Act (MFMA), which became effective in July 2004 and aims to modernize budget and financial management, and to ensure greater transparency and accountability in the finances of municipalities (South Africa, 2003). The MFMA is the local government version of the PFMA, which regulates financial management in the national and provincial spheres of government. Both are unique to South Africa, and bring uniformity to financial management in all forms of government.

The MFMA specifies that every municipality must adopt and implement an SCM policy (Fourie & Opperman, 2011, p. 332). As a result, the Minister of Finance, acting with the concurrence of the Minister for Provincial and Local Government, has, in terms of section 168 of the MFMA, issued the Municipal Supply Chain Management (MSCM) Regulations on May 30, 2005

(National Treasury, 2005). The MSCM regulations add substance to the framework provided by section 112 of the MFMA and also bring municipal procurement in line with the procurement practices of national and provincial spheres of government.

From this it is evident that there is conformity between Open Contracting principles and the South African public procurement practices. Table 1 provides a summary of the theoretical framework for the key aspects of Open Contracting juxtaposed against its conformity to the South African public procurement system.

Table 1. Theoretical framework for legislation in South African public procurement

Aspect of Open Contracting	Conformity of South African public sector procurement to Open Contracting
Legislation	♦ Disclosure and public participation in public procurement are firmly established and mandated in the Constitution. ♦ Financial enabling legislation and directives (i.e. Public Finance and Municipal Finance Management Acts) operationalizes the application of disclosure and public participation in all procurement activities through the respective sections in the Acts. ♦ Accounting Officers and Accounting Authorities must implement a procurement system that is fair, transparent, open, competitive and cost effective. ♦ Citizen has the right to access any information held by the state. ♦ State actors must include citizens to participate in policy.

Open Contracting principles call for the timely, current and proactive disclosure of documents and data related to public contracting. This is to empower the public to understand and monitor public contracting as a safeguard against inefficient, ineffective and corrupt use of public resources. To enable this proactive disclosure, governments are called on to develop systems to collect, manage, simplify and publish relevant data and documents regarding public contracts. These systems should be user-friendly and searchable in a manner that enables meaningful monitoring, performance and accountability for outcomes.

2. Methodology

The population for this study comprised 1,200 public sector procurement officials who are members of Chartered Institute of Procurement and Supply Chain (CIPS). The sampling frame was the list of only CIPS members employed in the South African public sector. The sample collection technique that was used for this research was the probability sampling with the simple random sampling method. An e-mail containing a web link to access the online questionnaire through the Survey Monkey website. The questionnaire structure is set out in Table 2. The statements, which were chosen, were the most relevant to the key aspect of this article, namely legislation and policies. The instrument was composed of thirteen statements in two major sections. Section A seeks information about the demographic profile of the respondents, while section B on conformity of South African legislation to Open Contracting.

Table 2. Questionnaire structure

Key aspect of Open Contracting	Scale items
Legislation and policies	Procurement operates in a highly regulated environment
	National legislation exists for disclosing procurement information
	National legislation exists for public participation
	We have a policy that promotes Open Contracting
	We have a policy statement for disclosure of procurement information
	We have a policy statement for public participation in procurement
	We have implemented Open Contracting
	Procurement operates in a highly regulated environment
	National legislation exists for disclosing procurement information

Source: Developed for this study.

The questionnaire was administered by CIPS and delivered via the internet to the complete list of 300 public sector procurement practitioners. A total of 300 (100%) completed questionnaires were returned. Fifty-two (52) of the targeted 300 respondents were excluded from the study. They were found not to be "public procurement champions", but performing secondary duties relating to public procurement hence their interest and registration with the CIPS. This would imply that a final total sample size of 248 was employed in this study, thus a realization of 82.7%.

Table 3 depicts the demographic profile of respondents' own characteristics, background and attributes. The information is represented in five categories: age, organization, province, designation, years of employment in current organization and total experience in public procurement.

Table 3. Demographic profile of respondents

Characteristic		Frequency	Percentage
Age	Younger than 25	2	0.8
	25 to 34 years	69	27.9
	35 to 49 years	129	52.2
	50 to 59 years	38	15.4
	60 years and older	9	3.6
Organization	National Government Department	64	25.9
	Provincial Government Department	44	17.8
	Public Entity (state-owned, state-controlled)	96	38.9
	Municipal Entity (state-owned, state controlled)	13	5.3
	Other state body (including municipality)	30	12.1
Province	Gauteng	155	62.8
	Limpopo	11	4.5
	Mpumalanga	9	3.6
	Kwazulu-Natal	27	10.9
	Free State	2	0.8
	Northern Cape	4	1.6
	Western Cape	22	8.9
	Eastern Cape	10	4.0
	North West	7	2.8
Designation	Chief Finance Officer	13	5.3
	Supply Chain Manager	79	32.0
	Supply Chain Clerk	13	5.3
	Supply Chain Practitioner	73	29.6
	Other role player	69	27.9
Years of employment in current organization	< 1 year	22	8.9
	1–4 years	86	34.8
	5–7 years	50	20.2
	8–10 years	33	13.4
	11 years +	56	22.7
Total years of experience in public sector procurement	< 1 year	9	3.6
	1–4 years	45	18.2
	5–7 years	56	22.7
	8–10 years	50	20.2
	11 years +	87	35.2

Most of the respondents were between the ages of 35 to 49 years (52.2%), mostly employed in a Public Entity (38.9%). The majority are employed as Supply Chain Managers (32%) in the Gauteng Province (62.8%), serving their current organization between 1 and 4 years (34.8%) and have total public procurement experience of 11 years and more (35.2%).

3. Data analysis and interpretation

3.1. Descriptive results for conformity of open contracting principles to South African public sector procurement: Legislation and policies.

Research Question: Are there South African legislation and policies to support Open Contracting?

After weighting the 7 items in the "Legislation and policies" measuring instrument according to the degree to which the respondents agreed or disagreed with the statements, the results were sorted for the items. Figure 2 highlights the difference in the breakdown trends and provides a number and percentage summary breakdown for each statement.

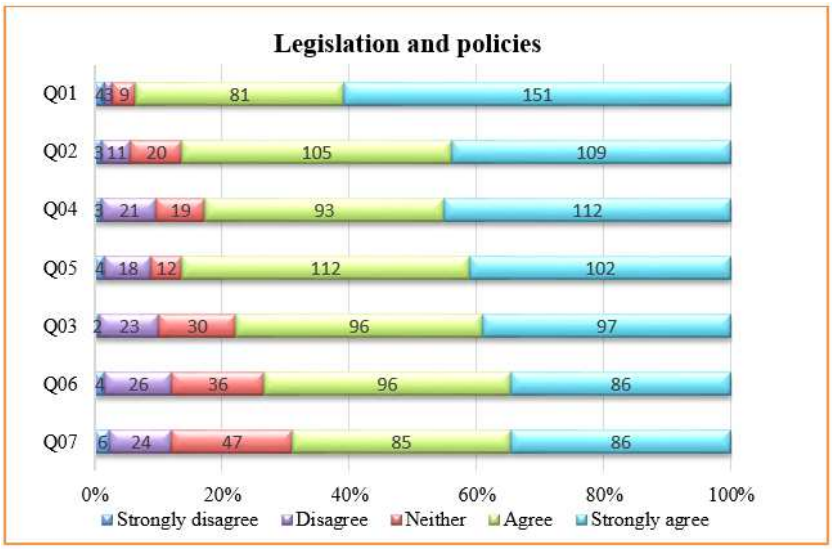


Figure 2. Results for legislation and policies

The following results are presented in the order of which the respondents agreed the most to the least with the items:

- Procurement operates in a highly regulated environment (93.6% of the respondents agree to strongly agree and 2.8% disagree to strongly disagree).
- National legislation exists for disclosing procurement information (86.3% of the respondents agree to strongly agree and 5.6% disagree to strongly disagree).
- We have a policy that promotes Open Contracting (82.7% of the respondents agree to strongly agree and 9.7% disagree to strongly disagree).
- We have a policy statement for disclosure of procurement information (86.3% of the respondents agree to strongly agree and 8.9% disagree to strongly disagree).
- National legislation exists for public participation (77.8% of the respondents agree to strongly agree and 10.1% disagree to strongly disagree).
- We have a policy statement for public participation in procurement (73.4% of the respondents agree to strongly agree and 12.1% disagree to strongly disagree).
- We have implemented Open Contracting (69.0% of the respondents agree to strongly agree and 12.18% disagree to strongly disagree).

3.2. Reliability analysis of the research instrument. Cronbach's alpha is one of the most commonly used tests, which are based on the average correlation of items within a test if the items are standardized. If the items are not standardized, it is based on the average covariance among the items. The Cronbach's alpha can range from 0 to 1. Cronbach's alpha was also calculated as part of the reliability test to assess how consistent the results were and would similar results be obtained in order to generalize if the sample size increased. A value of 0.7 or higher is an indicator that the same results would be derived if the same survey was carried out with a larger sample of respondents. The Cronbach's alpha was calculated for all the questions that have the same scales in each section (Nunnally, 1978, p. 245).

Table 4. Cronbach's alpha range

Section	Cronbach's alpha
Legislation and policies	0.855

Table 4 illustrates the Cronbach's alpha to be 0.855 for legislation and policies. The Cronbach alpha for all legislation and policies elements is more than the acceptable level of 0.70 and thus the scale is proved to be consistent.

4. Discussion and recommendations

The goal of this study was to investigate the conformity of the South African legislation and policies to the global principles of Open Contracting.

4.1. Revisiting the research question. Are there legislation and policies in South African legislation to implement Open Contracting?

4.2. Discussion of the findings. The response to the first statement revealed that the majority (93.6%) of the respondents strongly agreed that public procurement activities operate in a highly regulated and rules driven environment in the South African public sector. This finding, therefore, correlates with the current procurement practices as discussed in

section 3, where it was stated that more than 80 different legal instruments govern public sector procurement in South Africa (National Treasury, 2015, p. 10). All of these laws and regulations relating to public procurement are implemented through a large number of independent statutory instruments, with some catering for specific procurement practices and others for particular sectors or industries.

An overwhelming 86.3% of the respondents strongly agreed that national legislation exists for disclosing procurement information. This finding is in line with the literature review that the legal framework in South Africa strongly states the right of the public to access state information, including contract information. In the South African Constitution, under the heading Access to Information, Section 32(1) "Everyone has the right of access to (a) any information held by the state; and (b) any information held by another person that is required for the exercise or protection of any rights". The law does not prohibit the disclosure of contracting information and furthermore, in many instances, publication of contracts and procurement information is expressly required, particularly at the municipal level (Constitution, 1996, p. 15; South Africa, 2003, p. 67).

The respondents who agreed to strongly agreed with this statement measured 77.8%. Literature states that there are some opportunities to engage citizens in public contracting at the municipal level. However, procurement laws and treasury regulations are largely silent on the role of non-state actors in the public contracting process. The SCM Guide for Accounting Officers tends to also limit public participation (National Treasury, 2004, p. 44).

Of the respondents, 82.7% either agreed or strongly agreed that their institutes had a policy that promotes Open Contracting.

A majority (86.3%) of the respondents indicated that the institute has a policy statement regarding the disclosure of the procurement information. Only 8.9% of the respondents do not have a policy statement for such disclosure.

It was found that 73.4% of the respondents have a policy statement to implement public participation in their procurement processes. On the other hand, 12.1% do not have a statement in their supply chain policy that allows the general public to participate in the contracting activities.

A majority of the respondents, totalling 69%, submitted that they have not implemented Open Contracting.

4.3. Summary of discussion for legislation and policies. The following analogies can be drawn from this research with respect to the discussion on legislation and policies:

- Procurement operates in a highly regulated environment.
- National legislation exists for disclosing procurement information.
- National legislation exists for public participation.
- The organizations have a policy that promotes Open Contracting, which includes a policy statement for disclosure of procurement information as well as a statement for public participation in procurement.
- It seems that Open Contracting is not fully implemented.

4.4. Recommendations for legislation and policies. To fully implement the Constitution's mandate of establishing a procurement system, which is fair, equitable, transparent, competitive and cost-effective, it is recommended to:

- simplify the legal and policy framework for procurement;
- harmonize transparency requirements for all three spheres of government in new legislation;
- publish SCM policies of all procuring entities and communicate the value of transparency.

There is an opportunity for the custodian of South African public procurement, i.e. the Office of the Chief Procurement Officer to put forward a single coherent, comprehensive and overarching procurement law to standardize and clarify the procurement process to be followed by procuring entities in South Africa. A single law, with attendant implementing regulations, could greatly help bidders and the public to understand public procurement. It could also help SCM officers to understand and fulfil their obligations, particularly if the law simplifies and tailors procurement rules according to the capacity of the procuring institution and the size and strategic significance of the procurement. Examples of single harmonized procurement laws and regulations (that emphasize transparency) include the UNCITRAL Model Procurement Law, Mongolia, Mexico and Mauritius, among others.

The revised legal framework should harmonize transparency requirements for all three spheres of government. In the current situation, there is a different standard of transparency between municipal, national and provincial government departments. These differences should be resolved in favor of basic information about contract opportunities, awards and implementation being publicly disclosed, preferably as open data. At the same time, opportunities for procuring entities to go

beyond minimum requirements to disclose more information or to pilot civil society participation in public contracting as observers of procurement processes or monitors of contract implementation should not be prohibited or curtailed by the legal framework.

As a first step, procurement policies should be published and the National Treasury should communicate the value of transparency to procuring entities. Publication of procurement policies by procuring entities would enable potential bidders to better understand their rights and responsibilities and the functioning of the procurement process for each entity. Furthermore, National Treasury could issue a communication to procuring institutions entities emphasizing the importance of publishing information about and raising awareness of the importance of public contracting for local stakeholders. It is a great opportunity for people to learn about how their taxes translate to service delivery and to keep procuring institutions and contractors accountable for their performance. Likewise, it will help to empower the private sector with the information they need to determine whether or not to compete in public contracts and the confidence that procurement processes will be transparent and fair.

4.5. Research contribution. This study contributes to the existing body of knowledge about public procurement transparency, openness and public participation. Since no evidence of similar studies on Open Contracting in South Africa was found, this groundbreaking research study made a new contribution to the body of knowledge. If public contracting was more open, it can make a major contribution to efficiency and effectiveness in the functioning of government institutions.

4.6. Limitations of the study. Only procurement practitioners' perceptions on key South African legislation were considered in the study. These perceptions were not compared to other primary (public service officials including the Accounting Officer, Managers from other end-user departments, Employees, Community, etc.) and secondary (Auditor General, Provincial Treasuries, National Treasury, etc.) stakeholders to give a balanced view. This could compromise the interpretation of the responses.

4.7. Recommendations for future research. The research assessed the application of Open Contracting in the South African public sector procurement from a quantitative perspective. In general, the concept of Open Contracting in South African public procurement is not completely understood, which makes the field rich for research in South Africa. The respondents, however, provided a rich pool of information. From this the following theme for further research has emerged:

- A study on the development of a framework for the implementation of Open Contracting in the South African public sector procurement system.

Conclusion

The purpose of this study was to investigate the conformity of the Open Contracting principles to the current South African public procurement system. A review of the literature indicated a gap within the body of knowledge with respect to understanding Open Contracting. In conclusion, this study confirmed that Open Contracting in the South African public sector procurement is still young and full of promise. There needs to be an accurate targeting of organs of state tasked with the implementation of the public procurement system to implement Open Contracting in a formal and standardized format.

References

1. Ambe, I. M., & Badenhorst-Weiss, J. A. (2012, September). Supply chain management challenges in the South Africa public sector. *African Journal of Business Management, 6*(44), 11003-11014. Retrieved from http://www.academicjournals.org/AJBm/PDF/pdf2012/7Nov/Ambe%20and%20Badenhorst-Weiss.pdf
2. Arrowsmith, S. (2010). Public procurement: Basic concepts and the coverage of procurement rules. In S. Arrowsmith (Ed.), *Public procurement relations: An introduction* (pp. 1-31). Nottingham, UK: EU Asia InterUniversity Network.
3. Bolton, P. (2006). Grounds for dispensing with public tender procedures in government contracting. *Potchefstroom Electronic Law Journal, 2.* Retrieved from http://reference.sabinet.co.za/sa_epublication_article/perblad_v2_2006_a1
4. Chipkin, I., Tshimomola, G., & Brunette, R. (2014, August). Decentralized procurement fails the state. *Mail & Guardian, 1*. Retrieved from http://mg.co.za/article/2014-07-31-decentralised-procurement-fails-the-state
5. Davis, M. J. (2014, December). Procurement practices influencing service delivery: a case of Kenya power. *European Journal of Logistics, Purchasing and Supply Chain Management, 2*(3), pp. 79-137. Retrieved from http://www.eajournals.org/wp-content/uploads/Procurement-Practices-Influencing-Service-Delivery-A-Case-Of-Kenya-Power1.pdf
6. Doyle, M., Du Toit, D., Knipe, A., Van Niekerk, D., & Van der Waldt, G. (Eds.) (2001). *Public procurement and inventory management, in service excellence in governance*. Sandown: Heinemann.
7. Estefan, F. (2014). *Open to fight corruption in contracting.* Retrieved from http://www.open-contracting.org/open_to_fight_corruption_in_contracting

8. Folscher, A. (2010, November). Budget transparency: New frontiers in transparency and accountability. *Transparency Accountability Initiative, 22.* Retrieved from http://www.transparency-initiative.org/reports/new-frontiers-in-transparency-and-accountability
9. Fourie, M. L., & Opperman, L. (2011). *Municipal Finance and Accounting*. Bloemfontein: Van Schaik.
10. Gatjen, J. (2014, July 3). Open Contracting – What is it and how good is it? Proceedings from the *Third IBA Bachelor Thesis Conference*. Enschede: The Netherlands.
11. Hamilton, F. (1980). *Purchasing in South Africa*. Johannesburg: McGraw-Hill Book Company.
12. Horn, G. S., & Raga, K. (2012, September). Municipal supply chain management. *Administratio Publica, 20*(5), pp. 71-91. Retrieved from http://assadpam.za.net/Portals/5/Documents/AP/7199%20Administratio%20Publica%2020(3).pdf#page=75
13. Livhuwani, T. V. (2012). *Impact of the supply chain management on service delivery: The case study of the provincial department of economic development, environment and tourism in the Limpopo province* (MBA dissertation, University of Limpopo). Retrieved from http://ul.netd.ac.za/bitstream/handle/10386/704/tshamaano_vl_2012.pdf?sequence=1&isAllowed=y
14. Nunnally, J. C. (1978). *Psychometric Theory* (2nd ed.). New York: McGraw-Hill.
15. Open Contracting Partnership (2015). *Towards a new norm of disclosure and participation.* New York: Open Contracting Partnership.
16. Rolfstam, M. (2009). Public procurement as an innovation policy tool: The role of institutions. *Science and Public Policy, 36*(5), 349-360. Retrieved from http://spp.oxfordjournals.org/content/36/5/349.short
17. Roodhooft, F., & Abbeele, A. V. D. (2006). Public procurement of consulting service: Evidence and comparison with private companies. *International Journal of Public Sector Management, 19*(5), 490-512. Retrieved from http://www.emeraldinsight.com/doi/abs/10.1108/09513550610677799
18. Sandler, J. L. (2011). *A formative evaluation of the implementation process of the supply chain management policy framework in Eastern Cape provincial administration* (MBA dissertation, Rhodes University, Grahamstown). Retrieved from http://eprints.ru.ac.za/2101/1/SANDLER-MBA-TR11-73.pdf
19. South Africa (2017, January 20). Preferential Procurement Regulations, 2017. *Government Gazette*, 40553 (Regulation Gazette No. 40553). Retrieved from http://ocpo.treasury.gov.za/Resource_Centre/Legislation/Preferential%20Procurement%20Regulations%202017%20as%20per%20Gazette%2010684.pdf
20. South Africa (1996). *The Constitution of the Republic of South Africa as adopted by the Constitutional Assembly on 8 May 1996 and as amended on 11 October 1996*. Pretoria: Government Printer.
21. South Africa (2003, December 12). Framework for Supply Chain Management. *Government Gazette*, 25767 (Regulation Gazette No. 25767). Retrieved from http://www.treasury.gov.za/legislation/pfma/regulations/gazette_25767.pdf
22. South Africa (2003). *Municipal Finance Management Act.* Pretoria: Government Printer.
23. South Africa. Auditor-General (2012). *The consolidated general report on the audit outcomes of local government for 2010-11 (Part 1), 50.* Retrieved from http://www.agsa.co.za/Reports%20Documents/MFMA%20consolidated.pdf
24. South Africa. Department of Planning, monitoring and evaluation (2014). *Outcome 9: Responsive, accountable, effective and efficient developmental local government system.* Retrieved from http://www.thepresidency-dpme.gov.za/news/Pages/Outcome-9-Local-Government-MTSF-Chapter.aspx
25. South Africa. National Planning Commission (2011). *National development plan: vision for 2013.* Retrieved from http://www.npconline.co.za/medialib/downloads/home/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf
26. South Africa. National Treasury (2003). *Policy strategy to guide uniformity in procurement reform processes in government.* Retrieved from http://www.treasury.gov.za/divisions/sf/sc/Guidelines/policy.pdf
27. South Africa. National Treasury (2004). *Supply chain management: A guide for accounting officers/authorities.* Retrieved from http://www.treasury.gov.za/divisions/sf/sc/Guidelines/SCM%20Jan900-Guidelines.pdf
28. South Africa. National Treasury (2015). *Public sector supply chain management review.* Retrieved from http://www.treasury.gov.za/publications/other/SCMR%20REPORT%202015.pdf
29. Tsharane, J. S. (2014). *Factors that influence educators' intention to adopt information technology in Tshwane secondary schools* (MBA dissertation, Tshwane University of Technology, Pretoria). Retrieved from http://encore.tut.ac.za/iii/cpro/app?id=0712117418410085&itemId=1001299&lang=eng&service=blob&suite=def
30. Tukamuhabwa, B. R. (2012). Antecedents and consequences on public procurement non-compliance behavior. *Journal of Economics and Behavioural Studies, 4*(1), 34-36. Retrieved from http://connection.ebscohost.com/c/articles/74607733/antecedents-consequences-public-procurement-non-compliance-behavior
31. Van Der Walt, E. M. (2012). *Innovations in South African public service procurement policy: 1999–2005* (Master of Administration dissertation, UNISA, Pretoria). Retrieved from http://uir.unisa.ac.za/bitstream/handle/10500/9373/Dissertation_Van%20Der%20Walt_E.pdf?sequence=1
32. Van Vuuren, K. (2006, June 1-8). Achieving economic and social value through procurement professionalism. Proceedings of *SAPICS 28th annual conference and exhibition, Sun City.*